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DOL Announces Temporary Enforcement Policy Regarding Transfer of Small Retirement Benefit Payments of Missing Participants to State Unclaimed Property Funds

by Lisa S. Boehm on January 31, 2025

Retirement plan fiduciaries have a new option for handling small benefit payments owed to missing participants and beneficiaries thanks to a temporary enforcement policy announced by the Department of Labor ("DOL") earlier this month in DOL Field Assistance Bulletin No. 2025-1 ("FAB 2025-1").[1]

The Policy

Under the policy, and pending further guidance, the DOL will not assert a violation of fiduciary duties under Section 404(a) of ERISA in connection with a plan fiduciary's decision to transfer retirement benefit payments (including uncashed checks) owed to a missing participant or beneficiary[2] from an ongoing retirement plan to a state unclaimed property fund, if the following conditions are met:

- The present value of the participant's or beneficiary's vested benefit (including rollover contributions but disregarding any outstanding loan balance) does not exceed $1,000;
- The plan fiduciary determines that the transfer to a state unclaimed property fund is a prudent destination for the participant's or beneficiary's retirement benefit payments;
- The plan fiduciary has implemented a prudent program to find missing participants consistent with the DOL's Missing Participants—Best Practices for Pension Plans and nevertheless has been unable to find the participant or beneficiary;

[1] The DOL's "temporary enforcement policy" is a bit of a misnomer because it is actually a non-enforcement policy.

[2] FAB 2025-1 uses the term "missing" to also refer to participants and beneficiaries who are nonresponsive.

- The transfer is made to the unclaimed property fund of the state of the participant's or beneficiary's last known address;
- The state unclaimed property fund qualifies as an "eligible state fund;" and
- The summary plan description of the plan discloses that a missing participant's or beneficiary's retirement benefit payments may be transferred to an eligible state fund and identifies the name, address, and phone number of a plan contact for further information regarding the eligible state funds to which retirement benefit payments are transferred.

What is an Eligible State Fund?

To be an "eligible state fund," the state unclaimed property fund must satisfy nine requirements set forth in FAB 2025-1. Chief among them, the fund:

- May not charge any fees;
- Must permit claims to be made and paid in perpetuity;
- Must maintain a searchable website that reliably shows, at no charge, the name of the missing participant or beneficiary and the name of the plan in the results page of a search and must permit an electronic claims process; and
- Must participate in the National Association of Unclaimed Property Administrators MissingMoney.com website or similar non-commercial unclaimed property database endorsed by the National Association of State Treasurers, Inc.

Helpfully, FAB 2025-1 provides that absent actual knowledge to the contrary, a plan fiduciary may rely on a representation by a State Treasurer that the state operates an unclaimed property fund that meets all nine requirements.

What Else in FAB 2025-1 is Noteworthy?

Two other items in FAB 2025-1 are noteworthy. First, it states that the DOL is not precluded from asserting violations under ERISA Sections 107, 209, and 404 for failure to maintain records. Second, it states that it does not address federal income tax withholding obligations with respect to transferred amounts. In our view, retirement plans should withhold and remit federal income tax on transferred amounts in accordance with Section 3405 of the Internal Revenue Code until the IRS indicates otherwise.

Lastly, FAB 2025-1 includes an informative “Background” section summarizing the Department’s past guidance and initiatives regarding missing participants, particularly voluntary transfers of missing participants’ and beneficiaries’ retirement benefit payments to a state unclaimed property fund.

Takeaways from FAB 2025-1

1. The DOL’s enforcement policy gives retirement plan fiduciaries another option to consider, which they may find preferable to transferring a missing participant’s or beneficiary’s retirement benefit to an IRA because, unlike an IRA, there are no fees that could erode the retirement benefit.

2. Plan fiduciaries intending to make transfers pursuant to the enforcement policy will want to confirm that the plan’s missing participant processes align with the DOL’s Missing *Participants—Best* Practices for Pension Plans because the policy essentially turns that best practices guidance into a requirement.

3. These plan fiduciaries will also want to ensure that the plan’s SPD has been updated as required by the enforcement policy, and plan sponsors should consider whether the distribution provisions in the plan document need to be amended to permit transfers pursuant to the enforcement policy.

4. The enforcement policy is *temporary*. The DOL intends to consider more formal guidance related to voluntary transfers of retirement benefit payments from ongoing plans to state unclaimed property funds as part of its implementation of the SECURE 2.0 Act mandate to establish an online searchable Retirement Savings Lost and Found database.

If you have any questions regarding the DOL’s temporary enforcement policy or FAB 2025-1 generally, please contact a member of our Employee Benefits & Executive Compensation Group.

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