

Lost Retirement Money and Social Security

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Some workers save and/or earn money for retirement through a pension plan at work that they never receive as retirement benefits. In our dynamic economy, lost retirement money is often the result of a change in corporate identity, such as a company going out of business or being bought, combined with a person changing jobs, moving, or a death. While a number of policy issues are raised concerning lost pensions, lost pensioners, and how the money can be delivered to those to whom it is due, the end result often is unclaimed pension monies.

This article addresses the issue of the ultimate disposition of lost pension funds. Such money incorporates tax obligations to the government in the form of taxes not collected. That raises the questions of who does and who should benefit from the unclaimed pension funds?

Lost Pensions

Some people when they reach retirement age are unable to locate the pension they had with a former employer and claim their benefits--they have a "lost pension" (Blake and Turner 2002a, b). A former employer may be difficult to locate. Workers may be unable to locate a former employer and its pension plan if the employer moved to a different town, closed down a particular plant or office, was bought by another company and given a new name, merged with another company and changed names, split into different parts with none of them retaining the former name, went bankrupt, or simply ceased operations. The more of these changes that have occurred over time, the greater the difficulty a worker will have in tracing a former employer. Also, the more likely is it that the employer will make errors in record keeping. Employers may have difficulty finding former employees who have moved and who may have changed their name due to a change in marital status.

Other older persons may be entitled to a pension but are unaware of their eligibility. From the perspective of their pension provider, they are a "lost pensioner." The problem of lost pensions and lost pensioners is a problem job changers face in saving for retirement, and thus may be a particular problem in the United States where employees change jobs more frequently than in many other countries. Lost pensioners may also result from the death of a former worker, with the survivor being unaware they are eligible to receive a survivors benefit. Lost pensioners may be the result of loss of competence to manage one's financial affairs.

Money Lost

As a result of lost pensions and lost pensioners, large sums of money are unclaimed by pensioners. Between 1989 and 1997, more than \$1 billion in pension checks to retired federal government workers were not cashed, which is presumably entirely a problem of lost pensioners, since federal government pensions are relatively easy to claim (Caplin 1997). According to another estimate, \$1 billion is held in approximately 1,800 U.S. life insurance company accounts for unclaimed pension plans, individual annuities and life insurance policies. These benefits have gone unclaimed presumably because family members and beneficiaries were unaware that the policies existed at the time of death of the policy holder (Life Benefits Search 2001). While no accurate statistics exist concerning the total amount of unclaimed assets in U.S. pension funds, anecdotal evidence suggests that in the United Kingdom it is between £10 billion and £77

billion (Maunsell 1998). This evidence suggests that the amount of lost pension money in the United States could be substantial.

Though not part of the pension system, U.S. Savings Bonds are often purchased as a form of retirement savings. Savings Bonds are purchased by individual savers from the government. They currently have maturities of 30 years, though at one time they had maturities of 40 years. Savings bonds holders in the United States hold more than \$7 billion in savings bonds that have matured and are no longer paying interest. The Bureau of Public Debt has undertaken an advertising campaign to inform people that the bonds no longer pay interest once they have reached maturity, and that they should redeem the bonds (US Department of the Treasury 2000).

The Disposition of Unclaimed Pension Money

In the United States, if a pensioner never claims his or her defined benefit pension entitlement, the ownership of the underlying assets remains with the institution holding those assets. From the plan's perspective, it is not necessarily known whether the person did not claim the benefit because they could not find it or because they were dead and not entitled to the benefit. Thus, the employer of an ongoing pension plan, the Pension Benefit Guaranty Corporation (PBGC), or an insurance company ultimately claims the money. For employers, the claim takes the form of lower required contributions due to the larger assets in the pension fund.

In a defined contribution plan, the money belongs to the worker or the worker's estate. It does not revert to the employer. Due to the lack of clear guidance from the government on the issue of unclaimed defined contribution pension accounts, plan sponsors use various procedures to resolve the problem. In the case of a terminating plan, there is no mechanism for reinstatement of the benefit. Some plans withhold 100 percent of the account balance and remit it to the Internal Revenue Service (IRS). Other plans create an individual retirement account (IRA) and roll the individual's account balance into the IRA (ASPA 2001).

A non-scientific survey of plan sponsors indicated that several different approaches are used for the disposition of unclaimed defined contribution funds, reflecting uncertainty as to the appropriate action to be taken (Plansponsor.com, 2002). Some sponsors carry lost pensioners as

participants indefinitely. One plan allows default into forfeiture if the participant could not be located for five years. One plan redistributes the money to the remaining participants after three years of lost contact. Another plan withholds 100 percent as federal withholding payable to the Internal Revenue Service (IRS). Some plans escheat the money to the state in which the participant last is known to have lived. Some plans redeposit the money in the plan in a separate account.

Legal Issues

There is no definition in the Employee Retirement Income Security Act of 1974 (ERISA) as to when a participant should be considered lost. Lost participant cases have arisen in defined benefit plans that are being terminated or that have been taken over by the Pension Benefit Guaranty Corporation (PBGC), or in defined contribution plans. But in an ongoing defined benefit plan there is no clear obligation on the part of the plan sponsor or administrator to locate the participant when he or she becomes eligible for benefits. It is up to the participant to apply for benefits.

In a defined contribution plan, the participant's benefit is identified and does not terminate upon the participant's death. Therefore, the plan has a remaining obligation to pay the benefit to a survivor of the participant. If no one claims the benefit, a question arises as to what should happen to the money.

A number of states have taken the position that lost pension money becomes unclaimed property and should be handled as required by the unclaimed property statutes of the state where the property resides. Most states have unclaimed property statutes, stipulating that property that is not claimed by the owner or an heir after a certain number of years—ranging from three in New York to 15 in Idaho—becomes the state's property (Demby, 1995).

The U.S. Department of Labor, however, has taken the position that ERISA preempts the states' unclaimed property statutes (DoL Opinion 78-32A, December 22, 1978; DoL Opinion 79-30A, May 14, 1979; DoL Opinion 94-41A, December 7, 1994). It suggested that the sum of money could be deposited in a bank account in the name of the participant, which presumably eventually would be subject to the state unclaimed property laws (Seafood Workers, 1986).

In a court decision, the Illinois' Uniform Disposition of Property Act was preempted by ERISA (*Commonwealth Edison Co. v. Sarah D. Vega*, 174 F.3d 870 (7th Cir. 1999)). Under the

Act, the State of Illinois attempted to take control of amounts that were due to beneficiaries of a utility's pension plan, but which were unclaimed for five years. While the state would not have taken title to the benefits, it would have held them interest-free until claimed by beneficiaries. The Seventh Circuit held that the state's action would have violated the "exclusive purpose" rule of ERISA because it would have allowed plan assets to be used for a purpose other than providing benefits to beneficiaries. The court also held that if the Act was not preempted, it would have subjected the plan to the states' varying laws regarding unclaimed property, in contravention of ERISA's goal of providing uniform regulation of employee benefit plans (Section 52,014, RIA Pension Coordinator 2002).

Some courts have disagreed with the position taken by the Department of Labor. A second circuit case, *Aetna Life Insurance Company v. Borges*, (869 F.2d 142, 2d Cir. 1989), found that checks sent to participants but not cashed were governed by the abandon property statute of Connecticut and the plan had to turn the money over to the state. Participant money held by the state as abandon property would receive all the protections afforded other property such as publishing names of individuals in newspapers.

Depending on the wording of the various state statutes, the locations for escheat could be the pension participant's last known state of domicile, the state where the money is held in trust, or the employer's state of incorporation. Situations can arise when more than one state can claim lost benefits. Keeping track of the conflicting state laws, of the various requisite dormancy periods, and which state has jurisdiction in each case, can be an administrative burden for pension plan administrators (Demby, 1995). The law in this area is unsettled and further clarification in the future can be expected.

Social Security Trust Funds and Lost Pensions

A possible policy option for the disposition of lost pension money, including lost insurance money, and for lost savings bonds, would be for that money ultimately to escheat to the Social Security Old Age and Survivors Insurance (OASI) trust fund. The details as to exactly how that would be done and at what point that would occur would need to be considered. An option for pension money could involve the Pension Benefit Guaranty Corporation (PBGC) collecting the funds and doing a participant search, because it already is involved in lost pension money for the defined benefit plans it has taken over. After a period of time, the money

collected by the PBGC would escheat to the Social Security OASI trust fund. Alternatively, the Social Security Administration could directly collect the money.

This policy would not affect the right of workers to claim their benefits if they subsequently realized that they were due a lost pension. Policy would need to be developed for tracking the money and giving it back if the person ultimately claimed it.

This policy would apply to defined contribution plans, Individual Retirement Accounts (IRAs), and insured pension funds, because for those plans the lost money clearly belongs to pension participants rather than employers. Social Security is, of course, already involved in paying retirement benefits, including verifying the appropriateness of payments. It is already involved in the lost pension issue because it has the responsibility to notify workers when they claim Social Security benefits if they may have unclaimed pension benefits with former employers.

Such a policy would benefit employers and pension service providers because it would clarify the unsettled issue of the ultimate disposition of lost pension money. It would provide participants a single national source to which they could look if they thought they had lost pension money from a defined contribution plan. It would also ultimately provide an added source of financing to help resolve the problem of the long run financial solvency of the OASI trust fund. While it is difficult to estimate how much money Social Security would gain by this policy, it would appear from estimates for the United Kingdom that it would be in the billions of dollars.

Having lost pension money escheat to Social Security rather than to state governments would be more consistent with the purpose intended by the workers and employers who contributed the money. Allowing plans to forfeit the individual accounts that were deemed to be unclaimed and to distribute the account balances to the remaining participants in the plan would maintain the money within the retirement income system, but would selectively benefit people who were already benefiting from the tax preferences provided to the pension system rather than more widely benefiting the taxpaying population that had provided the tax preference for the funds.

Conclusions

The disposition of lost pension money is an unsettled issue, with plans following a number of options. The courts have provided mixed guidance, so that businesses operating in different states face different legal requirements. One option that could resolve these issues is to have lost pension money ultimately escheat to the Social Security OASI trust fund. This option would not affect the rights of workers to ultimately claim their benefits. It would provide a uniform treatment of lost pension money, which would simplify the situation for employers and pension providers. It would provide workers searching for lost pension money a national agency to contact.

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