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Uncashed Distribution Checks: Best Practices for Plan Sponsors

Defined contribution plan sponsors face numerous challenges when workers change jobs, and the Department of Labor (DOL) is paying close attention to how employers are dealing with these situations.

Often, outgoing workers don't provide instructions or forwarding information, leaving it up to the plan sponsor to figure out what to do with the assets that are left behind.

From 2004 to 2013, more than 25 million participants in workplace plans left at least one retirement account behind when changing jobs, according to a January report from the Government Accountability Office (GAO). Meanwhile, the DOL estimates that $15 million in distribution checks goes unclaimed each year.

While the DOL offers guidance for dealing with missing participants in terminated plans, the same is not true for ongoing plans. As fiduciaries, plan sponsors must account for all assets in a plan—whether those checks have been cashed or not.

Plan sponsors should realize that plan participants can be deemed missing because they have not cashed their check. Terminated vested plan participants can also be deemed missing if they simply walked away from the plan and did not request a distribution.

In many cases, searches for missing participants are conducted by plan service providers, such as record keepers, trustees or custodians. But this doesn't relieve plan sponsors from their fiduciary obligation to make sure procedures are being followed. Not dealing with the issue properly can be considered a breach of fiduciary duty and can entail harsh penalties and other liabilities.

According to an October 2017 letter sent by the American Benefits Council to the DOL, the DOL's regional offices have been aggressive in investigating plan sponsors' processes for dealing with terminated vested plan participants. Terminated vested participants are workers who qualify to receive matching contributions, but have left the company and may not be of retirement age. In some cases, regional offices determined that plan sponsors breached their fiduciary duties—even when plan procedures have been followed. In light of the DOL's aggressive investigations into these issues, plan sponsors should have procedures in place to handle the uncashed distribution checks of missing participants.

Current Guidance and Best Practices

After leaving a company, many plan participants forget to roll over their 401(k) assets into an Individual Retirement Account (IRA) or their next employer's retirement plan. This doesn't absolve plan sponsors from their duties, however. It's critical that plan documents outline policies so plan sponsors can appropriately handle these situations. At a minimum, plan documents should articulate:

- The process to be followed in searching for an unresponsive participant
- A timetable for plan providers (if applicable) to report progress
- The framework for charging fees and moving assets to an outside IRA, as well as a process for documenting these practices
- Next steps for unsuccessful searches

While rules allow plan sponsors to cash out small accounts, the GAO report found that more than 13 million accounts of $1,000 or less were left by participants from 2004 to 2013, amounting to $1.2 billion. It may seem like a small amount compared to the trillions of dollars in defined contribution plans today, but many experts agree that the numbers are only going to increase as the workforce continues on its trajectory of greater mobility.

To date, the DOL and the Internal Revenue Service (IRS) haven't issued direction on how plan sponsors should handle uncashed checks from ongoing plans. Many plan sponsors have relied on Field Assistance Bulletin (FAB) 2014-01, which is meant for finding participants in terminated defined contributions plans. In August

2017, a DOL official offered four best practices for plan sponsors to follow until further guidance is issued:

1. Send a certified letter to the missing participant using their last known address
2. Keep detailed and up-to-date records on the attempts to reach the missing participant
3. Ask co-workers if they know how to find the missing participant
4. Try calling the missing participant's cell phone (since most people keep their number when moving to a new residence)

If these four steps don't successfully locate the missing participant, plan sponsors should consider continuing their efforts. Possible alternatives include hiring a locator service or conducting other Internet searches. It's important to reiterate that the DOL is placing special emphasis on investigating these issues, and just because plan sponsors made a good faith effort to find someone, it doesn't mean they're relieved of certain responsibilities.

Meanwhile, U.S. Sens. Elizabeth Warren (D-Mass.) and Steve Daines (R-Mont.) have reintroduced legislation aimed at creating a national database to help American workers find their missing retirement accounts. The Retirement Savings Lost and Found Act would allow employers to move abandoned accounts to target date funds as opposed to money market accounts. It would also transfer uncashed checks under $1,000 to Treasury securities, which would be logged into the database for workers to find. Lastly, the legislation clarifies the role employers and plan sponsors play in finding workers who have abandoned their retirement accounts. The bill has been referred to the Senate Finance Committee.

Insight: Reevaluate Your Procedures and Coordinate With Service Providers

As the DOL continues its focus on investigating plan sponsors' practices related to missing participants, plan sponsors should review—and possibly revise—their policies regarding how they handle uncashed distribution checks and other issues related to missing participants. If applicable, plan sponsors should discuss the topic with service providers to make sure everyone is on the same page regarding the processes and availability of information.

If they haven't done so already, plan sponsors should develop, document, and implement procedures for whenever a worker terminates employment. Creating these procedures should be a priority for plan fiduciaries and committees. In addition, plan sponsors may want to consider doing to following to strengthen their controls related to missing participants:

- Maintain and regularly update a list of outstanding checks
- Monitor account balances for terminated plan participants
- Cash out small account balances—but realize that doing so could increase the number of outstanding checks
- Regularly update employees' contact information