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Key Legislative Developments Affecting Your Human Resources US

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Retirement Registry Proposed Again

Bipartisan legislation proposed in 2016 to create a registry for lost retirement benefits has been resurrected. The Retirement Savings Lost and Found Act of 2018 would call for a searchable database designed to help workers reconnect with their accounts from prior jobs, and would offer safe harbors for fiduciaries on the search steps needed for addressing missing participants.

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Missing Participants; Missing Accounts

Between automatic enrollment, short job tenure, and participant inattention to account balances when they change jobs, more and more plans are finding they have long lists of participants that they cannot find. The DOL has included this issue as a key area when auditing plans — often finding participants that plan administrators had given up on. IRS has also issued field guidance to their auditors about steps that plan administrators need to follow to avoid running afoul of minimum distribution requirements. Plans and participants alike would benefit from an organized way to connect. PBGC has recently paved the way for terminated defined contribution plans (see our [January 2, 2018 For Your Information](#)), but active plans and IRAs are not invited to that party.

Stepping into the debate, GAO released their report [“Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings”](#) on March 5th. Acknowledging the problems job changes present for managing retirement accounts, GAO was asked to review steps federal agencies might take to assist participants with these challenges. GAO made seven recommendations, including that DOL issue guidance to help ongoing plan sponsors search for missing participants, and that IRS clarify how U.S. individuals should report foreign retirement savings to the IRS. IRS was not supportive of GAO’s suggestion that they re-open their letter forwarding program to help locate missing participants.



Lost and Found Legislation Reintroduced

Expecting that this problem will grow as workers change jobs more frequently over their working years, Sen. Elizabeth Warren (D-MA), together with Sen. Steve Daines (R-MT), introduced the Retirement Savings Lost and Found Act of 2018 ([S. 2474](#)). The bill had been introduced in 2016; with concerns remaining valid and with the fresh GAO report, time is ripe for reconsideration. The new bill has been referred to the Senate Finance Committee.

Retirement Registry

The Retirement Savings Lost and Found Act of 2018 would direct the Social Security Commissioner and the Treasury Secretary to create the “Retirement Savings Lost and Found,” a new searchable database containing account and contact information. The registry would use the data employers are already required to report to the Treasury about terminated participants with unpaid vested benefits on Form 8955-SSA, and would expand reporting requirements to include mandatory reporting of distributions (including automatic IRA rollovers) and transfers so that individuals would be able to track funds to current vendors and know whether funds had previously been delivered to them.

Participants are frequently made aware of potential benefits when the Social Security Administration provides the information reported on Form 8955-SSA when they file for Social Security benefits. Though plan administrators may report participants who have been paid out or are no longer entitled to those benefits, more often than not this does not happen, with the result that individuals think they are eligible for benefits when they are not.

Minimum Distribution Obligation

The Act would provide relief to plans for required minimum distribution (or any other plan qualification) failures due to an inability to locate participants. The Act delineates specific search requirements that must be met to obtain this relief. In addition to meeting the expanded reporting requirements, a plan administrator or other responsible party must:

- Attempt contact by certified mail or similar service to the participant’s last known address, or electronically if the only available contact information is an electronic address; and
- Do at least one of the following (two, if the only record is an electronic address):
 - Check related plan (e.g., the employer’s health plan) and employment records
 - Check with designated plan beneficiary
 - Use free Internet search tools
 - Use a commercial locator service

Sound familiar? Yes, these are essentially the steps the DOL prescribed for terminating defined contribution plans in [Field Assistance Bulletin 2014-01](#) (See our [September 3, 2014 For Your Information.](#))

Coordination of Guidance

The Act would require DOL, IRS and PBGC to coordinate guidance on missing participants. Recent informal reports have suggested the agencies intend to do this in any event, but an official requirement would be welcomed.

Small Cashouts

The Act would also increase the small cashout amount from \$5,000 to \$6,000 and permit accounts of less than \$1,000 (for which there is no participant election) to be transferred to the Director of the Retirement Savings Lost and Found and invested in U.S. Treasury securities, or to an IRA.

Unfortunately, the Act would not address the issue of distributing larger accounts of unresponsive participants in ongoing plans.

Week Ahead

As in previous weeks, we expect issues outside the benefit plan realm to gain the attention of Congress. The bill discussed above is referred to a Senate committee and needs time to simmer before it reaches the floor or gains support in the House.

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