



**Testimony on behalf of Alight
Solutions by:**

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&**

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Introduction

Member Jason Bortz, Issue Chair and members of the ERISA Advisory Council, thank you for the opportunity to submit these comments for the record. Alight Solutions, LLC (“Alight”) is pleased to share our thoughts and experiences with the ERISA Advisory Council on its review of permissive transfers of uncashed checks¹ from ERISA plans to State unclaimed property funds. Please note that these comments solely reflect the views of Alight and not of any client or group of clients of Alight.

Alight is a leading provider of benefits administration and cloud-based HR and financial solutions. We are the largest independent recordkeeper of employer-provided defined benefit and defined contribution plans, serving millions of retirement plan participants in the U.S. Alight’s purpose is to reimagine how people and organizations thrive. Central to this mission is ensuring U.S. workers are able to control and access their retirement savings both during accumulation and when it’s time to retire, change jobs, or otherwise take distributions. Reliable actions by employer plans when benefit payments go unclaimed can play an important role in achieving this goal.

As an HR solutions provider, Alight assists a number of our employer clients with the identification, tracking, notices, and ultimate reporting and remittance of unclaimed payroll assets. For other clients, we provide them with information files and reporting on a periodic basis or upon request, which the client may use to follow each applicable state’s unclaimed property process. There are several generations of the Uniform Unclaimed Property Act promulgated by the Uniform Law Commission, which states have adopted to varying degrees, with some states also integrating unique provisions. In effect, each state has its own processes and rules related to unclaimed property and they differ in a number of important ways that may make them less attractive to ERISA plans seeking uniformity and clarity for both their internal unclaimed asset processes and helping payees ultimately get their money.

For our testimony, we will provide broad background and comparison of some unclaimed property processes with which we’re familiar; speculate as to what ERISA plans may need a recordkeeper to do if they were going to directly use such processes and what the plan burden may be; and attempt to identify areas that may need additional clarification or guidance. Alight does not practice law or tax, or give legal or tax advice to clients or otherwise, and will not do so here. Our comments use relatively layman’s terms not distinguishing, for example, between plan settlor versus plan fiduciary functions, which may be covered by other witnesses. That notwithstanding, it’s our general impression that the variation between states and absence of guidance on how to navigate such variation in light of ever-present fiduciary standards may lead to more uncertainty, disunity, and cost for employer plans in any attempts to utilize these state unclaimed property resources than is generally preferred and aspired to in the ERISA context.

¹ We assume the ERISA Advisory Council’s reference to uncashed checks includes unclaimed distributions otherwise supported by a plan, not just printed (or “hard”) checks. We will generally use uncashed check as a term inclusive of these other circumstances, if any.

Remarks on the Uncashed Check Processes for ERISA Plans

We divide our remarks today into three categories: identification of the property, dormancy and diligence, and remittance of the property to the state.

Identification of the Property

The unclaimed property regimes generally rely on a presumption of abandonment that arises after certain strict preconditions are met and a certain amount of time (dormancy) has elapsed, as discussed in more detail below. Generally, in order for the dormancy period to start the check has to go uncashed for some period of time, i.e., become “stale,” and in some cases certain written notices or contact attempts must have been undertaken to notify the payee.

For ERISA plans, we’d expect each plan may need to define and direct the circumstances under which its uncashed checks would be identified for possible remittance to a state rather than another mechanism for handling such distributions. Note, it’s unclear whether plans could pick and choose which uncashed checks would be remitted to a state, or if it’s an all-or-nothing decision for the plan. Although plans generally have processes for how they handle stale checks now, for example, forfeiture with a right to reinstatement, the state unclaimed property process may include specific notices, content, and other efforts that plans may not have previously considered, and which may vary among the states. This may raise uncertainty for plans in considering this option, as to whether they are required to assess, monitor, follow, and periodically change to reflect state-by-state requirements of identification and standards of abandonment.

Dormancy and Diligence

In the unclaimed property process, different categories of property are subject, on a state-by-state basis, to different periods of dormancy or aging prior to conveyance to the relevant state. In reviewing general categories and periods, it appears that plan payments may be subject to dormancy of 1 to 5 years, with most periods being 3 years or 5 years. During this period, states may require varying degrees of “diligence” including notices with specific content and delivery standards, monitoring of contact with payees, and documentation of the diligence in order to support the ultimate remittance of the property to the state.

Remittance to the State

Similar to the discussion above, states vary in whether they accept ACH/wire transfers versus “hard checks” for the actual remittance and with regards to the timing under which the remittance must be made – subject to penalty – following the dormancy period. States also have different documentation that needs to be submitted with the payment to identify the apparent owner and validate that the required diligence has been performed. We expect that plans would need to account for, track, and follow the requirements of each applicable state in order for the state to accept the remitted payment, and it’s unclear whether state penalties would apply for late or incomplete submissions given that the plan would be remitting voluntarily.

Summary and Additional Commentary

The state unclaimed property process, in our experience, is multifaceted, but workable for property “holders” of uncashed checks to which it applies. There is no argument that companies and vendors successfully remit impressive amounts of abandoned property each year. However, in light of the inherent state-by-state nature of unclaimed property requirements and the fundamental principles of ERISA’s fiduciary requirements, we question whether plans could practically get to a point where this option was as or more useful than the more uniform alternatives.

Using the unclaimed property funds may result in many parallel, manual processes in order to make payments to possibly dozens of different recipient states. In contrast, from the plan’s perspective, each of the other options listed in the ERISA Advisory Council’s issue statement (rollover to an individual retirement account or annuity; forfeiture with right of restoration; and transfer to a federally insured benefit account) all result essentially in handling the uncashed checks in one general way, typically under one set of processes and standards. In our experience, the options that result in more intra-plan uniformity are more suitable for scale and lower cost, and, we would expect, more in-line with how employer plan sponsors tend to approach ERISA plan operations.

Additional Commentary

1. The issue statement notes that unless a missing participant is subsequently located, certain of the options would result in transfer to a state unclaimed property fund. We expect this may elicit questions about whether it’s better for plans to “short-cut” the process and follow the unclaimed property rules directly. In general, at this time, we do not believe it would be better for the participants or the plans to “short-cut” that process. Individual retirement account providers have built their processes, businesses, and standards of care around servicing individual accounts and complying with the state requirements. ERISA plans, on the other hand, generally have not and we expect plans would incur both initial and ongoing expenses not otherwise borne today in order for plans to follow these requirements.
2. In exploring options to make the use of unclaimed property funds more attractive for plans, it may be helpful for states and the Department of Labor to examine whether plans could adopt their own uniform approach to state requirements. We’d expect this would help address two challenges of the state-by-state standards:
 - a. It may reduce disputes potentially arising from participant claims under Federal law that different timelines, notice requirements, and other elements caused participants, in effect to be discriminated against with respect to their ability to recover their funds, despite such practices being supported by state law; and
 - b. It may reduce the cost to the plan. We’d expect that some requirements may be “higher” than they’d otherwise be for some states, but uniform processes would streamline the approach overall.

3. We anticipate some disruption and employer complaints from former employees who eventually come forward after payment has been remitted to a state. This could be more pronounced for employees with experience with other plans that did not use the state process, or where employees have contact with peers in other states whose payments either weren't remitted to the state or were provided more time or additional notices.
4. We anticipate circumstances where the uncashed check(s) may only represent a portion of the account of a missing participant, which may lead to subjecting the uncashed check portion to a different claim standard or recovery process than the remaining account balance. This could be troublesome on the uniformity front as well as difficult to administer and manage.
5. If a participant returns to find the uncashed check in the state unclaimed property fund, the standard of proof or documentation required of the participant by the state fund in order to substantiate his/her claim for the property may be different and, in some cases, more challenging to satisfy than if the money would have remained with the plan.
6. Federal guidance may be helpful regarding whether plans may choose to utilize the unclaimed property programs of some states but not others, or for some unclaimed checks, but not others.
7. Federal guidance may be helpful regarding when plans using one or more state program(s) can discontinue participation in circumstances such as a change in the state's law.
8. Federal and state guidance may be needed that generally ensures against any penalties arising from voluntary use of a state's unclaimed property program being imposed on ERISA plans. Federally, this may warrant a safe harbor approach. Each state, however, may need to amend its law or rules, or provide other sufficient assurances. This guidance should also provide penalty exemptions, including for late or incomplete remittance, for existing uncashed checks of any plan that chooses to transition to using a state's unclaimed property program.

Conclusion

Alight appreciates the opportunity to share our perspective with the ERISA Advisory Council and fully supports the Department of Labor's stated goal of reuniting missing participants with their retirement savings. We believe the state unclaimed property funds and their process are undeniably successful in helping to consolidate otherwise disparate lost assets into more centralized state-by-state resources. However, the variation between state programs and uncertainty in how ERISA's fiduciary duties and preemption interact with the state requirements may keep ERISA plans from using the funds. We encourage the Department and the states to continue exploring more uniform approaches to the state uncashed checks processes if they wish to increase ERISA plan participation. We would be happy to continue to work with the Department and other stakeholders to create a more effective and consistent process for both ERISA plans and participants who are entitled to their retirement savings.

About Alight Solutions

As a leading provider of human capital solutions, we help our clients and their people navigate the complexity of health, wealth and HR. We combine data-driven, consumer-centered technology with personalized care and service to deliver a superior customer experience. Our dedicated colleagues across 19 global centers help 23 million people and their 11 million family members simplify work and life, both now and in the future. At Alight, we are reimagining how people and organizations thrive.

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