

Missing Retirement Plan Participants? The DOL Says You Should Follow These Best Practices

A Practical Guidance® Article by
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In response to ongoing pleas for guidance, the Department of Labor (DOL) has published an [informal outline](#) expressing its views on how retirement plan administrators should be addressing missing or unresponsive participants. Through contrasting lists of “red flags” and “best practices,” the publication reveals the DOL’s expectations of plan administrators and provides helpful guideposts for them to follow. This article provides a summary of the publication, as well as tips for plan administrators to maintain, in the words of the DOL, a “well-run plan” with respect to missing and unresponsive participants.

As evidenced by its words and actions over the past several years, the DOL has been intently focused on identifying and rehabilitating plans with what it considers lax protocols for ensuring participants stay connected to their retirement plan benefits. For this reason, it is worthwhile for plan administrators to review the complete lists of red flags and best practices in the publication. However, if there is one clear takeaway from the publication it is that plan

administrators should be proactive in maintaining and, if necessary, regaining contact with participants. In the eyes of the DOL, taking ad hoc steps to find participants only after they are owed a distribution or just mailing a check to their last known address may not be enough.

Red Flags – Being Reactive

In the publication, the DOL provides the following list of “red flags” that in its experience indicate a problem with missing or nonresponsive participants:

- More than a small number of missing or nonresponsive participants
- More than a small number of retired participants not receiving benefits
- Missing or outdated contact information and census data
- Absence of sound policies for handling returned mail
- Absence of sound policies for handling uncashed checks

Practice Pointer

Keep a list and check it twice. As reflected in the publication, the DOL expects that plan administrators will track participants with stale contact information, keep a record of mail that has been returned, and account for checks that are uncashed.

Best Practices: Being Proactive

The DOL states in the publication that the following “best practices” are effective at minimizing and mitigating the problem of missing or nonresponsive participants:

1. **Maintain accurate census information for the plan's participant population.** At regular intervals, plan administrators should review and update contact information for participants and beneficiaries and prompt participants to update their information.

Practice Pointer: As further suggested by the DOL, when a plan (or just its assets) is acquired in connection with a corporate transaction, the buyer should require the seller to provide records of missing participants and any search efforts that have been taken.

2. **Implement effective communication strategies.** The nature of communications to participants should be clearly identified, and the content should be concise and readable. Additionally, plan administrators should have a process for obtaining and regularly confirming that participant contact information is up to date.

3. **Missing participant searches.** The DOL has previously denoted search steps that plan administrators should take in [Field Assistance Bulletin 2014-01](#). Such guidance only technically applies to plan administrators of terminating defined contribution plans. However, because it has been the only guidance from the DOL regarding search steps for missing participants, it has also been relied on by plan administrators of ongoing plans. In addition to those previously stated in Field Assistance Bulletin 2014-01, this new publication describes the following search steps:

- o Attempt contact through social media.
- o If a participant is unresponsive for a long period, use death searches, such as the Social Security Death Index.
- o Contact colleagues of missing participants.
- o Publish a list of missing participants on the company's intranet or email the list to current employees.
- o For union employees, contact the local union office. –and–
- o Register missing participants on pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits).

Practice Pointer: Plan administrators should update any applicable policies and, in some cases, plan documents to include these additional search steps.

4. **Document procedures and actions.** Plan administrators should create and follow policies for avoiding, identifying, and rectifying missing participants, and they should document the steps taken to implement the policies. Also, they should ensure any third-party administrator has a sound policy for this purpose and is following it.

Practice Pointer: This step is particularly critical for plan administrators. To some extent, participants going missing is unavoidable. However, with written evidence that a prudent process is in place and is being followed, a plan administrator should be able to demonstrate that participants are not missing due to any fiduciary shortcomings. While such a process and its application are typically within the primary control of a third-party administrator, the DOL expects that plan administrators are familiar with the process, are confirming it is prudent, and are ensuring it is applied consistently.

In conjunction with the publication described above, the DOL simultaneously published [DOL Field Assistance Bulletin 2021-01](#) describing its temporary enforcement policy with respect to terminating defined contribution plans using the PBGC Missing Participants Program and [Compliance Assistance Release No. 2021-01](#) regarding investigative processes and case closing practices among EBSA's Regional Offices. To the extent relevant, plan administrators should also review and understand this additional guidance.

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- [DOL, Field Assistance Bulletin 2014-01](#)
- [DOL, Compliance Assistance Release No. 2021-01](#)
- ["Duties of an ERISA Fiduciary,"](#) Lexis Tax Advisor -- Federal Topical § 1C:20.07

Practical Guidance

- [Locating Missing Participants in Qualified Retirement Plans](#)
- [Missing Participants Best Practices Checklist](#)
- [Missing Participant PBGC Program Procedures Checklist](#)
- [Terminating a Defined Benefit Plan Checklist](#)
- [ERISA Fiduciary Duties](#)
- [Questions After IRS Guidance On Uncashed 401\(k\) Checks](#)

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