

A large, light green decorative shape on the left side of the page, resembling a stylized 'L' or a curved vertical bar.

Department of Labor
Releases New Guidance on
Missing Participants

Legacy Retirement Solutions, LLC

P.O. Box 1215
Brookhaven, PA 19015

Phone: 484-483-1044
Fax: 484-361-4800

E-mail: marketing@legacyrslc.com

Department of Labor Releases New Guidance on Missing Participants

As you may recall, in June of this year on LinkedIn, we at Legacy Retirement Solutions, LLC lamented the end of the “letter forwarding service” as sponsored by the Social Security Administration (“SSA”). The letter forwarding service was a valuable tool in the world of tax-qualified defined contribution retirement plans because it provided an inexpensive resource under which the SSA would forward certain items of third-party provided correspondence to the most recent address that the SSA had in its records for an individual.

In the past, utilization of the SSA letter forwarding service was an Internal Revenue Service (“IRS”) and Department of Labor (“DOL”) approved method for a “Plan Administrator” (in this context, we are referring to an ERISA Plan Administrator which usually means the Plan Sponsor and not a third-party retirement plan administrator also known as a “TPA”) to satisfy certain due diligence obligations associated with its responsibility to attempt to locate “missing participants” (former employees with a retirement plan benefit who no longer reside at their last known address). This included the need to locate missing participants in the context of the voluntary correction of compliance problems under the Employee Plans Compliance Resolution System (“EPCRS”) as promulgated by the IRS as well as in conjunction with the DOL’s Field Assistance Bulletin No. 2004-02 (“FAB 04-02”) which provided guidance regarding the proper termination of defined contribution plans.

The IRS sponsored a similar letter forwarding service which also was eliminated in 2012. The elimination of both the IRS and SSA letter forwarding programs left a significant area of uncertainty with respect to a definitive, inexpensive and approved missing participant search methodology. These programs were critical to the ability of a Plan Administrator to fulfill his or her fiduciary obligations in connection with attempting to locate missing participants. Fortunately, the DOL recognized the need to create additional guidance in this area and, in response, recently issued Field Assistance Bulletin No. 2014-01 (“FAB 14-01”) which is intended to supersede FAB 04-02 referenced above.

Under the new guidance, the DOL has established what must be done when a participant cannot be located through a routine delivery method such as first class mail or some form of electronic contact. Specifically, FAB 14-01 indicates that a plan fiduciary must perform all of the following:

- Issue notices via Certified Mail;
- Check related Plan and employer records for alternate contact opportunities;
- Check with the participant’s designated plan beneficiary; and
- Employ free electronic search tools which include internet searches, public record databases and social media.



www.legacyrslc.com

**Legacy Retirement Solutions,
LLC**

P.O. Box 1215
Brookhaven, PA 19015
Phone: 484-483-1044
Fax: 484-361-4800

Failure to take all of the steps listed above to locate a missing participant is considered to be a fiduciary breach by the DOL.

If the search methods indicated above are unsuccessful, the DOL states that it is necessary for the Plan Administrator to consider whether additional search methods are appropriate. This evaluation should consider the account balance of the missing participant as compared to the cost of employing additional search methods. Other search methods could include internet search tools that charge a fee, commercial locator services, credit reporting agencies, information brokers, investigation databases and analogous services. In addition, as long as the terms of the plan permit it, the DOL has indicated that reasonable costs incurred as a result of the performance of these additional searches may be charged to the account of the missing participant at issue.

If after the employment of the mandatory and, if appropriate, additional search methods discussed above a participant still cannot be located, FAB 14-01 establishes three permissible options that a Plan Administrator may employ in order to distribute the account balance of the missing participant. First and preferably, the Plan Administrator could perform a direct rollover of the account balance of the missing participant to an "individual retirement account" ("IRA"). This method is preferred because it results in the continued deferral of income tax while avoiding both 20% mandatory withholding and, potentially, the 10% additional tax on early distributions.

Another approved distribution option is to establish an interest bearing federally insured bank account with the proceeds of the missing participant's plan account. In selecting a bank to provide this service, the Plan Administrator must consider the bank's quality, the interest rate (with or without a guarantee) and any real or potential charges that may be assessed by the bank. In addition, the participant must have the unconditional right to withdraw the funds from the account.

The third DOL approved distribution option involves the transfer of the account balance of the missing participant to a state's unclaimed property funds in the state of the participant's last known residence or work location. However, any transfers to such a fund must comply with all relevant state law requirements.

We sincerely hope that this article helped you to better understand this topic. However, under no circumstances is it to be construed as financial, tax or legal advice. Therefore, if you believe that it may apply to your (or your client's) company, be sure to further discuss it with a qualified retirement plan professional. For more information about this topic, please contact our marketing department at 484-483-1044 or your administrator at Legacy.



www.legacyrslc.com

**Legacy Retirement Solutions,
LLC**

P.O. Box 1215
Brookhaven, PA 19015
Phone: 484-483-1044
Fax: 484-361-4800