



MEMORANDUM

TO: All Pension Plans

FROM: KLAUSNER, KAUFMAN, JENSEN & LEVINSON

RE: Best Practices for Locating Missing or Nonresponsive Participants and Beneficiaries

DATE: February 2021

In 2017, the IRS released guidelines on some ways to locate missing participants who are due a benefit or a refund of contributions from your Fund. The Department of Labor (DOL) has recently gathered some “best practices” which supplements the original guidance from the IRS. While the Department of Labor does not govern your Fund, we thought that these best practices would be helpful.

Overall, the DOL has found that establishing uniform policies and procedures is a proven method to minimize and mitigate the problem of missing or nonresponsive participants. Documenting what steps have been taken is necessary for compliance with the safe harbor. If a retirement plan has not completed and documented the steps they have taken, it may be challenged for violation of the required minimum distribution (RMD) standards for failing to commence or make a distribution payment to a participant or beneficiary to whom payment is due. Please contact our office if you need any assistance in the search or documentation process.

1. **MAINTAINING ACCURATE CENSUS INFORMATION**

- Contacting participants, both current and retired, and beneficiaries on a periodic basis to confirm or update their contact information, including cell phone numbers and email addresses. Consider requesting social media contact information and next of kin/emergency contact information.
- Including contact information change requests in plan communications along with a reminder to advise the retirement plan of any changes in contact information.
- Following up on undeliverable mail/email and uncashed checks.
- Provide an online platform for members to update contact information and provide prompts to confirm contact information upon login.
- In the case of a change in plan administrator, addressing the transfer of appropriate plan information and relevant employment records (e.g. next of kin information and emergency contacts).

2. **IMPLEMENTING EFFECTIVE COMMUNICATION STRATEGIES**

- Using plain language and offering non-English language assistance when appropriate.
- Stating upfront and prominently what the communication is about – e.g., eligibility to start payment of pension benefits, a request for updated contact information, etc.
- Clearly marking envelopes and correspondence with the retirement plan or sponsor name and indicating that the communication relates to pension benefit rights.

3. **MISSING PARTICIPANT SEARCHES**

- Checking related retirement plan and employer records for participant, beneficiary and next of kin/emergency contact information. While the retirement plan may not possess current contact information, it is possible that the employer's payroll records or the records maintained by another of the employer's plans, such as a group health plan, may have more up-to date information. If there are privacy concerns, the person engaged in the search can request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary.
- Checking with designated retirement plan beneficiaries (e.g., spouse, children) and the employee's emergency contacts (in the employer's records) for updated contact information.
- Using free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, and social media to locate individuals.
- Using a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals.
- Attempting contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address.
- Attempting contact via other available means such as email addresses, telephone and text numbers, and social media.

- If participants are nonresponsive over a period of time, using death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant's death, redirecting communications to beneficiaries.
- Reaching out to the colleagues of missing participants by, for example, contacting employees who worked closely with the participant or by publishing a list of "missing" participants on the employer's intranet, in email notices to existing employees, or in communications with other retirees who are already receiving benefits. Similarly, for unionized employees, some have reached out to the union's local offices and through union member communications to find missing retirees.
- Registering missing participants on public and private pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits), and publicizing the registry through emails, newsletters, and other communications to existing employees, union members, and retirees.
- Searching regularly using some or all of the above steps.

4. **DOCUMENTING PROCEDURES AND ACTIONS**

- Documenting key decisions and the steps and actions taken to implement the policies.
- For retirement plans that use third party administrators or record keepers to maintain plan records and handle participant communications, ensuring the administrator or record keeper is performing agreed upon services, and working with the administrator or record keeper to identify and correct shortcomings in the plan's recordkeeping and communication practices, including establishing procedures for obtaining relevant information held by the employer.