

# The 2013 ERISA Advisory Council Executive Summary to The Secretary of Labor November 5, 2013

The 2013 ERISA Advisory Council

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## **Topics for 2013**

- Locating Missing and Lost Participants
- Private Sector Pension De-Risking and Participant Protections
- Successful Retirement Plan Communications for Various Population Segments

# Locating Missing and Lost Participants

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## Our goals

- Identify challenges and best practices on how to connect Lost Participants with their benefits.
- Examine the fiduciary obligations surrounding locating Lost Participants and the use of plan assets to pay for locating such participants.
- Study how plans are applying the state abandoned property and escheatment laws to benefits of Lost Participants.
- Determine what, if any, actions the DOL should take to modify current guidance regarding Lost Participants.
- Determine what other agencies are doing in regard to Lost Participants and how the DOL might coordinate its actions with these efforts.

## Findings

Testimony confirmed:

- Both participants and plan sponsors have difficulty keeping contact information up to date because employees change jobs frequently and there has been an increase in mergers and other restructurings by companies and plans.
- Effective methods of minimizing the number of Lost Participants include data scrubbing at regular intervals, maintaining multiple points of contact, and sending regular reminders and updates to participants.
- There is confusion over which methods of locating Lost Participants satisfy ERISA fiduciary requirements because:
  - The IRS eliminated its locator service and
  - Inexpensive and commercial web-based locator services are now more effective than previously approved methods such as the Social Security locator service and certified mail.
- Lack of updated and coordinated guidance on:
  - Approved and safe harbor methods for locating Lost Participants
  - ERISA pre-emption of state unclaimed property laws
  - Plan asset status of funds held in omnibus accounts and uncashed checks.
- Federal inter-agency coordination with the IRS, SSA, and PBGC would be helpful.

## Recommendations

The Advisory Council recommends that DOL:

1. Develop and maintain suggestions for plan sponsors, plan administrators, plan fiduciaries and service providers for improving administrative practices in the following areas:
  - Track and keep in touch with participants so they do not become lost.
  - Remind participants about keeping contact information up to date and providing alternative contact information.
  - Provide information to participants about consolidating retirement assets through rollovers either to their current employer plan or an IRA.
  - Find lost participants efficiently and effectively, using methods such as web search and commercial locator services.
  
2. Legal guidance
  - Update guidance for finding Lost Participants in terminated plans under FAB 2004-02.
    - Provide safe harbor status to programs developed by PBGC for Lost Participants in DC plans and for non-governmental locator programs, perhaps utilizing a menu of acceptable approaches.
    - Clarify that the FAB also applies to lost beneficiaries.
  
  - Issue guidance for both active and frozen defined contribution plans
    - Consolidate and clarify guidance which parallels the guidance for terminated plans in FAB 2004-02.
    - Confirm the process for the handling and forfeiture of uncashed benefit checks.
    - Confirm that participants and beneficiaries with uncashed checks may be treated as lost after a specified time.
    - Provide guidance on charging search costs to accounts of participants and beneficiaries.
  
  - Extend automatic rollover safe harbor provisions of Regulation section 2550.404a-2 to Lost Participants and lost beneficiaries and to mandatory plan distributions.
  
  - Update guidance on ERISA pre-emption of state abandoned property laws.
  
  - Issue guidance with respect to assets underlying uncashed checks to clarify:
    - Plan asset status
    - Appropriate accounting treatment
    - Appropriate reporting and disclosure on Form 5500.
  
3. Work with other federal agencies to enhance or develop
  - Reporting of information on terminated vested participants under Code section 6057.
  - SSA letter to terminated vested participants.
  - PBGC program for Lost Participants and a national plan registry.
  - Federally funded pension counseling projects.

# Private Sector Pension De-Risking and Participant Protections

Richard A. Turner, Issue Chair  
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Paul Secunda, Drafting Team Member

Mary Ellen Signorille, Issue Vice Chair  
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## Our goals

- Identify significant factors contributing to the increase in de-risking activity.
- Distinguish between the two different roles of settlor and fiduciary in de-risking transactions.
- Explore alternatives to de-risking transactions.
- Analyze the need for participant protections in de-risking transactions.

## Findings

Testimony confirmed:

- Plan sponsors are de-risking their defined benefit pension plans
  - For a variety of reasons, including the fact that accounting standards and funding rules have increased volatility
  - In a variety of ways, including transferring risks to participants and insurers.
- Plan sponsors and participants could benefit from a clarification of, and from the addition of safe harbors to, IB 95-1.
- Plan sponsors generally could benefit from educational outreach on the topic of de-risking.
- Participants, especially those in pay status, face challenges in understanding the nature and impact of these transactions on their retirement security.
- Participants could benefit from
  - Disclosures focused on these specific transactions, and
  - Sufficient time to review and consider those disclosures.
- Plan sponsors, participants, and the pension system generally could benefit from
  - The collection of information to track de-risking trends
  - Coordination of de-risking issues with other agencies.

## Recommendations

The Advisory Council recommends that DOL

1. Confirm that Interpretive Bulletin 95-1 applies to any purchase of an annuity from an insurer as a distribution of benefits under a defined benefit plan, not just purchases coincident with a plan termination, and consider the development of safe harbors within the scope of the Interpretive Bulletin for such purchases.
2. A defined benefit pension plan providing participants with an option of a lump sum distribution within a specified window, with or without a separate option of the distribution of an annuity described in IB 95-1, should provide disclosures similar to required plan termination disclosures, with not less than 90 days' notice, and include such factors as:
  - Whether early retirement or other subsidies are included
  - Comparison of lump sum to promised benefits under the plan
  - Potential impact of tax penalties, if any.
3. Consider providing guidance under ERISA § 502(a)(9) clarifying:
  - The consequences of a breach of fiduciary duty in the selection of an annuity contract for distribution out of the plan,
  - The term "appropriate relief," and
  - Under what types of circumstances generally "posting of security" may be necessary.
4. Provide education and outreach concerning de-risking to plan sponsors on:
  - The range of options available
  - The distinction between settlor and fiduciary functions
  - The distinctions among disclosure, education, and advice to participants in connection with distributions, options, and elections.
5. Consider collecting relevant information regarding plan de-risking transactions.

# Successful Retirement Plan Communications for Various Population Segments

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## Our goals

- Understand how to increase plan participation and retirement savings through the application of behavioral economic principles.
- Examine types of targeted communications, strategies, and channels that have been most successful in increasing participation and/or savings.
- Retirement Plan Communications  
Our goals (continued)
- Study best practices in plan design and segmented communications that encourage participation and increase retirement savings, while considering cost and resources.
- For communications segmented to a portion of the plan's population, examine potential legal issues in the areas of:
  - privacy
  - utilization of plan assets
  - discrimination

## Findings

Testimony confirmed:

- Inertia and low financial literacy are barriers that prevent employees from actively participating in defined contribution plans.
- Certain plan design features, such as auto enrollment and auto escalation, can increase participation and savings.
- One-on-one meetings have the most positive impact on participation and retirement outcomes.
- Small group meetings also are effective in educating employees on retirement planning.
- Communications segmented by gender, age, income level, and/or ethnic background are more effective than "one-size- fits-all" types of communications.

## **Recommendations**

The Advisory Council recommends that DOL:

1. Provide education to plan sponsors on specific techniques and communication practices that have been statistically proven to be effective.
2. Clarify the distinction between advice and education, particularly the extent to which segmented education and life planning may be construed as advice.
3. Issue guidance to plan sponsors that would allow the use of promotional items or incentives to encourage participation, including purchasing reasonably priced promotional items with plan assets.
4. Consider coordinating with Treasury to promote self-correction programs for plan sponsors who might not offer auto enrollment and/or auto escalation out of concern about unintentional errors.
5. Provide examples of target contribution rates to enable participants to meet their retirement goals. Also, DOL should encourage higher default rates of employee contributions for automatic enrollment and/or automatic escalation.