

DOL Announces Temporary Enforcement Policy for Small Retirement Benefit Amounts Owed to Missing Participants

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The DOL has announced enforcement relief allowing small retirement benefit amounts owed to missing or nonresponsive participants and beneficiaries to be transferred from a plan to a state's unclaimed property fund, subject to certain requirements. Under this policy, the DOL will not pursue an action for violation of ERISA's fiduciary rules with respect to a fiduciary's voluntary decision to transfer benefit payments (including uncashed checks) from an ongoing plan to such a fund, so long as the missing individual's accrued benefit is \$1,000 or less (disregarding outstanding plan loans but including rollovers) and specified conditions are met.

As explained in the related [news release](#), the conditions are designed to protect missing individuals' interests and ensure that the state unclaimed property funds meet minimum standards. The fiduciary must have implemented a prudent program for locating missing participants and beneficiaries consistent with the DOL's Best Practices guidance. The fiduciary must determine that the fund is a prudent destination and select the fund in the state of the individual's last known address. The plan's SPD must explain that benefits owed to missing participants and beneficiaries may be transferred to an unclaimed property fund and provide a plan contact for further information. And the fund must qualify as an "eligible state fund." This entails allowing claims to be made and paid in perpetuity, not reducing transferred amounts for fees or other charges, and meeting other requirements such as having a searchable website and participating in the National Association of Unclaimed Property Administrators MissingMoney.com website (or similar database) and the States' Unclaimed Property Clearing House. Also, the fund must permit plans to pay reappearing individuals directly and then obtain reimbursement from the state.

Specifying that this policy is temporary, the announcement indicates that the DOL will consider issuing more formal guidance on transfers from ongoing plans to state unclaimed property funds as part of its project to assist individuals in locating their plan administrators and keeping plan contact information current. A key component of this effort is the establishment of the [Retirement Savings Lost and Found Database](#), which is now available to the public. The DOL encourages plan administrators, recordkeepers, and others to submit information to the database.

EBIA Comment: Fiduciaries of ongoing plans may welcome this option for dealing with small amounts owed to missing participants and beneficiaries. (Transfers to state unclaimed property funds were already permitted for terminating plans in limited circumstances.) Citing considerations supporting its approach, the DOL notes that unclaimed property funds do not deduct fees (unlike IRAs) and maintain robust outreach and technology operations. Also, otherwise qualifying distributions to state unclaimed property funds may be later rolled over to a

qualified plan on a pre-tax basis. For more information, see EBIA's 401(k) Plans manual at Section XII.J ("Missing or Unresponsive Participants").

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