United States Government Accountability Office

Report to the Ranking Member, Committee on Finance United States Senate

January 2018

WORKPLACE RETIREMENT ACCOUNTS

Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings

GAO-18-19

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GAO Highlights

Highlights of GAO-18-19, a report to the Ranking Member, Committee on Finance, United States Senate.

Why GAO Did This Study

Saving for retirement can be difficult. However, when participants lose their workplace retirement accounts when they change employers or participate in a workplace retirement plan abroad they can encounter additional challenges in securing adequate retirement savings. GAO was asked to review steps federal agencies might take to assist participants with these challenges.

This report examines key challenges U.S. participants face with: (1) unclaimed retirement accounts in the United States, and (2) complying with U.S. tax reporting requirements on their foreign retirement savings. GAO reviewed relevant federal laws and regulations, and reviewed selected tax treaties. GAO interviewed stakeholders in the United States and in Australia, Canada, Hong Kong, Switzerland, and the United Kingdom—chosen because these locations host relatively large populations of U.S. individuals and have well-developed workplace retirement systems.

What GAO Recommends

GAO recommends Congress consider addressing taxation issues affecting the transfer of retirement assets between plans within the same foreign country. GAO is making seven recommendations, including that DOL issue guidance to help ongoing plan sponsors search for separated participants, and that IRS issue guidance to clarify how U.S. individuals should report foreign retirement savings to the IRS. The agencies generally agreed with GAO's recommendations. IRS disagreed with two of GAO's recommendations.

View GAO-18-19. For more information, contact Charles Jeszeck at (202) 512-7215 or jeszeckc@gao.gov.

What GAO Found

Plan participants in the United States face challenges after they change jobs, including not receiving communications from their plan sponsor and being vulnerable to unforeseen tax consequences that can result in a loss of retirement savings. GAO previously reported that when participants leave savings in a plan after separating from a job, the onus is on them to update former employers with their new address and to respond to their former employer's communications. GAO found that although an employer may incur costs searching for separated participants, there are no standard practices for the frequency or method of conducting searches. GAO reported that from 2004 through 2013, over 25 million participants in workplace plans separated from an employer and left at least one retirement account behind, despite efforts of sponsors and regulators to help participants manage their accounts. Department of Labor (DOL) officials told GAO that some sponsors do not search for participants when disclosures are returned as undeliverable. DOL has issued guidance on searching for missing participants for some plans that are terminating, but guidance does not exist on what actions DOL expects ongoing plan sponsors to take to keep track of separated participants. A key element of DOL's mission is to protect the benefits of workers and families. However, without guidance on how to search for separated participants who leave behind retirement accounts, sponsors may choose to do little more than remove unclaimed accounts from the plan when possible, and workers may never recover these savings.

Stakeholders told GAO that U.S. individuals who participate in foreign workplace retirement plans face challenges reporting their retirement savings for tax purposes because of complex federal requirements governing the taxation of foreign retirement accounts and a lack of clear guidance on how to report these savings. For example, stakeholders told GAO it is not always clear to U.S individuals or their tax preparers how foreign workplace retirement plans should be reported to the Internal Revenue Service (IRS) and the process for determining this can be complex, time-consuming, and costly. In the absence of clear guidance on how to correctly report these savings, U.S. individuals who participate in these plans may continue to run the risk of filing incorrect returns. Further, U.S. individuals in foreign retirement plans also face problems transferring retirement savings when they switch jobs. In the United States, transfers of retirement savings from one qualified plan to another are exempt from U.S. tax. However, foreign plans are generally not tax-qualified under the Internal Revenue Code, according to IRS officials, and such transfers could have tax consequences for U.S. individuals participating in foreign retirement plans. Officials from the Department of the Treasury (Treasury) told GAO that a change to the U.S. tax code could improve the tax treatment of transfers between foreign retirement plans that Treasury has already examined. Without action to address this issue, U.S. individuals may not consolidate their foreign retirement accounts or may have to pay higher U.S. taxes on transfers than taxpayers participating in qualified plans in the United States, threatening the ability of U.S. individuals to save for retirement abroad.

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Abbreviations

ATO	Australian Taxation Office
DB	defined benefit
DC	defined contribution
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
FATCA	Foreign Account Tax Compliance Act
FBAR	Report of Foreign Bank and Financial Accounts
IGA	Intergovernmental Agreement
IRA	individual retirement account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
MOU	memorandum of understanding
MPF	Mandatory Provident Fund
MPFA	Mandatory Provident Fund Schemes Authority
PBGC	Pension Benefit Guaranty Corporation
PFIC	Passive Foreign Investment Company
PLR	private letter ruling
PTIN	preparer tax identification number
SSA	Social Security Administration
Social Security	Old Age and Survivors' Insurance program
State	U.S. Department of State
TBOR	Taxpayer Bill of Rights
TPA	third-party administrator
Treasury	Department of the Treasury

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

January 31, 2018

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

Dear Senator Wyden:

Saving for retirement through workplace plans can be difficult for U.S. citizens, whether they are participants in U.S workplace plans or participants in foreign workplace plans.[1] Regardless of whether the plan is a U.S. or a foreign workplace retirement plan, participants encounter challenges that go beyond finding ways to save enough for retirement. For example, workers can accumulate multiple workplace retirement accounts as they change jobs over the course of their careers. Former employers may merge causing the retirement plan to change names and administrators, making it more difficult for plan participants to locate their

[1]The term "U.S. individuals," as used in this report, refers to (a) U.S. citizens and (b) U.S. resident aliens. According to IRS, section 7701(b) of the Internal Revenue Code provides that U.S. resident aliens generally include U.S. lawful permanent residents (also known as Green Card holders) and individuals (who are not U.S. citizens or U.S. lawful permanent residents) who are present in the United States for a certain number of days over a specified testing period. IRS officials told us U.S. citizens and U.S. resident aliens are generally subject to the same U.S. income tax and information reporting rules with respect to their U.S. or foreign workplace retirement accounts. This report focuses on (a) U.S. individuals participating in plans sponsored by private-sector U.S. employers for work generally performed in the United States (U.S. workplace retirement plans); and (b) U.S. individuals participating in plans sponsored by private-sector foreign employers for work generally performed abroad (foreign workplace retirement plans).

original plan accounts.[2] In the United States, plan participants are responsible for keeping track of their unclaimed accounts[3] by continuing to communicate with their previous employers by updating contact details to receive important information about their accounts. In addition, plan sponsors also generally have a responsibility to act solely in the interest of the participants, which includes an obligation to attempt to locate separated participants in some circumstances. Despite the efforts of plan participants, plan sponsors, and regulators to manage unclaimed accounts in the U.S. workplace retirement plan system, accounts can remain unclaimed for multiple reasons, which may eventually affect the retirement security of plan participants.[4]

As we previously reported, other countries have made it easier for U.S. individuals who work abroad and save for retirement through workplace retirement plans to manage their accounts by providing mechanisms to track and consolidate them.[5] However, U.S. individuals who participate in foreign workplace plans face different challenges than their counterparts in U.S. workplace retirement plans. For example, foreign plans may not

[2]In the United States, employers choosing to offer plans generally sponsor two broad types of workplace retirement plans: (1) defined contribution (DC) plans, in which benefits are based on contributions and the performance of the investments in participants' individual accounts; and (2) defined benefit (DB) plans, generally funded by the employer, which promise participants a specified monthly benefit in retirement generally based on factors such as an employee's years of service and salary, regardless of the performance of the plans' investments. In this report, unless otherwise clear from context, we use the term workplace retirement accounts, or simply retirement accounts to refer to both DC accounts and DB benefits within workplace retirement plans (i.e., private-sector single-employer plans), even though DB plans do not typically have individualized accounts. These are accounts that private-sector employers provide to employees in the workplace as a vehicle for saving for retirement. For the purpose of this report, workplace retirement accounts do not include individual retirement accounts (IRA), benefits under the Social Security Old-Age and Survivors' and Disability Insurance program (Social Security) in the United States, or government programs in foreign countries that may be similar to Social Security. We also excluded retirement savings vehicles that are not employer-sponsored.

[3]For this report we define unclaimed retirement accounts as accounts belonging to separated participants with deferred vested benefits left in a previous employer's retirement plan. The definition includes accounts of separated participants for whom the plan has an incorrect mailing address, and accounts of separated participants for whom the plan has an accurate address but the participant is unresponsive.

[4]From 2004 through 2013, separated employees left more than 16 million accounts of $5,000 or less in workplace plans, with an aggregate value of $8.5 billion. See GAO, *401(k) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, GAO-15-73 (Washington, D.C.: Nov. 21, 2014).

[5]See GAO-15-73.

be eligible for preferential tax treatment under U.S. law, and U.S. participants in those plans may be subject to additional reporting requirements. As of April 2015, the U.S. Department of State (State) estimated that 8.7 million U.S. citizens lived abroad, more than the populations of 39 individual U.S. states. Given the issues facing participants managing workplace retirement accounts in the United States and abroad, you asked us to review steps federal agencies might take to assist them. This report examines key challenges U.S. participants face

1. with unclaimed workplace retirement accounts in the United States, and
2. complying with U.S. tax reporting requirements on their foreign workplace retirement savings.

To understand the key challenges U.S. participants face with unclaimed workplace retirement accounts in the United States, we interviewed officials from the Department of Labor (DOL), the Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (IRS), and record keepers and third-party administrators (TPA) that provide search and other services to plan sponsors. We also reviewed relevant federal laws and regulations, as well as guidance and other related documents from DOL and IRS. We also reviewed reports from the 2013 ERISA Advisory Council on Missing or Lost Participants.

To understand the challenges faced by U.S. individuals who participate in foreign workplace retirement plans to comply with U.S. tax reporting requirements on their foreign workplace retirement savings,[6] we selected five international case study locations with well-developed workplace retirement systems to examine. Each of the case study locations have relatively large populations of U.S. workers and high total amounts of foreign earned income reported by U.S. taxpayers living in that location.[7] We deliberately included case study locations with and without a bilateral tax treaty with the United States, based on Department of the Treasury

[6]For purposes of this report, we focused on applicable U.S. income tax requirements for U.S. individuals. Unless otherwise indicated, we excluded issues such as: taxation of employers or plan sponsors; other types of U.S. taxes participants may be subject to, such as Social Security or unemployment taxes; U.S. taxation of plan participants who are not U.S. citizens; and any taxes imposed by a foreign country.

[7]We reviewed data on foreign earned income reported by the IRS Statistics of Income Division. Foreign earned income is generally income received, such as wages, salaries or professional fees, for personal services a taxpayer performs in a foreign country during a period the taxpayer’s tax home is in a foreign country.

(Treasury) information.[8] Our case study locations were Australia, Canada, Hong Kong, Switzerland, and the United Kingdom. For each case study we reviewed documentation related to the tax treatment of workplace retirement accounts accumulated in that location by U.S. individuals, such as tax treaties and Intergovernmental Agreements (IGAs) related to the Foreign Account Tax Compliance Act (FATCA).[9] We also reviewed publicly available research and reports about each case study location's retirement system, and interviewed relevant stakeholders. For each case study we interviewed government officials, plan sponsors, and service providers. Where available, we reviewed relevant data provided to us by relevant government officials. We did not conduct an independent legal analysis to verify the information provided about the laws or regulations in the locations we selected for this study. Instead, we relied on appropriate secondary sources and interviews with relevant officials to support our work. We also interviewed IRS and Treasury officials, including those in the Office of Chief Counsel, the Office of Tax Policy, the Tax Exempt and Government Entities Division, and the Taxpayer Advocate Service. We also spoke with organizations representing U.S. expatriates, foreign and domestic retirement experts, tax advisors, and tax preparers who specialize in assisting individuals with foreign income and assets when filing their U.S. tax returns. We also reviewed transcripts of testimonies the National Taxpayer Advocate gave before Congress pertaining to

[8]The United States has income tax treaties with a number of foreign countries. As described on IRS' website, under these treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate, or are exempt from U.S. income taxes on certain items of income they receive from sources within the United States. According to IRS, these reduced rates and exemptions vary among countries and specific items of income and treaty provisions generally are reciprocal (i.e., apply to both treaty countries).

[9]According to IRS, FATCA is a colloquial term commonly used to refer to certain provisions of Subtitle A of Title V of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, §§ 501-541, 124 Stat. 71, 97-117 (2010). Specifically, IRS told us that FATCA is commonly used to refer to section 501 of that law (Reporting on certain foreign accounts), which added chapter 4 to the Internal Revenue Code (IRC) (codified at 26 U.S.C. §§1471-1474), and section 511 (Disclosure of information with respect to foreign financial assets), which added section 6038D to the IRC (codified at 26 U.S.C. § 6038D). According to IRS, chapter 4 and section 6038D are separate and distinct reporting regimes. Chapter 4 generally requires foreign financial institutions and certain other foreign entities to report to the IRS on foreign financial accounts held by U.S. taxpayers. IRS has entered into Intergovernmental Agreements (IGAs) with foreign countries to implement these requirements. Section 6038D of the IRC requires individual U.S. taxpayers to report foreign financial assets that exceed a certain threshold amount. For the remainder of this report, we generally use "IRC section 6038D" to refer to this provision, and "FATCA" to refer to Chapter 4. However, in describing stakeholder discussions, we use the term "FATCA" when stakeholders used this term but did not specify which provisions were being referred to.

international tax issues and FATCA, as well as IRS and Treasury documentation on foreign workplace retirement plans and reporting foreign income and assets.

GAO conducted this performance audit from July 2015 to October 2017 in accordance with generally accepted government auditing standards. Those standards require that GAO plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. GAO believes that the evidence obtained provides a reasonable basis for the report's findings and conclusions based on the report's audit objectives.

Background

Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC)

The Employee Retirement Income Security Act of 1974 (ERISA) contains various provisions intended to protect the interests of plan participants and beneficiaries in workplace retirement plans.[10] These protections include requirements related to reporting and disclosure, participation, vesting, and benefit accrual, as well as plan funding. For example, ERISA requires plans to provide plan participants with a summary plan description, including information on their rights under ERISA, periodic benefit statements, and upon request, a copy of the annual report including a financial statement, according to DOL. ERISA sets fiduciary standards that generally require workplace retirement plan funds to be handled prudently and in the sole interest of participants.[11] ERISA also

[10]Pub. L. No. 93-406, 88 Stat. 832 (codified as amended in scattered sections of 26 and 29 U.S.C.). Title I of ERISA, including the reporting and disclosure and fiduciary responsibility requirements, does not generally cover plans sponsored by government entities or plans "maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens," among others. 29 U.S.C. § 1003.

[11]Under ERISA, a fiduciary is any person, to the extent they (1) exercise any discretionary authority or control over plan management or any authority or control over the management or disposition of plan assets, (2) render investment advice with respect to plan money or property for a fee or other compensation, or (3) have any discretionary authority or responsibility for plan administration. 29 U.S.C. § 1002(21)(A). Plan fiduciaries are required to act prudently, solely in the interest of plan participants and beneficiaries, and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. Fiduciaries are also required to diversify the investments and act in accordance with plan documents, which set the terms of the retirement plan, insofar as such documents are consistent with ERISA. 29 U.S.C. § 1104(a).

establishes certain requirements related to plan termination.[12] ERISA does not require employers to provide workplace retirement plans, but those that do must comply with applicable requirements and standards.

The Internal Revenue Code (IRC) provides favorable tax treatment for workplace retirement plans that meet certain qualification requirements set out in the IRC.[13] For example, employees are generally not taxed on contributions made on their behalf but instead are taxed on benefits received.

Federal Agencies' Roles with Respect to U.S. Workplace Retirement Plans

Several federal agencies play a role with respect to U.S. workplace retirement plans. Responsibility for enforcing ERISA is shared by DOL, Treasury, and PBGC. Treasury, through IRS, is primarily responsible for enforcing the IRC.

Department of Labor's Employee Benefits Security Administration (EBSA)

The mission of DOL's Employee Benefits Security Administration (EBSA) is to assure the security of retirement, health, and other workplace-related benefits of U.S. workers and their families. DOL administers Title I of ERISA, which includes the fiduciary standards and disclosure and reporting requirements. To carry out its responsibilities, EBSA issues regulations in these and other areas, and conducts programs and initiatives to assist and educate workers, plan sponsors, fiduciaries, and service providers on their rights and obligations under ERISA. EBSA also issues guidance and field assistance bulletins to assist plan sponsors and plan fiduciaries with managing retirement plans. For instance, in 2014, EBSA issued Field Assistance Bulletin (FAB) 2014-01 to assist fiduciaries of terminating DC plans in fulfilling their obligations under ERISA to locate

[12]See Congressional Research Service: *Summary of the Employee Retirement Income Security Act (ERISA),* (Washington, D.C., April 10, 2008).

[13]The IRC is codified in Title 26 of the U.S. Code.

missing participants[14] and properly distribute their account balances.[15] EBSA also maintains an outreach program employing approximately 100 benefits advisors throughout the country in 13 field offices. The program offers services to educate U.S. workers, beneficiaries, and plan sponsors about their rights and obligations under federal employee benefit laws, and helps individuals obtain retirement benefits that have been improperly denied.[16]

Internal Revenue Service (IRS)

Under Title II of ERISA and subsequent amendments to the IRC, IRS issues and enforces rules that plans must meet to be qualified for preferential tax treatment. IRS also enforces certain provisions in Title I of ERISA regarding participation, vesting, benefit accrual, and minimum funding. IRS' mission is to help U.S. taxpayers understand and meet their tax responsibilities and to enforce the law with integrity and fairness. To help achieve its mission, IRS issues tax regulations and other guidance to help taxpayers comply with the IRC.[17] IRS guidance provides detailed and technical explanations of tax laws for professional tax preparers as well as taxpayers.[18] IRS also manages a number of initiatives, programs,

[14]According to the bulletin, under the IRC, plan administrators are required to distribute all plan assets as soon as administratively feasible after plan termination, and before making a distribution, the plan administrator has a responsibility to contact the plan's participants for directions on how to distribute their account balances. See 26 U.S.C. § 402(f). In the bulletin, DOL used the term “missing participants” to refer broadly to those participants who fail to respond to these notices or for whom mail is returned. The bulletin provided guidance on what steps plan fiduciaries should take to search for these unresponsive participants. See DOL Field Assistance Bulletin 2014-01. With respect to DB plans, the Pension Benefit Guaranty Corporation has a Missing Participants Program for searching for and distributing benefits on behalf of missing participants of terminating DB plans covered by Title IV of ERISA. Under ERISA, the term “missing participant” is defined as a participant or beneficiary under a terminating plan whom the plan administrator cannot locate after a diligent search. See 29 U.S.C. § 1350.

[15]We previously recommended that DOL convene a taskforce to consider establishing a national pension registry to assist participants with locating unclaimed retirement accounts; DOL agreed to evaluate the possibility of doing so. See GAO-15-73.

[16]According to EBSA, in fiscal year 2016, the benefits advisors closed 193,669 inquiries/complaints and recovered just over $394 million in benefits for participants who had been improperly denied through an informal negotiation process with the employer.

[17]Treasury also participates in the formulation of certain forms of guidance.

[18]Other IRS sources of information include forms, instructions, and publications for taxpayers to use in preparing their returns; news releases, fact sheets, and tax tips to the news media; online interactive tools in which taxpayers can receive answers after asking general or taxpayer-specific questions; and instructional audio and video presentations. These various communication tools are intended to help taxpayers understand tax laws, improve voluntary compliance with the IRC, and control IRS' administrative costs.

and systems to enforce federal tax law and assist taxpayers that are related to our review of unclaimed retirement accounts.[19] For example, to assist taxpayers, IRS adopted a Taxpayer Bill of Rights in 2014 to provide a better understanding of taxpayers' rights under the IRC. IRS also periodically publishes a strategic plan for a given period that outlines how it will improve service to taxpayers and enforce the law. To help ensure that taxpayers are paying the correct amount of tax due and to identify discrepancies, IRS' Automated Underreporter Program matches taxpayer income and deductions submitted on information returns by third parties against amounts reported by taxpayers on their individual income tax returns. IRS also assists taxpayers and payors with information about federal tax withholding obligations. To assist taxpayers with foreign accounts, since 2003 IRS has offered an Offshore Voluntary Disclosure Program. This program provides a way for taxpayers with previously undisclosed income and undisclosed offshore accounts that need to be reported to contact IRS and resolve their tax matters.

IRS also assists sponsors that administer qualified retirement plans through a number of systems and programs. For example, IRS offers assistance to plan sponsors through the Employee Plans Compliance Resolution System, which helps sponsors of qualified plans remedy operational and form mistakes made in the course of administering a retirement plan and avoid plan disqualification. IRS also forwards letters to missing individuals on behalf of private individuals or government agencies for a "humane purpose" when there is no other way to relay the information to the individual.[20] Between 1994 and 2012, IRS forwarded letters through a letter forwarding program on behalf of entities that control assets that may be due a taxpayer, such as from sponsors of qualified plans that are attempting to locate missing participants.

[19]In addition to the IRS, other entities within Treasury are responsible for various aspects of tax law administration. For instance, Treasury's Office of Tax Policy develops and implements tax policies and programs and reviews regulations and rulings to administer the IRC. Treasury's Office of International Tax Counsel is responsible for negotiating and reviewing income tax and estate and gift tax treaties with foreign countries, and for coordinating tax treaty matters with the U.S. Department of State and Congress.

[20]A "humane purpose" is one in which a person is seeking to find a missing person to convey a message of an urgent or compelling nature, or is seeking to find a missing person because of an emergency situation. For example, these would include letters to notify a person of a serious illness, imminent death, or the death of a close relative, to locate a missing relative to convey an urgent or compelling message, or to help locate persons being sought for a medical study to detect and treat medical defects or diseases.

Pension Benefit Guaranty Corporation (PBGC)

Title IV of ERISA created PBGC as a U.S. government corporation to provide plan termination insurance for certain DB plans that are unable to pay promised benefits. For example, when a PBGC-insured single-employer DB plan fails, PBGC trustees the plan and pays benefits up to statutory limits. PBGC also oversees the voluntary ("standard") termination of fully funded PBGC-insured single-employer DB plans to ensure participants will receive the benefits to which they are entitled. As part of the standard termination process, PBGC's Missing Participants Program connects participants—missing when the plan closes out—to their retirement benefits, in part by maintaining a centralized, online database the public can use to find lost retirement benefits.[21]

Social Security Administration (SSA)

SSA provides retirement benefits to eligible individuals under the federal Social Security Old Age and Survivors' Insurance program (Social Security). Although SSA does not oversee workplace retirement plans, SSA maintains data that are reported to IRS by plans using Form 8955-SSA on separated participants with vested but undistributed benefits.[22] When individuals claim Social Security benefits, SSA may provide them with a "Potential Private Pension Benefit Information" notice that indicates they may be entitled to a retirement benefit through a past employer.

[21]PBGC recently issued a final rule that expanded the Missing Participants Program to DC plans. Missing Participants, 82 Fed. Reg. 60,800 (Dec. 22, 2017). According to PBGC officials, although current statute gives PBGC the authority to compel plans to provide information to the agency on the disposition of participant retirement accounts, PBGC made this optional in the final rule. In other words, with respect to missing participants, a DC plan choosing to participate can choose to transfer account balances directly to PBGC or to provide PBGC with information about where the account balances were transferred. Either way, according to officials, the agency will try to find the missing participant and when located, will provide either benefits or information (depending on which approach the plan used). With both approaches, PBGC will add the missing participants to its public on-line database, according to PBGC officials.

[22]Plan administrators must complete IRS Form 8955-SSA to satisfy the reporting requirements of section 6057(a) of the IRC (which requires plan administrators of plans subject to the vesting standards of ERISA to report certain information about separated participants with deferred vested benefits under the plan.)

Ongoing and Terminated Workplace Retirement Plans

DOL reported that in 2014 there were just over 639,000 DC plans and nearly 43,500 DB plans in the United States. These plans were sponsored by individual employers (i.e., private single-employer plans) and provided benefits to nearly 118 million participants.[23] When a qualified plan terminates[24]—whether it is a DB or DC plan—federal law requires plan participants to immediately be 100 percent vested in all accrued benefits (to the extent funded in the case of a DB plan)[25] regardless of the vesting schedule in the plan document, according to IRS. A plan sponsor is required to distribute assets from a terminated plan as soon as administratively feasible, but generally within 1 year after plan termination.[26] For terminated DC plans, such as 401(k) plans, participants generally receive the full amount of their vested account balance upon plan termination, according to IRS.

Transferring Savings of Missing Participants in U.S. Defined Contribution Retirement Plans

When an employee separates from an employer but still has vested savings in a qualified defined contribution retirement plan, the plan can, under certain conditions and without the participant's consent, transfer accounts out of the plan—commonly referred to as a "forced transfer."[27] Before the Economic Growth and Tax Relief Reconciliation Act of 2001[28] was enacted, ongoing DC plans could, in the absence of participant instructions, distribute balances of $5,000 or less by paying them directly to the participant, referred to as a "cash-out." This law sought to protect participants' retirement savings by requiring ongoing plans that have a cash-out limit that exceeds $1,000 (up to $5,000), in the absence of

[23]See Employee Benefits Security Administration, United States Department of Labor, Private Pension Plan Bulletin Historical Tables and Graphs, 1975-2014. Washington, D.C., Sept. 2016.

[24]In this report, we refer to DC and DB plans that have not been terminated as "ongoing plans."

[25]26 U.S.C. § 411(d)(3); 26 C.F.R. § 1.411(d)-2(a)(1).

[26]Rev. Rul. 89-87, 1989-2 C.B. 81. In an involuntary termination, if a terminated DB plan that is covered by Title IV of ERISA has insufficient funds to pay all of the benefits, the PBGC will become the plan's trustee and will guarantee the payment of vested pension benefits up to limits set by law. In fiscal year 2017, PBGC paid retirement benefits to nearly 840,000 retirees in more than 4,800 plans totaling over $5.7 billion.

[27]See 26 U.S.C. § 401(a)(11), (a)(31)(B) and 26 U.S.C. § 417(e). We have reported on forced transfers in GAO-15-73.

[28]Pub. L. No. 107-16, 115 Stat. 38.

participant instructions and subject to certain notice requirements, to transfer balances that exceed $1,000 (up to $5,000) to an individual retirement account (IRA), preserving their tax-preferred status.[29]

Terminating plans are subject to different requirements. Fiduciaries of terminating plans are obligated to search for missing participants, to notify them of the termination and pending distribution of benefits before transferring participants' unclaimed accounts to an IRA or elsewhere, according to DOL guidance.[30] The guidance further provides that fiduciaries of terminating plans who are unable to locate missing participants may also be permitted to transfer accounts belonging to missing participants, without consent, to a federally-insured bank account or to a state's unclaimed property fund. This occurs if the plan fiduciary cannot find an IRA provider to accept a direct rollover distribution for a missing participant or otherwise determines not to roll over the distribution to an IRA, for some other compelling reason. For tax reporting purposes, transfers made to a bank or a state unclaimed property fund are generally subject to income taxation, according to the guidance. This contrasts with rollovers to IRAs in which transferred retirement savings remain tax-favored. Plan sponsors are generally required to withhold 20 percent of the account balance on transfers to a bank or state unclaimed property fund and will send the withheld amount to Treasury to be used toward any potential taxes due on the distribution.[31]

[29]In these circumstances, the plan may transfer eligible account balances to an IRA. IRAs are a type of retirement savings vehicle–different from workplace retirement plans–that generally allow eligible individuals to save for retirement on a tax-deferred basis. See 26 U.S.C. § 408. After the account is transferred into an IRA, it is generally subject to the rules governing IRAs and no longer subject to ERISA. Ongoing plans generally may not distribute vested accounts of more than $5,000 without the consent of the participant. 26 U.S.C. § 411(a)(11).

[30]DOL FAB 2014-01. According to this guidance, if a plan follows certain required search steps, but does not find the missing participant, the duties of prudence and loyalty require the fiduciary to consider if additional search steps are appropriate. A plan fiduciary should consider the size of a participant's account balance and the cost of further search efforts in deciding if any additional search steps are appropriate. See GAO-15-73 for additional information on specific requirements for forced transfers and the differences between terminating plans and ongoing plans.

[31]Sponsors will also generate a form 1099-R to report the income and tax withholding to both the IRS and the participant.

Tax Treatment of U.S. and Foreign Workplace Retirement Plans in which U.S. Individuals Participate

In the United States, employee and employer contributions and investment earnings in a qualified retirement plan are generally not taxed as income until the employee receives the benefit. For example, employees participating in a 401(k) plan can generally elect to have their employer contribute a portion of their compensation to their account on a pretax basis. This deferred compensation (commonly referred to as a pre-tax elective contribution by IRS) is not subject to income tax withholding, and employees are not required to report it as wages on their individual U.S. tax returns at the time of the contribution. In addition, employers can provide matching or non-elective contributions to an employee's 401(k) account; these matching or non-elective contributions are generally tax-deductible by the employer and employees also are not required to report these contributions as wages on their U.S. tax returns or pay income tax on these contributions at the time the contributions are made. Distributions from a qualified DC plan in the United States made to participants, including those who have separated from their employer, may be treated differently for tax purposes, depending on the nature and timing of the distribution. For example, a direct rollover, in which money is transferred directly from one qualified workplace retirement plan or IRA to another eligible retirement plan or IRA, is not taxable at the time of the rollover but should be reported on the participant's federal tax return. By contrast, a distribution that is not rolled over[32] is generally taxable income in the year in which it is received by the participant, according to IRS.

Foreign workplace retirement plans are generally not tax-qualified under the IRC or covered by ERISA, according to IRS officials and tax experts with whom we spoke. They are, however, generally subject to the regulatory structure in place in the country where the retirement plan exists.[33] Foreign workplace retirement plans that cover U.S. individuals may be subject to certain provisions of the IRC and other federal laws governing reporting and taxation of these retirement assets, as well as

[32]Participants may be able to defer tax on all or part of an eligible rollover distribution by requesting the payor to directly roll over the taxable portion into an IRA or to an eligible retirement plan. If the distribution is made before the occurrence of certain events (and not timely rolled over), such as before the participant reaches age 59½, it may also be subject to a 10 percent additional tax on early withdrawals. See 26 U.S.C. § 72(t).

[33]In addition, in two of our case study locations, participation by workers in a workplace retirement plan is mandatory under certain conditions, according to government officials with whom we spoke. For this report, we did not conduct a legal review of the regulations or laws in the case study locations that pertain to workplace retirement plans.

any applicable income tax treaties between the United States and the foreign country (see more about these treaties below). The extent to which U.S. individuals are subject to U.S. income tax on the contributions and earnings accruing in their foreign workplace retirement account depends on the specific characteristics of the plan.[34] For example, according to tax experts with whom we spoke, many foreign workplace retirement plans qualify as employees' trusts, and the taxation of contributions and earnings from these plans are governed by section 402(b) of the IRC.[35] According to IRS, as long as the foreign retirement plan is determined to be an employees' trust, the U.S. individual must include on their U.S. tax return contributions to the trust if the contributions are not subject to a substantial risk of forfeiture (vested). In addition, IRS officials said contributions that become vested after the year of contribution are taxable in the year of vesting, and earnings are taxable when distributed.[36] Some foreign workplace retirement plans may include investments in a Passive Foreign Investment Company (PFIC),[37] which, according to one tax preparer with whom we spoke, are investments in foreign mutual funds, hedge funds, or other kinds of pooled investments not incorporated in the United States. A U.S. individual who is a

[34]Contributions may include employee contributions and employer contributions.

[35]According to international tax publications we reviewed, section 402(b) governs the taxation of funded employee benefit trusts that are not qualified plans. Whether and when contributions and generated income from a section 402(b) trust are taxable as income to the participant depends on various factors, including whether the contributions are "substantially vested" and whether the participant is a highly compensated employee. See 26 U.S.C. §§ 402(b), 83(a).

[36]However, according to IRS, if the foreign retirement plan is not an employees' trust, then the contributions and realized earnings are required to be reported on the U.S. individual's U.S. tax return.

[37]A Passive Foreign Investment Company (PFIC) is generally defined as a foreign corporation for which (a) 75 percent or more of its gross income for the taxable year is passive income, or (b) at least 50 percent of the average percentage of assets held by the corporation during the taxable year produce passive income, or are held for the production of, passive income. 26 U.S.C. § 1297(a). According to IRS, passive income includes items such as dividends, interest, rents, royalties, and other items that are not generally derived from the active conduct of business.

shareholder of a PFIC may be subject to annual reporting requirements and a high income tax rate on certain distributions.[38]

U.S. individuals who participate in a foreign workplace retirement plan also may be subject to income tax on any distribution they receive from their plan during the current tax year. Depending on the circumstances, U.S. individuals also may be subject to income tax on certain distributions they have not actually received, such as transfers of assets between or within foreign workplace retirement plans, if they are in "constructive receipt" of (or otherwise have income inclusion with respect to) the funds.[39] In addition, U.S. individuals who pay foreign income taxes on distributions from their foreign workplace retirement plans may be eligible to claim a foreign tax credit on their U.S. tax return.[40]

Income Tax Treaties

U.S. Income Tax Treaties with Other Countries

One objective of tax treaties is to provide taxpayers some relief from having to pay taxes in both the United States and a foreign country on the same income—referred to as "double taxation"—without creating opportunities for tax evasion or avoidance. Treaty provisions generally apply to both countries that have signed the treaty. A U.S. resident who receives income from a treaty country may be entitled to certain treaty benefits—credits, deductions, exemptions, or reductions in the rate of tax—on the taxes owed to that foreign country. Similarly, residents of the foreign country may be entitled to treaty benefits on their U.S. taxes on income from U.S. sources. However, with certain exceptions, tax treaties generally do not reduce the U.S. tax liability of U.S. residents.

Source: Department of the Treasury and the Internal Revenue Service. | GAO-18-19

As of October 2017, the United States had a network of 57 comprehensive income tax treaties covering 66 countries, according to Treasury. U.S. individuals are subject to U.S. income tax on their worldwide income, and this could include contributions and earnings within and distributions from a foreign workplace retirement plan. However, tax treaty provisions may reduce foreign income taxes owed by U.S. individuals who receive income sourced from a treaty country; for example, through the use of credits, deductions, exemptions, or tax rate

[38]See generally 26 U.S.C. §§ 1291-1298. Treasury regulations generally exempt from the annual reporting requirements participants in a "foreign pension fund" if there is an applicable income tax treaty that provides that the income earned by the foreign pension fund may be taxed as the income of the participant only when, and to the extent the income is paid to, the participant. 26 C.F.R. § 1.1298-1(c)(4).

[39]In general, gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer. 26 C.F.R. § 1.451-1(a). Under Treasury regulations, "income, although not actually reduced to a taxpayer's possession, is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that the he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given." However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. See 26 C.F.R. § 1.451-2.

[40]Such credits may be available under applicable tax treaties or the U.S. tax code; *see, e.g.,* 26 U.S.C. §§ 901-909.

reductions.[41] (See appendix I for more information on how IRS recommends taxpayers review tax treaties.)

According to IRS and Treasury, almost all U.S. tax treaties also contain what is known as a "saving clause," which IRS describes as a way to preserve or "save" the right of each country to tax its own residents (and in the case of the United States, its citizens) as if no tax treaty were in effect.[42] As a result, these treaties do not generally reduce the U.S. income tax for U.S. individuals, unless an exception applies. In February 2016, Treasury issued a revised U.S. Model Income Tax Convention (i.e., model treaty), which is the baseline text the agency uses when it negotiates tax treaties.[43] Depending on the outcome of the treaty negotiations, the final treaty with a particular foreign country may or may not include language from the model treaty.

Reporting Foreign Accounts and Foreign Financial Assets

According to IRS, the Foreign Account Tax Compliance Act (FATCA) and IRC section 6038D are important developments in U.S. efforts to combat tax evasion by U.S. individuals holding accounts and other financial assets offshore,[44] which may have implications for U.S. individuals who

[41]For example, tax treaties may provide for how each country will tax pension contributions, earnings, and distributions. Since the treaties are bilateral, these treaties may also reduce the U.S. income tax imposed on residents of foreign countries on their income from U.S. sources. The 2016 U.S. Model Income Tax Convention (i.e., model treaty) developed by Treasury uses the term "resident" and includes a definition of that term for purposes of the model treaty. Similarly, tax treaties with other countries may establish their own definitions of who is covered by the treaty.

[42]See IRS Publication 519, U.S. Tax Guide For Aliens, For Use In Preparing 2016 Returns, p. 47.

[43]For example, Article 17 of the 2016 U.S. Model Income Tax Convention ("Pensions, Social Security, Annuities, Alimony, and Child Support") includes proposed language describing how pension distributions and earnings are to be taxed in each country and how transfers of funds between pensions may be exempt from taxation under certain circumstances. Article 18 ("Pension Funds") includes proposed language describing the tax treatment in each country of pension fund contributions.

[44]According to IRS, FATCA is commonly used to refer to sections 501 and 511 of the Hiring Incentives to Restore Employment Act (codified at 26 U.S.C. §§ 1471-1474 and 26 U.S.C. § 6038D, respectively). Section 511 establishes reporting requirements for individuals, while section 501 (generally referred to in this report as FATCA) establishes reporting requirements for foreign financial institutions and certain other foreign entities. However, in describing our discussions with stakeholders, we use the term "FATCA" if stakeholders used this term but did not specify which provisions were being referred to.

have foreign retirement accounts. FATCA generally requires foreign financial institutions to provide information to IRS regarding foreign financial accounts held by U.S. taxpayers.[45] IRC section 6038D generally requires U.S. individuals to report to IRS their foreign financial assets that exceed a certain threshold. Beginning in July 2014, U.S. entities were required to withhold 30 percent on certain payments to a foreign financial institution unless the institution has entered into an agreement with IRS regarding FATCA reporting or is in a jurisdiction that is treated as having an Intergovernmental Agreement (IGA) in effect.[46] However, FATCA regulations exempt foreign financial institutions from reporting on retirement accounts that meet certain requirements. Treasury has entered into IGAs with other countries to assist with implementing FATCA that may also provide an exemption for foreign financial institutions reporting of certain retirement accounts. This exemption does not exist under IRC section 6038D, which requires individuals, including U.S. citizens, to report their foreign retirement accounts on IRS Form 8938 if they meet certain regulatory thresholds. For example, unmarried U.S. individuals living abroad must file if the total value of their specified foreign financial assets is more than $200,000 on the last day of the tax year or more than $300,000 at any time during the tax year.[47]

[45]See 26 U.S.C. §§ 1471-1474.

[46]However, IRS Notice 2014-33 established calendar years 2014 and 2015 as a transition period for purposes of IRS enforcement and administration of the FATCA withholding requirements, among other things. The notice stated that during this period, IRS will take into account the extent to which the foreign financial institution has made good faith efforts to comply with the requirements.

[47]See 26 C.F.R. § 1.6038D-2(a). An unmarried taxpayer living in the United States or married taxpayers filing separate income tax returns living in the United States must file if the total value of his or her specified foreign financial assets is more than $50,000 on the last day of the tax year or more than $75,000 at any time during the tax year. Married taxpayers filing a joint income tax return and living in the United States must file if the total value of their specified foreign financial assets is more than $100,000 on the last day of the year or more than $150,000 at any time during the tax year. Unmarried taxpayers living abroad must file if the total value of their specified foreign financial assets is more than $200,000 on the last day of the tax year or more than $300,000 at any time during the year. Married taxpayers filing a joint income tax return living abroad must file if the total value of their specified foreign financial assets is more than $400,000 on the last day of the tax year or more than $600,000 at any time during the year. Specified foreign financial assets include, among other things, savings, deposit, checking, brokerage accounts, stocks, bonds, retirement accounts, annuities, and other investment accounts. Real estate and physical assets are excluded from IRC section 6038D reporting.

Estimated Number and Financial Profile of U.S. Citizens Living and Working Abroad

The U.S. Department of State (State) estimates that as of April 2015, 8.7 million U.S. citizens lived abroad. (See appendix II for other estimates.) Income data published by IRS for 2011[48] suggest that a majority of U.S. taxpayers who earned income from foreign sources likely owed little federal income tax because their reported adjusted gross income[49] was relatively low due to tax credits and exemptions available to taxpayers on foreign-earned income.[50] IRS estimated that in 2011 over 449,000 returns were filed by taxpayers reporting foreign-earned income and just over 445,000 of these returns reported using the foreign-earned income exclusion. We previously reported that for tax year 2011, taxpayers claiming the foreign-earned income exclusion had higher average income ($163,450) than the average Form 1040 filer ($58,706), and about 45 percent of those taxpayers had an adjusted gross income of less than $10,000.[51] These data reflect that some taxpayers were able to exclude all or most of their foreign-earned income in calculating their adjusted gross income. We also reported that taxpayers claiming the foreign-

[48]IRS compiles and reports data describing foreign income earned by U.S. individuals abroad for use in its publicly available Statistics of Income Bulletin. We reviewed data reported by IRS for tax year 2011. See Internal Revenue Service, Statistics of Income Bulletin, Spring 2014, Washington, D.C.

[49]The IRC defines adjusted gross income as gross income minus adjustments to income. These adjustments can include items such as moving expenses, contributions to IRAs or other qualified retirement plans or health savings accounts, alimony payments, and student loan interest payments, among others. See 26 U.S.C. § 62.

[50]U.S. individuals who live and work abroad may be eligible for a credit or deduction against U.S. tax for foreign income taxes paid to other counties (the foreign tax credit). 26 U.S.C. § 901. Under section 911 of the tax code, U.S. individuals who live and work abroad may also be eligible for an exclusion of foreign-earned income (up to $101,300 in 2016) and an exclusion or deduction of certain foreign housing costs. The income that U.S. citizens and resident aliens may exclude under section 911 is generally limited to amounts earned for services performed abroad, including salaries and wages. It does not include income derived from capital, such as interest, dividends, capital gains, or retirement distributions.

[51]See GAO, *Tax Policy: Economic Benefits of Income Exclusion for U.S. Citizens Working Abroad Are Uncertain,* GAO-14-387 (Washington, D.C.: May 20, 2014).

earned income exclusion had lower average U.S. tax rates than all Form 1040 filers.[52]

Participants Face Challenges Managing Unclaimed Retirement Accounts and Agencies Have Not Provided Sufficient Guidance and Information to Assist Them or Plan Sponsors

Participants Have Challenges Managing Unclaimed Retirement Accounts

Participants in U.S. workplace retirement plans face challenges managing unclaimed accounts accumulated over the course of their careers. We previously reported that some 401(k) plan participants find it difficult to keep track of their savings, particularly when they change jobs, because of challenges with consolidation, communication, and information.[53] First, we found that individuals who accrue multiple accounts over the course of a career may be unable to consolidate their accounts by rolling over

[52] A majority of the returns reporting use of the foreign-earned income exclusion in 2011 (just over 84 percent) reported adjusted gross income from foreign sources as under $100,000 and 71 percent reported adjusted gross income under $50,000. Nearly a quarter of the returns reported no adjusted gross income for tax year 2011 from foreign sources due to allowable deductions and adjustments to income, including the foreign-earned income exclusion. Although these taxpayers reported no adjusted gross income for 2011, their average foreign earned-income was just above $49,000, according to GAO analysis of IRS data.

[53] See GAO-15-73. We reported that when participants leave their savings in a plan after leaving a job, the onus is on them to update former employers with address and name changes, and to respond to their former plan sponsor’s communications. We also reported that although an employer may incur costs searching for separated participants, there are no standard practices for the frequency or method of conducting searches. GAO reported that from 2004 through 2013, over 25 million participants in workplace plans separated from an employer and left at least one retirement account behind.

savings from one employer's plan to the next.[54] Second, maintaining communication with a former employer's plan can be challenging if companies are restructured and plans are terminated or merged and renamed. Third, key information on lost accounts may be held by different plans, service providers, or government agencies, and participants may not know where to turn for assistance. As one witness testified to the ERISA Advisory Council in 2013, it is not uncommon for former employees to have difficulty locating a previous employer.

Existing reporting and disclosure requirements directed at plan sponsors can provide participants who separate from their employer information about their accounts via multiple disclosures. However, plan sponsors have no automatic way to keep participants' contact information up to date, nor do they have ways to ensure that separated participants will respond to their communications. Many participants rarely read the notices they receive. We conducted a review of private sector pension plan notices in 2013, and found that participants were interested in information about their individual benefits, which could reasonably include information about a pending distribution of their unclaimed account.[55] Due to the large number of participant notices, we found participants struggled with what they must or should read.

When participant notices are ineffective, accounts can become lost or unclaimed and eventually shrink or disappear entirely, diminishing a source of income in retirement. For example, accounts with a balance of $1,000 or less can be cashed out of a plan without participant consent; account balances can be reduced by tax withholding and early distribution taxes, or conditionally forfeited by the plan sponsor until the participant

[54]We previously reported that 401(k) plan processes for handling separating participants' accounts create barriers for participants to roll their savings to a new plan, making IRA rollovers an easier and faster choice for those who want to consolidate their savings. However, we also reported that the plan environment generally has lower fees, better comparative information, and ERISA plan fiduciaries are required to select and monitor reasonable investment options. See GAO, *401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants,* GAO-13-30 (Washington, D.C.: Mar. 7, 2013).

[55]GAO, *Private Pensions: Clarity of Required Reports and Disclosures Could Be Improved*, GAO-14-92, (Washington, D.C., Nov. 21, 2013).

emerges to make a claim.[56] Accounts with balances under $5,000, and sometimes those with larger balances, can be forcibly transferred to an IRA, where the account balances may decrease over time as the fees outpace low investment returns, as we reported in our prior work. In 13 of the 19 forced-transfer IRA scenarios we considered in 2014, a $1,000 account balance was reduced to zero within 30 years.[57] DOL has also uncovered tens of thousands of participants of retirement age with unclaimed accounts that remained in their plans who were not receiving the retirement income they were due.

DOL Has Not Provided Guidance to Ongoing Plan Sponsors for Locating Missing Participants

Although DOL has provided guidance to plan sponsors of terminated DC plans about locating missing participants and unclaimed accounts, DOL has not provided similar guidance to ongoing plans.[58] DOL officials told us that they are conducting investigations of steps taken by ongoing plans to find missing participants under their authority to oversee compliance with ERISA's fiduciary requirement that plans be administered for the exclusive purpose of providing benefits.[59] Plan sponsors are required to send notices to participants in a variety of circumstances, such as to obtain direction before making a distribution.[60] However, the communication is not always successful, and may result in a mailing to an out-of-date address.

[56]IRS regulations allow a qualified plan to provide that a benefit is forfeitable "on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit." 26 C.F.R. § 1.411(a)-4(b)(6). IRS officials told us the language "inability to find the participant or beneficiary" implies a requirement to make reasonable efforts to find the participant or beneficiary. Executives at one record keeper told us that when DC accounts are conditionally forfeited, there should still be a record of that asset amount, but that great diligence is required to maintain the record through mergers and acquisitions.

[57]See GAO-15-73.

[58]See Field Assistance Bulletin No. 2014-01.

[59]Among other requirements, a plan fiduciary is required to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters in the conduct of an enterprise of a like character and with like aims. 29 U.S.C. § 1104(a)(1).

[60]*See, e.g.,* 26 C.F.R. § 1.411(a)-11(c).

With the absence of guidance, it is not clear to sponsors of ongoing DC plans how they should satisfy requirements to notify participants when participant addresses are out of date. Undeliverable mail is the main indicator for identifying a participant as missing, according to third-party administrators (TPA), who help manage missing participant issues for plan sponsors. However, DOL officials told us a recent pilot investigation found that some ongoing plans send notices that were returned undeliverable but then fail to follow-up with any search process.[61] In contrast, if participants in a terminated plan do not respond to a notice, plan sponsors need to take certain steps, at a minimum, to locate the participant or a beneficiary. According to our analysis of stakeholder interviews, in some circumstances plan sponsors may be considering a participant to have been "notified," even when the mail used to notify them was returned undeliverable. Executives at one firm that conducts missing participant searches told us that for an average client, 7 to 10 percent of mail will be returned undeliverable, which means communication was unsuccessful, potentially leaving participants without notification of changes to the plan or potential distributions or transfers.

It also is not clear how ongoing plan sponsors should arrange for paying to obtain updated addresses of participants with unclaimed accounts. Because search costs are not all paid from plan assets, finding missing participants can be an additional business expense for plan sponsors. Once an account is force-transferred out of the plan to an IRA, the account may be charged a $65 annual search fee by the IRA provider, as we reported one provider did in 2014.[62] Plan sponsors are permitted to pay only reasonable plan administration expenses, although they may charge expenses associated with a specific participant to that participant's account.[63] To reduce costs for its plan sponsor clients, representatives at one TPA told us that it will generally try to cash out accounts in ongoing plans under $1,000 immediately, before an address becomes obsolete.[64]

[61]Two third-party administrators and one record keeper told us they would not send personal financial information to an address known to be incorrect.

[62]See GAO-15-73.

[63]See FAB 2003-03.

[64]Representatives of the third-party administrator noted they send notice of the impending cash-out 30 days ahead of time.

DOL audit findings also show that ongoing plans have challenges staying in touch with missing participants and paying them their benefits when due. DOL officials told us that in a recent DOL pilot investigation of 50 large DB plans, they found tens of thousands of separated participants who were entitled to benefits but were not receiving them. They told us that between 1 and 7 percent of all participants could be missing and not receiving letters from the plan, depending on the industry. They said their investigations found databases with missing names, addresses, and Social Security Numbers, and data they suspected were unreliable, such as participants named "Jane Doe" or with birth dates listed as "1/1/1900."

DOL enforces the fiduciary standards of ERISA, which require plan fiduciaries to act solely in the interest of plan participants and their beneficiaries, for the exclusive purpose of providing benefits to them, among other things. After plan termination, plan fiduciaries must distribute all plan assets as soon as administratively feasible, which could create an urgent need for plan sponsors to find participants. DOL officials said that part of their enforcement role is examining how plans are maintaining good records and what plans are doing to find and communicate with participants—officials are aware that additional guidance indicating what is expected of plan fiduciaries would be helpful.

PBGC has recently published a final rule which expands its Missing Participants Program to cover most terminated DC plans, and DOL intends to revisit its guidance within that context.[65] At that time, DOL will have an opportunity to also provide guidance to ongoing DC plan sponsors on their obligations under ERISA to prevent, search for, and pay costs associated with missing participants. By doing so, DOL can provide plan sponsors with better tools to manage unclaimed accounts and help ensure that future DOL investigations do not also uncover ongoing DC plans with substantial numbers of participants not receiving benefits to which they are entitled.

[65]Under section 4050 of ERISA, PBGC operates a Missing Participants Program, which establishes certain requirements for terminating DB plans with respect to locating missing participants and dealing with their benefits. The Pension Protection Act of 2006 amended ERISA to require PBGC to expand its Missing Participants Program to include most DC plans, among others. On December 22, 2017, PBGC finalized a rule expanding the program. PBGC will charge a one-time fee of $35 per missing participant or beneficiary when their assets are transferred to PBGC by a DC plan choosing to use the program, and will accept amounts under $250 for free. Fees were set in consideration of guidance from GAO and OMB. See Missing Participants, 82 Fed. Reg. 60,800 (Dec. 22, 2017).

IRS Has Not Issued Guidance Clarifying Tax Withholding Requirements for Cashed-Out Unclaimed Retirement Accounts

Based in part on our discussions with IRS and our review of ERISA Advisory Council documentation, when a plan sponsor cashes out an unclaimed account and sends the money to the participant address it has on file, the address may be obsolete. As a result, the participant may not include the distribution in his or her taxable income for the year because the participant may not have received the payment from the plan sponsor or be aware of the transfer. According to an IRS publication on tax withholding for plan sponsors, a 20 percent income tax withholding generally is mandatory on amounts distributed from the plan that are not rolled over directly into another qualified plan or an IRA.[66] However, our findings that some participants may not actually receive these distributions raise questions about whether withholding should be required in situations when it is reasonable to believe distributions will not be received by the participants.

Misconceptions exist regarding how and when IRS will credit tax withholding toward a taxpayer's tax liability. For example, two TPAs told us they believed that IRS will credit tax withholding on cashed-out accounts to the tax liabilities of missing participants.[67] One industry representative we interviewed in 2013 told us that he withheld taxes when he could not find a participant because he believed the withholding would cause IRS to make the participant aware of the account. According to DOL bulletins issued in 2004 and 2014, some plan sponsors were using 100 percent withholding—in effect transferring the entire account to IRS—under the assumption that the withheld amounts would be matched and

[66]According to IRS Publication 15-A, Employer's Supplemental Tax Guide, account balances that are eligible to be rolled over tax free to an IRA or another eligible retirement plan are subject to a flat 20 percent withholding rate if they are distributed rather than rolled over directly into one of those vehicles. The publication further provides that distributions that are (a) required by law, (b) one of a specified series of equal payments, or (c) qualifying "hardship" distributions are not subject to the mandatory 20 percent federal income tax withholding.

[67]Tax withholding occurs when accounts of $1,000 or less are cashed out, with a check mailed to an address on file for the participant, and for terminated plans, with accounts transferred to a federally-insured bank account or state unclaimed property fund. As previously discussed, workplace retirement accounts may be cashed out without the consent of a participant only if certain conditions are met.

applied to a participant's tax liabilities.[68] DOL bulletins clarified it was not an appropriate distribution option for plan sponsors. Table 1 shows a variety of approaches to tax withholding. However, according to IRS, none of the tax withholding strategies automatically reduces the tax liability of the account holder. IRS officials told us that the agency does not routinely credit federal tax withholding to a taxpayer's current federal tax liability unless the taxpayer has made a claim.[69]

Table 1: A Variety of Approaches to Tax Withholding for Distributions from Workplace Retirement Plans

No tax withholding	Ensures that income withheld does not exceed the income received by plan participant.
20 percent withholding	Amount commonly withheld from cash-outs from plans.
100 percent tax withholding	Used in the past by plan sponsors in an attempt to reduce participants' tax liability.

Source: GAO analysis of Department of Labor and Internal Revenue Service documentation. | GAO-18-19

Retirement accounts with small balances are most vulnerable to the tax consequences of tax withholding by plan sponsors. We previously reported that in the absence of participant instructions, accounts with a balance of $1,000 or less can be cashed out of the tax-deferred plan environment by plan fiduciaries without the separated participant's consent.[70] From 2004 to 2013, separated participants left more than 13 million accounts of $1,000 or less in workplace retirement plans with an aggregate value of $1.2 billion, according to SSA.[71]

[68]In DOL Field Assistance Bulletin 2004-02, DOL prohibited the practice, citing its discussions with IRS staff and its understanding of IRS data processing at the time. DOL updated that guidance in 2014 with FAB 2014-01, noting again that some plan fiduciaries were using 100 percent withholding, and stating that it did not believe that 100 percent withholding would necessarily result in a crediting of the withheld amount against the missing participant's income tax liabilities (for example, the amount withheld may exceed a missing participant's income tax liabilities). As a result, DOL stated, missing participants might not receive the full benefit to which they are entitled. In both the 2004 and 2014 guidance documents, DOL concluded that 100 percent withholding is not in the best interest of participants and would violate ERISA's fiduciary requirements.

[69]According to the IRS, in the United States, taxes are paid through a system based on self-reporting. Tax withholding generally must be claimed by the taxpayer for it to be credited toward the taxpayer's tax liability.

[70]See GAO-15-73.

[71]This analysis was conducted by SSA of data submitted to plan sponsors on Form 8955-SSA.

Withholding taxes on balances of $1,000 or less at the time of distribution may result in participants paying taxes twice on the account. IRS told us that missing participants generally have up to 3 years to become aware of and claim the withheld amounts for them to be credited towards their tax liability. However, missing participants who claim their account after 3 years may again pay federal income tax on the account balance, although IRS officials said they thought such a scenario would be rare. (See fig. 1).

Taxpayer Bill of Rights (TBOR)

Internal Revenue Code section 7803(a)(3) requires the IRS Commissioner to ensure that IRS employees are familiar with and act in accordance with the 10 fundamental rights that make up the TBOR. Among others, these rights include:

Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

Right to Pay No More than the Correct Amount of Tax

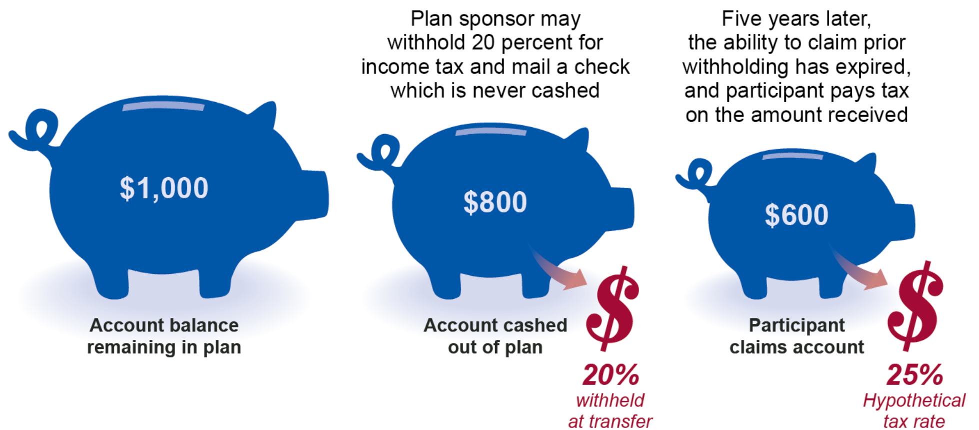
Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if IRS has not resolved their tax issues properly and timely through its normal channels.

Source: Internal Revenue Service. | GAO-18-19

Figure 1: Illustrating Possible Double Taxation of a Small Unclaimed Workplace Retirement Account Involuntarily Cashed Out and Later Claimed



Source: GAO analysis of Internal Revenue Service (IRS) documentation. | GAO-18-19

Note: This figure depicts a situation in which the plan sponsor cashes out a workplace retirement account without the consent of the participant, which can happen for accounts of $1,000 or less, absent participant instructions. Such cash-outs can result in an uncashed check sent to an old address. According to IRS, tax withholding on unclaimed accounts is not automatically credited to the account owner's tax liability by IRS. Instead, taxpayers generally must be aware of the withholding and claim it on their tax return for it to be credited. Taxpayers may not be aware of either the withholding or the income if the plan sponsor does not have their current address, according to IRS documentation and industry representatives with whom we spoke.

IRS has not issued specific guidance clarifying the withholding requirements that apply to distributions from unclaimed accounts in situations in which the participant may be unlikely to receive the distribution. By reviewing the issue of distributions to participants with unclaimed accounts, including reviewing the IRC in this context, IRS may be able to issue guidance on applicable tax withholding and other tax requirements with respect to such accounts.[72] The Taxpayer Bill of Rights states that taxpayers are entitled to clear explanations of the tax laws in IRS publications and notices, and federal internal control standards require agencies to communicate effectively with external stakeholders to

[72]In October 2017, Treasury released its 2017-18 Priority Guidance Plan, which indicated Treasury intends to provide "guidance on missing participants" in the future. IRS officials told us in November 2017 information about its content or form was not yet available.

help achieve agency goals.[73] U.S. participants already facing the challenge of finding a small account transferred without their consent may discover, when the account is located, 20 percent of their account eliminated by taxes.[74] Without an IRS review of this issue and subsequent guidance, questions may remain about withholding from distributions in situations where the participant may be missing.

Plan Sponsors Can No Longer Use IRS' Letter Forwarding Program to Locate Missing Participants

Under IRS' letter forwarding program, between 1994 and 2012 plan sponsors could ask IRS to use IRS' most current address on file to forward a letter with information about an account to a missing plan participant. However, in 2012 IRS modified the service and no longer forwards letters on behalf of qualified retirement plan sponsors attempting to locate plan participants.[75] According to the 2013 Report of the ERISA Advisory Council on Locating Missing and Lost Participants, the letter forwarding program was a popular alternative for plan sponsors when email and U.S. mail proved ineffective at contacting separated participants. Executives at one large record keeper told us the letter forwarding program provided very important assistance for locating missing participants, noting that few individuals are going to ignore correspondence from IRS. Although the letter forwarding program never notified the plan sponsor as to whether or not the letter reached the intended recipient, executives at one TPA characterized the program as effective. In addition, they said the fact that it was sponsored by IRS and sanctioned by DOL gave plan fiduciaries confidence that they were acting prudently.

[73]See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014). IRS' Taxpayer Bill of Rights states that taxpayers have the right to know what they need to do to comply with tax laws. In addition, IRS' strategic plan states that IRS guidance should help taxpayers understand their tax responsibilities through targeted outreach, communications, and education. See IRS Strategic Plan, Fiscal Years 2014-2017, Objective 2: Develop clear and focused outreach, communications, and education programs to assist taxpayer understanding of tax responsibilities and awareness of emerging tax laws.

[74]In addition to the 20 percent tax withholding, depending on the circumstances an unclaimed retirement account may also be subject to a 10 percent additional early distribution tax if the distribution is made before certain events, such as the participant turning age 59½. 26 U.S.C. § 72(t).

[75]Revenue Procedure 2012-35 modified Revenue Procedure 94-22 to no longer provide services to locate taxpayers who may be owed assets, citing the Internet as a missing participant locator resource that had been unavailable in 1994. The letter forwarding program continues today, limited to humane purposes, such as notifying close relatives of an illness in the family and emergency situations.

Missing participant search services and their value vary widely today, based on industry representatives we interviewed. For example, representatives of one search firm told us they charged $1.25 for a search. However, an executive at a TPA firm told us another firm charged $35 for a Social Security Number-based search, which reliably connected with participants. PBGC estimates the cost of a commercial locator service to be $40 per search.[76] Industry stakeholders told us that the steps currently required by existing guidance do not provide a straightforward way to send a letter about an unclaimed account to a missing plan participant.[77] They described benefits that only IRS can provide through this service, such as the likelihood recipients will open a letter from IRS and the confidence fiduciaries have using an IRS-sponsored program. We discussed with IRS officials the commensurate fees charged in the private sector for missing participant searches and we discussed the variety of services and associated costs currently available.

According to OMB Circular A-123, agencies and individual federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls for results-oriented management. IRS has always charged a user fee for the letter

[76]An executive at another TPA told us their contract offered unlimited searches for $25 per month, and said it can be helpful sometimes but not always. Searching by Social Security Number, while more expensive, is more effective than other methods, according to representatives from two TPAs with whom we spoke. One TPA told us that a Social Security Number-based search costs $20-$25. However, a plan sponsor may spend multiple times that amount and still not find a missing participant. For example, one TPA told us that in some cases it can cost as much as $150 to find a participant. An attorney in Canada told us that one of her plan sponsor clients paid $500 Canadian per person to search for four lost DB plan participants, and still only found three.

[77]Representatives of two TPAs told us they turned to commercial locator services for a more reliable way to find participants after the free Internet searches required under DOL FAB 2014-01 were unproductive. DOL guidance for terminated plans is sometimes used by ongoing plans to make decisions in the absence of other guidance, according to an industry association with whom we spoke. DOL Field Assistance Bulletin 2004-02 included discussion of the letter forwarding programs. IRS also issued a memorandum to its employee plan examiners regarding required minimum distributions and missing participants on October 19, 2017. The memorandum directs examiners not to challenge a qualified plan for failure to commence or make a distribution to a participant or beneficiary to whom a payment is due, if the plan has taken certain steps. These steps include searching plan, sponsor, and publicly-available records; using a commercial locator service, a credit reporting agency, or a proprietary Internet search tool; and attempting contact participants via United States Postal Service certified mail to their last known mailing address and other appropriate means.

forwarding program, and the fee has not changed since 1994.[78] IRS officials told us resource constraints led them to revise the letter forwarding program. While IRS management controls will need to ensure that a program expansion is cost-effective, by reinstating the letter forwarding program for plan participants in a cost-effective manner, IRS can help support the retirement security of separated plan participants and plan sponsor efforts to meet their obligations under the IRC and ERISA.

Information Provided to U.S. Workers on Unclaimed Retirement Accounts Is Often Outdated and Incorrect

Certain information U.S. workers receive on unclaimed workplace retirement accounts based on data reported to IRS by plan sponsors is not reliable because plan sponsors are not updating the data over time as required. SSA maintains data on vested, unpaid retirement benefits left behind in workplace retirement plans by separated participants in its pension benefit record database.[79] The information, including the name of the plan, the value of the benefit, and the contact information of the plan administrator, is reported by plan administrators to IRS, and IRS provides it to SSA. When an individual retires and claims Social Security benefits, SSA sends the individual a Notice of Potential Private Pension Benefit Information.[80] The notice informs the recipient that they may have an unclaimed retirement account from a former employer and suggests that they may want to make an effort to determine whether or not the benefit actually does exist. SSA mails about 90,000 notices to new Social Security claimants each month. Separated participants can often find that no benefit exists, according to DOL and SSA documentation and

[78]The fee is only on bulk requests of 50 or more letters. Forwarding letters to fewer than 50 missing participants was free. Furthermore, according to one service provider, plan sponsors would cap the number of letters requested at 49 per year to avoid paying any fees, leaving IRS to cover the costs of the work.

[79]Administrators of workplace retirement plans covered by the vesting standards of section 203 of ERISA are required to report to IRS each year on Form 8955-SSA certain information on participants who separated from service, and are covered under the plan and entitled to vested deferred benefits that were not paid during the year. IRS is required to transmit this information to SSA. 26 U.S.C. § 6057(a), (d). Each month, SSA checks the name and Social Security Number of each new claimant for Social Security benefits to determine whether the claimant is listed in SSA's pension benefit record database, and mails one or more notices to each new claimant listed. SSA also sends these notices to individuals upon request and to claimants of a lump-sum death payment or hospital insurance coverage under Title XVIII of the Social Security Act. 42 U.S.C. § 1320b-1(a); 20 C.F.R. § 422.122.

[80]Participants can request this information earlier, but that fact is not publicized, and not many do so.

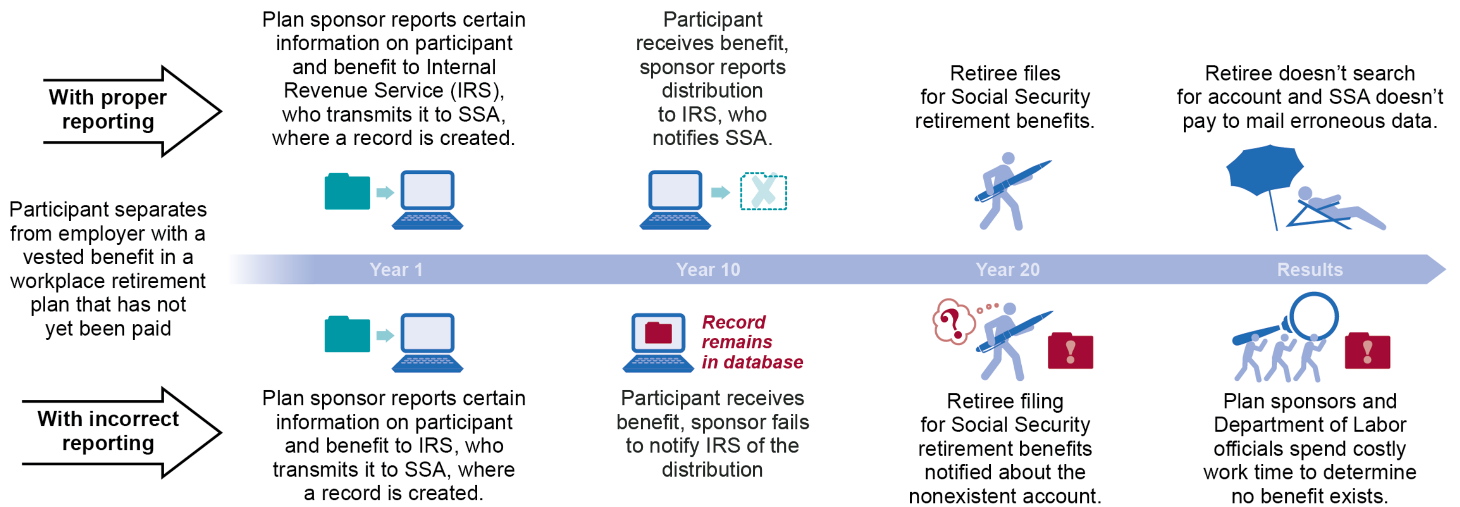
stakeholders we interviewed. A TPA executive also told us separated participants are not always able to determine what happened to their accounts.[81]

IRS and SSA have a memorandum of understanding (MOU) in place establishing their agreements for collecting and managing these data. In the MOU, IRS and SSA agree to pursue improvements to the reporting process. The MOU states that, where appropriate and consistent with IRS directives, IRS will assess penalties under the IRC on plan sponsors who fail to file Form 8955-SSA according to instructions. The agencies have also agreed to contact and receive information from filers as necessary and appropriate to follow up regarding missing, incomplete, or incorrect information requested on the form.

According to the Form 8955-SSA instructions, plan sponsors are required to report when benefits previously reported are paid, and therefore no longer due, to plan participants. Such updates allow the pension benefit record database at SSA, used to generate the Notice of Potential Private Pension Benefit Information, to reflect the fact that those benefits are no longer due. IRS officials said the data can be inaccurate because plan sponsors are not consistently reporting distributions, resulting in erroneous records of accounts accumulating in the database (see fig. 2).

[81]ERISA contains certain requirements relating to the maintenance of records for reporting and disclosure purposes and for determining the pension benefits to which participants and beneficiaries are or may become entitled. For example, section 107 requires that records pertaining to required reports must be maintained for at least six years, and section 209 requires employers to maintain records sufficient to determine benefits that are or may become due to each employee. In addition, under the IRC and Treasury regulations, any person subject to income tax is required to keep certain relevant records and retain them so long as they may become material in the administration of any internal revenue law. 26 U.S.C. § 6001, 26 C.F.R. § 1.6001-1.

Figure 2: One Way Erroneous Information on Unclaimed Workplace Retirement Accounts Accumulates in the Social Security Administration (SSA) Pension Benefit Record



Source: GAO analysis of agency and retirement industry interviews and agency documents. | GAO-18-19

Note: These reporting requirements apply only to plans covered by the vesting standards of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. Years shown are hypothetical; these events could happen on a different timeline. Retirees may also experience a burden to research the letter received from SSA that incorrectly indicates that a retirement benefit may be due.

An executive at one TPA told us that plan sponsors generally remember to put participant names on Form 8955-SSA, but often fail to take the names off after benefits are paid. According to the TPA executive, if there are 1,000 names on the list of separated participants with vested benefits in the plan, 999 will have been paid by the time they receive the notice from SSA. Nonetheless, participants will generally inquire about a benefit when they receive the SSA notice because it is from the government, and they trust the notice and think the money is there, according to one TPA with whom we spoke.

IRS officials told us that enforceable penalties can be imposed on plan sponsors for not including all required information on the form. The IRS website lists four possible actions related to incorrectly filing Form 8955-SSA that are subject to a penalty;[82] however, a failure to report

[82]The four listed actions include: (1) failure to file an annual registration statement, (2) failure to file notification of a change in the status of the plan, (3) failure to furnish a statement to a plan participant or furnishing a fraudulent statement, and (4) late filing.

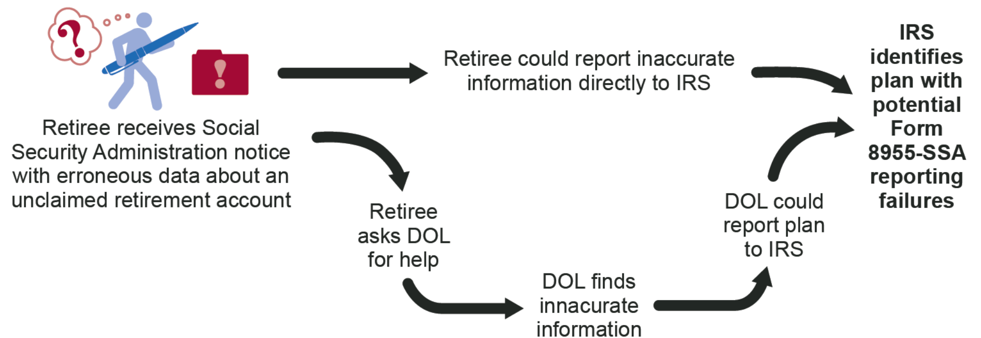
distributions is not on the list. IRS officials said if the agency were to add the failure to report distributions to the list the penalty would likely encourage some sponsors to update the data as required.[83]

IRS officials told us they do not currently know which plans are not reporting distributions. The Notice of Potential Private Pension Benefit Information leaves the responsibility for determining whether a benefit exists up to the participant and the agencies do not ask the participant for the results of their inquiries. SSA includes a note at the bottom of the notice encouraging new retirees to contact DOL with complaints, but the participant is not asked to follow up with IRS or SSA to identify plans associated with inaccurate data. Having this information would help IRS select plans to audit in order to update and improve the quality of data in SSA's pension benefit record database. SSA could modify the notice participants receive to encourage them to inform IRS if they determine the information on the notice to be erroneous. DOL benefits advisers, who field calls from inquiring individuals after they receive a notice about a potential benefit that no longer exists, also have information on plans that may not be reporting distributions to separated participants on Form 8955-SSA as required.[84] DOL officials told us they would need a formal MOU in place to facilitate such information sharing. Figure 3 illustrates these possible options for identifying plans not reporting distributions as required.

[83]IRS officials told us that Form 8955-SSA currently requires that a plan administrator provide updated information for participants who have previously been reported on the Form 8955-SSA, even though 26 C.F.R. § 301.6057-1(c) suggests that providing updated information is voluntary. IRS told us that this issue will be evaluated as part of its guidance project on IRC section 6057 reporting requirements listed on its 2017-2018 Priority Guidance Plan.

[84]DOL already has this information in summaries of some participant phone calls in some cases. We previously reported that one of the reasons these data are poorly managed is that responsibility for the data and their reporting is spread across three agencies. In addition to these steps required of IRS and SSA, DOL assists those who need help with the notice. We previously recommended Congress consider providing DOL authority to centralize these data. See GAO-14-92.

Figure 3: Two Options that Could Identify Workplace Retirement Plan Sponsors with Form 8955-SSA Reporting Failures



Source: GAO analysis of Department of Labor (DOL) and Internal Revenue Service (IRS) documentation. | GAO-18-19

Standards for internal control in the federal government state that agencies should communicate quality information externally so that external parties can help agencies achieve their objectives.[85] Although IRS and SSA have agreed in the MOU to work together to promote efforts to improve internal controls, they are not collaborating to improve the likelihood that the Notice of Potential Private Pension Benefit Information will correspond to an actual benefit in the future. While IRS has authority over implementing and enforcing the Form 8955-SSA reporting requirements, IRS officials do not have access to SSA's pension benefit record database to update records.[86] IRS officials told us at one point they discussed with SSA a possible project that would allow plan sponsors to update all the records associated with their plan at once. SSA officials told us they could collaborate with IRS to update the data in the pension benefit record database. By working together, IRS and SSA can increase the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual workplace retirement benefits in the future.

[85]See GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

[86]IRS officials said that changes they made to the form in 2009 have likely also improved reporting of distributions by plan sponsors. However, we reviewed the 2008 and the 2016 form instructions and found they both instructed plan sponsors to report a participant that has previously been reported under the plan but is no longer entitled to those deferred vested benefits.

Complex Tax Requirements and a Lack of Guidance Can Hinder U.S. Individuals' Ability to Correctly Report Foreign Retirement Accounts

Stakeholders Told GAO that U.S. Individuals Who Participate in Foreign Workplace Retirement Plans Face Multiple Challenges

U.S. individuals who participate in foreign retirement plans can face a number of challenges with tax reporting requirements on their retirement savings. According to IRS officials and tax preparers with whom we spoke, these challenges are greater for U.S. individuals who live and work abroad full time than for corporate executives on temporary assignment in a foreign country. Individuals sent abroad for limited times by their employer often remain as participants in their employer's U.S. workplace retirement plan and do not need to participate in a foreign workplace plan. According to IRS officials and tax professionals with whom we spoke, many of these executives may have tax filing assistance made available to them by their company, further reducing their reporting burden. Individuals who work in a foreign country may be forced to participate in a mandatory foreign retirement plan, depending on the country and the rules governing residency, according to officials with whom we spoke in our case study locations. In these instances, according to IRS officials, the individuals have no choice but to comply with U.S. tax reporting rules on their foreign retirement accounts. Those who live abroad long-term due to family or personal ties naturally accumulate foreign assets and savings, such as foreign retirement accounts.

Tax preparers in all five case study locations we reviewed, as well as IRS officials, indicated that preparing a U.S. tax return for a participant in a foreign retirement plan is more complex than preparing a comparable U.S. tax return that does not include foreign assets. We were told that attempting to categorize a foreign retirement account for tax reporting under the IRC can be challenging because such accounts may be

reported as one of several different designations that may or may not be eligible for tax-deferral in the United States.[87] This contrasts with U.S. individuals participating in U.S. retirement plans that meet the criteria for tax-qualified status under the IRC, who generally receive a Form W-2 Wage and Tax Statement that automatically deducts retirement account contributions from gross wages.[88] In addition, participating in a foreign retirement plan can initiate a complex set of U.S. reporting requirements on retirement assets, such as participants having to report contributions and earnings or having to file additional forms and schedules for their retirement account, which is typically not required of taxpayers with U.S.-based retirement plans. IRS officials told us that the onus is on U.S. individuals who participate in foreign retirement plans to comply with these complex reporting requirements. As a result, these participants often need to turn to expert tax preparers to prepare their U.S. tax return even if they ultimately do not have to pay taxes.

Statutory changes on reporting foreign assets have further affected U.S. individuals who participate in foreign retirement plans. Stakeholders told us that reporting requirements under the Foreign Account Tax Compliance Act (FATCA) can increase the cost of tax preparation for U.S.

[87]The tax treatment of a foreign retirement plan depends on various factors, including the characteristics of the plan and the provisions of any relevant tax treaties. For example, according to tax experts with whom we spoke, many foreign workplace retirement plans qualify as an employees' trust, and the taxation of contributions and earnings from these plans are governed by section 402(b) of the IRC. Whether and when contributions and generated income from a section 402(b) trust are taxable as income to the participant depends on various factors, including whether the contributions are "substantially vested" and whether the participant is a highly compensated employee. See 26 U.S.C. §§ 402(b), 83(a). As another example, according to one commercial tax publication for U.S. expatriates, a Canadian Registered Retirement Savings Plan is considered to be a simple grantor trust, and unless an election is made under the U.S./Canada Income Tax Treaty, the earnings of the plan are subject to tax. See: http://www.nysscpa.org/news/publications/the-tax-stringer/stringer-article-for-authors/tax-implications-of-foreign-pension-plan-participation#sthash.fRJ9lkjf.dpuf [accessed on 4/14/17.]

[88]A U.S. individual participating in a workplace retirement plan that meets the criteria for tax-qualified status under the IRC may generally defer paying income taxes on contributions until he or she receives the benefits. For example, if an employee chooses to contribute to a 401(k) account, those contributions, earnings within the account, and any employer contributions on the individual's behalf are not included in the calculation of wages, tips, and other compensation on the Form W-2 Wage and Tax Statement provided by the employer to their employee. For example, an individual filing a 1040-EZ simply puts the wage amount from the Form W-2 onto his or her tax return, thus automatically receiving tax-deferral on retirement contributions.

individuals who participate in foreign retirement plans.[89] For example, according to IRS guidance, these participants in foreign retirement plans must gather and examine monthly retirement account statements, convert the account balance to U.S. dollars, and determine if the total value of the account at the end of the year or anytime during the year caused the individual's total asset value to exceed the reporting threshold. If the total assets meet the reporting threshold, the participant must report the value of their retirement account even if they are no longer contributing to the account. In contrast, participants in U.S. plans generally are not required to report the value of their U.S. workplace retirement accounts under FATCA or IRC section 6038D, according to IRS. We were also told of other consequences of FATCA for U.S. individuals abroad, such as a reduction in available financial services, as some banks refuse to do business with U.S. individuals because of FATCA's reporting requirements.

Lastly, once an individual decides to change jobs in a foreign country, transferring foreign retirement savings can be difficult. For example, in several of the case study locations we reviewed foreign officials and tax preparers told us that plans automatically transfer a retirement account to a different account within the plan or to a location outside the plan when an employee separates from their employer, which can have U.S. tax implications. Stakeholders said that existing U.S. tax law does not provide these participants with tax-deferral if they transfer their foreign retirement savings from one foreign workplace retirement plan to another—a benefit granted to U.S. participants in qualified U.S. retirement plans who make such transfers.[90] This condition may act as a disincentive for U.S. individuals abroad to consolidate foreign retirement accounts and can

[89]According to IRS, FATCA is commonly used to refer to sections 501 and 511 of the Hiring Incentives to Restore Employment Act (codified at 26 U.S.C. §§ 1471-1474 and 26 U.S.C. § 6038D, respectively). Our discussions with stakeholders used the term "FATCA;" however, stakeholders did not specify which provisions were being referred to. In this case, these reporting requirements fall under IRC section 6038D, according to IRS officials. IRC section 6038D requires individual U.S. taxpayers to report foreign financial assets that exceed a certain threshold amount.

[90]IRS officials told us that transfers from one account to another may be taxable; specifically whether such transfers are taxable depends on whether the amounts are considered constructively received, which depends on the facts and circumstances on whether the individual had control over the amounts in the account and whether receipt of the amount is subject to a substantial limitation or restriction. For example, officials said that if a foreign jurisdiction would impose a penalty tax for withdrawing before a certain age, then that could be a substantial limitation or restriction preventing constructive receipt.

cause challenges when individuals change jobs or are required by their retirement plan or employer to transfer their account.

IRS Guidance Is Unclear Regarding How to Report Foreign Retirement Accounts

While IRS has issued guidance providing information regarding foreign assets and pensions, IRS officials told us that the guidance is not specific on how foreign workplace retirement plans should be treated under the IRC, nor does it provide guidance for specific countries.[91] One source of guidance is Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, which discusses special tax rules for U.S. citizens and resident aliens who work abroad or who have income earned in foreign countries. Another source of guidance in the International Tax Gap Series describes how foreign pensions and annuity distributions are taxed. While both guidance sources provide taxpayers with some information on how to report foreign assets, neither describes in detail how taxpayers are to determine if their foreign workplace retirement plan is eligible for tax deferred status, or how to account for contributions, earnings, or distributions on their annual U.S. tax return, particularly whether and when contributions and earnings should be taxed as income.

IRS also directs taxpayers to review tax treaties, if applicable, for provisions related to pensions, but IRS officials told us these treaties can vary from country to country and said that they can be difficult for non-experts to understand.

[91]IRS officials told us that tax issues involving foreign retirement plans are more complicated than with U.S. plans. Even without treaties, according to IRS officials, the tax treatment of foreign retirement plans (even those within the same country) is not uniform, and treaty provisions are not uniform.

Example from the Income Tax Treaty between the United States and Switzerland

This is an example of the type of language that U.S. individuals may need to read and understand in order to correctly file their income tax return if they hold a foreign pension. According to Department of the Treasury (Treasury) officials, Article 18 of the U.S.-Switzerland tax treaty (excerpt below) does not provide U.S. individuals with tax relief on their pensions if they are living in Switzerland, despite the language stating pensions shall be "taxable only in that State" in which the individual lives. Treasury officials said that since this language is not part of a specific exception to the "saving clause" (Paragraph 3, Article 1 of the treaty), the United States may still tax U.S. individuals on Swiss retirement account contributions and earnings, even if they have already paid tax in Switzerland on these savings.

"Pensions and Annuities

1. Subject to the provisions of Article 19 (Government Service and Social Security), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Subject to the provisions of Article 19 (Government Service and Social Security), annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years or for life, under an obligation to make the payments in return for adequate and full consideration (other than services rendered)."

Source: Treasury officials and the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income. | GAO-18-19

For example, Treasury officials told GAO that the tax treaties for two of the five[92] case study locations we selected have pension clauses and certain provisions that apply to U.S. residents of those countries saving for retirement that afford some tax protection. However, Treasury officials said that two of our other case study locations have treaties that do not provide tax protections for U.S. individuals on their foreign retirement accounts (one of our case study locations does not have an income tax treaty with the United States.)[93] Tax preparers and IRS officials we spoke with indicated that it is difficult for U.S. individuals to know how to correctly apply tax treaty provisions to their foreign workplace retirement savings. In addition, these IRS officials and other retirement experts said a U.S. individual abroad without expertise in the IRC and tax treaties would have difficulty reporting their foreign retirement account correctly. Existing IRS guidance does not alleviate the confusion faced by U.S. individuals who participate in foreign retirement plans. Confusion regarding how to report foreign retirement accounts to IRS on a U.S. tax return or elsewhere is inconsistent with U.S. taxpayers' rights, as described in the Taxpayer Bill of Rights, to pay no more than the correct amount of tax and to know what they need to do to comply with tax laws.

Disagreement exists among the professional tax preparers with whom we spoke about the correct method for reporting foreign retirement accounts on a U.S. tax return. IRS officials told us that U.S. tax law generally does not recognize foreign retirement plans as tax-qualified and IRS does not recognize any retirement accounts outside the United States as having tax-qualified status. IRS officials we spoke to said that only plans meeting the specific requirements of 401(k) or other requirements describing retirement plan qualification may achieve tax-qualified status in the United States. As a result, according to IRS guidance, U.S. individuals participating in foreign workplace retirement plans generally cannot

[92]See income tax treaties between the United States and Canada, and the United States and the United Kingdom, respectively.

[93]See the 1996 Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income and the 1982 Double Taxation Taxes on Income Convention between the United States and Australia. IRS' Publication 54 describes the "saving clause" that is typically included in most tax treaties. The "saving clause" provides that the treaties do not affect how the United States taxes its own citizens and residents. As a result, U.S. individuals generally cannot use the treaty to reduce their U.S. tax liability. However, the guidance notes that most treaties provide exceptions to the saving clause that allow certain provisions of the treaty to be claimed by U.S. individuals, and that it is important that taxpayers examine the applicable saving clause to determine if an exception applies.

deduct contributions to their account from their income on their U.S. tax return. This is true even if the retirement account is considered a tax-deferred retirement account in the country where the individual works, and even if the account is similar in nature to those found in a U.S.-type retirement plan, such as a 401(k) plan. IRS officials told us that it should generally be unnecessary to file a foreign retirement account as a Passive Foreign Investment Company (PFIC) if the foreign retirement plan is covered by a tax treaty with the United States, but acknowledged that some tax advisors in foreign countries advise their U.S. clients to consider their interest in such plans as an investment in a PFIC. For example, in one of the case study locations we reviewed, a tax preparer said that he advises U.S. individuals who participate in such plans to report their foreign retirement account as a PFIC in their U.S. tax filing, and that contributions and earnings are subject to be taxed at the higher tax rate generally applicable to PFICs.[94] Other tax preparers we spoke to in that location said that this is a matter of some discussion among tax preparers and that they reported retirement plans as an employees' trust. The National Taxpayer Advocate told us that receiving incorrect tax advice from a foreign tax preparer may not be a sufficient mitigating circumstance to avoid penalties for reporting a foreign retirement account incorrectly on a tax return. While reasonable reliance on a tax professional with respect to the details of a return is generally a mitigating circumstance for errors on a return, according to the National Taxpayer Advocate, tax preparers in other countries are usually not considered qualified preparers by IRS.[95] U.S. taxpayers who file an incorrect tax return can lose money by accruing penalties.

IRS officials told us that individual taxpayers are responsible for understanding their filing requirements and for determining how to correctly file their tax returns, regardless of whether they live in a foreign

[94]An online guide from a tax preparation firm that serves U.S. expatriates characterizes PFICs as pooled investments registered outside the United States that may include mutual funds, hedge funds, money market funds, insurance products, and non-U.S. retirement plans. According to this guide, PFICs are potentially subject to the top individual tax rate. See https://www.taxesforexpats.com/guides/passive-foreign-investment-company-8621.html.

[95]Any person with an IRS preparer tax identification number (PTIN) is authorized to prepare federal tax returns. However, tax preparers have differing levels of skills, education, and expertise. For example, Enrolled Agents take a comprehensive exam and are required to complete ongoing education requirements to maintain their credential. Not all PTIN holders have additional credentials and may not have the authority to represent their clients before the IRS.

country or the United States. In its mission to help taxpayers meet their tax responsibilities, IRS could issue guidance concerning how U.S. individuals are to correctly report their foreign retirement assets. The Taxpayer Bill of Rights states that as part of the right to a fair and just tax system, taxpayers have a right to expect that system to consider circumstances that affect their ability to provide timely information. IRS officials told us they had been considering issuing improved guidance in some areas pertaining to the taxation of foreign retirement accounts. However, without clearer specific guidance from IRS describing how to correctly report foreign retirement assets on a U.S. tax return, U.S. individuals who participate in foreign workplace retirement plans continue to run the risk of filing incorrect returns due to confusion over how to properly classify and report their accounts. Clarifying how U.S. individuals who participate in foreign workplace retirement plans should report their retirement assets on their annual U.S. tax return will help ensure these taxpayers can meet their tax reporting obligations.

Complying with Reporting Requirements Can Be Costly for U.S. Individuals Who Participate in Foreign Workplace Retirement Plans

Federal law requires U.S. individuals to report specified foreign financial assets, including any applicable retirement and pension accounts they own, if these assets, in the aggregate, are above the regulatory threshold.[96] Similarly, the Report of Foreign Bank and Financial Accounts (FBAR) requires information with respect to foreign accounts above a certain amount.[97] As a result, U.S. individuals who participate in foreign

[96]According to IRS, FATCA is commonly used to refer to sections 501 and 511 of the Hiring Incentives to Restore Employment Act (codified at 26 U.S.C. §§ 1471-1474 and 26 U.S.C. § 6038D, respectively). Section 511 establishes reporting requirements for individuals, while section 501 (generally referred to in this report as FATCA) establishes reporting requirements for foreign financial institutions and certain other foreign entities. However, in describing our discussions with stakeholders, we use the term “FATCA” if stakeholders used this term but did not specify which provisions were being referred to.

[97]Pursuant to the Bank Secrecy Act and Treasury regulations, U.S. individuals who have financial interests in or signature authority over foreign financial accounts must file an FBAR if the maximum aggregate value of those accounts exceeds $10,000 at any time during the calendar year. This would generally include any foreign workplace retirement accounts, but foreign financial accounts held by or on behalf of tax-qualified retirement plans are exempted. 31 U.S.C. § 5314, 31 C.F.R. §§ 1010.306(c), 1010.350(g)(4). The FBAR is not filed with an individual’s tax return, but is filed separately and directly with the Treasury. Failure to file an FBAR when required to do so may result in civil penalties, criminal penalties, or both. 31 U.S.C. §§ 5321-5322.

Foreign Account Tax Compliance Provisions and Internal Revenue Code (IRC) section 6038D Reporting

Foreign account tax compliance provisions, including Internal Revenue Code (IRC) section 6038D, were enacted as part of the Hiring Incentives to Restore Employment Act to reduce tax evasion by creating greater transparency of offshore accounts and entities held by U.S. individuals and by providing IRS with tools to further enforce tax laws, according to IRS. Foreign account tax compliance provisions under IRC sections 1471-1474 generally require foreign financial institutions to report to IRS on foreign financial accounts held by U.S. taxpayers and IRC section 6038D requires individual U.S. taxpayers to report foreign financial assets that exceed a certain threshold amount. Taxpayers who fail to comply with reporting requirements under IRC section 6038D may be subject to penalties, including a $10,000 failure to file penalty, an additional penalty of up to $50,000 for continued failure to file after IRS notification, and a 40 percent penalty on an understatement of tax attributable to non-disclosed assets.

Source: Internal Revenue Service. | GAO-18-19

retirement plans may need to hire tax preparers to prepare returns in compliance with these U.S. laws, and, according to tax preparers with whom we spoke, the cost for having a complete tax return professionally prepared for an individual holding a foreign retirement account ranges from $1,800 to as high as $16,000.

Determining how a foreign retirement account should be reported is time consuming even for experts. Tax preparers must prepare multiple items, including the tax return itself, and additional schedules and forms pertaining to the retirement account, according to the preparers with whom we spoke. For example, Form 3520 may be required if the account is being reported as a foreign trust. In addition to preparing tax forms, one tax preparer we spoke to said that preparers may have to spend time trying to obtain other documents necessary to prepare a U.S. tax return, for example, detailed retirement account statements.

Since the implementation of IRC section 6038D, individuals have increased exposure to penalties, and failure to report a foreign retirement account when required may bring significant financial penalties, even if no taxes were due on the retirement account in question.[98] For example, according to the IRS website, failure to report foreign financial assets on Form 8938 as required may result in a penalty of $10,000 and an additional penalty of up to $50,000 for continued failure to report after IRS sends the individual a notification of failure to report.[99] As a result of this reporting requirement, U.S. individuals who participate in workplace retirement plans abroad may incur substantial costs to correctly file their returns and risk diminishing their retirement security if they fail to correctly report their foreign retirement assets.

Even in cases where the individual owes no U.S. tax, tax preparation can costs thousands of dollars. Three tax preparers and representatives of one investment firm that provides pension advice with whom we spoke noted that even if a U.S. individual who participates in a foreign workplace

[98]Although discussions with stakeholders generally used the term “FATCA;” stakeholders did not specify which provisions they were referring to. In this case, the reporting requirements for U.S. individuals fall under IRC section 6038D, according to IRS.

[99]26 U.S.C. § 6038D. However, if the failure to report the information is shown to be due to reasonable cause and not due to willful neglect, no penalty will be imposed. See 26 C.F.R. § 1.6038D-8(e). In addition, individuals may also be subject to a 40 percent penalty on any understatement of tax attributable to non-disclosed assets. 26 U.S.C. § 6662(j)(3). See https://www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions.

retirement plan did not ultimately owe any taxes, they are required to report their foreign retirement assets under both FATCA[100] and FBAR. Tax preparers in four of our case study locations[101] as well as in the United States mentioned FATCA's requirements as an added challenge when reporting foreign retirement accounts on U.S. tax returns.[102] Additionally, one investment industry association representative we interviewed said that FATCA casts a wide net and that many "accidental Americans"[103] and U.S. individuals abroad were challenged to comply with its requirements.[104] Some of the tax preparers we spoke with said many individuals taking steps to come into tax compliance as a result of FATCA may happen to have U.S. citizenship but may never have lived or worked in the United States as adults.[105]

The National Taxpayer Advocate told us that the high cost of tax preparation amounted to an "advanced penalty" for U.S. individuals who live abroad. In a written testimony to Congress in 2015, she stated that

[100]Stakeholders generally used the term "FATCA" to describe the reporting requirements for U.S. individuals of their foreign financial accounts and assets. In this case, these requirements fall under IRC section 6038D, according to IRS officials.

[101]The case study locations were Australia, Canada, Hong Kong, Switzerland, and the United Kingdom.

[102]Although our discussions with stakeholders generally used the term "FATCA," these reporting requirements fall under IRC section 6038D, according to IRS.

[103]"Accidental American" is used colloquially to describe citizens of other countries who acquired U.S. citizenship through their parents' ties to the United States rather than their own choices, for example, through a U.S. citizen parent who emigrated abroad, or because they were born in the United States but left as young children. Such individuals may have never lived or worked in the United States as adults, and according to tax preparers with whom we spoke, many such individuals are surprised to learn of their U.S. tax obligations.

[104]Although our discussions with stakeholders generally used the term "FATCA," these reporting requirements fall under IRC section 6038D, according to IRS.

[105]Although our discussions with stakeholders generally used the term "FATCA," these reporting requirements fall under IRC section 6038D, according to IRS.

FATCA has created unique challenges for U.S. taxpayers abroad[106] and presented evidence in Volume 1 of the Taxpayer Advocate Service Fiscal Year 2016 Objectives Report to Congress that there was little evidence that foreign filers are any more likely to be non-compliant than taxpayers in the general taxpayer population.[107] The National Taxpayer Advocate specifically identified concerns with FATCA as an area of focus in the Fiscal Year 2016 Objectives Report to Congress, and stated that taxpayers' rights to a fair and just tax system, and to pay no more than the correct amount of tax, are being adversely affected by FATCA.[108]

IRS officials we spoke with indicated they are aware of the difficulties some taxpayers are experiencing with these reporting requirements, but said the agency is required to implement the law. They also said that retirement accounts are usually the primary asset for individuals abroad and that from an individual enforcement perspective, these reporting requirements help to ensure a "line of sight" year over year on participants' foreign pension arrangements. IRS officials expressed

[106]See the written statement of Nina E. Olson, National Taxpayer Advocate, the hearing on the Internal Revenue Service Fiscal Year 2016 Budget Request before the Subcommittee on Financial Services and General Government, Committee on Appropriations, United States Senate. Available at https://www.irs.gov/pub/tas/NTA_Testimony_030315.pdf. See also the National Taxpayer Advocate Fiscal Year 2016 Objectives Report To Congress, Volume 1, available for download at https://taxpayeradvocate.irs.gov/reports/fy-2016-objectives-report-to-congress/full-report. IRS officials noted that the National Taxpayer Advocate was likely referring to reporting requirements for U.S. individuals under IRC section 6038D.

[107]The National Taxpayer Advocate analyzed data from the IRS Compliance Data Warehouse, Individual Return Transaction File Entity, and Individual Master File Status History Tables, and found that 19 of every 1,000 Form 8938 filers did not file their return timely, as compared to 16 of every 1,000 in the general population. They also found that 24 of every 1,000 Form 8938 filers did not pay taxes timely, as compared to 59 of 1,000 general population taxpayers. See also the National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress, Volume 1, available for download at https://taxpayeradvocate.irs.gov/reports/fy-2016-objectives-report-to-congress/full-report.

[108]The Taxpayer Bill of Rights adopted by the IRS includes 10 fundamental rights afforded by the Internal Revenue Code (IRC). IRC section 7803(a)(3) requires the IRS Commissioner to ensure that IRS employees are familiar with and act in accordance with these 10 taxpayer rights. The National Taxpayer Advocate has expressed concern that, "without statistically valid evidence or analytical justification, the IRS has adopted a coercive approach to international taxpayers, reflecting an assumption that all such taxpayers are suspect of fraudulent activity." See National Taxpayer Advocate, "Objectives Report to Congress – Fiscal Year 2017, Volume 1" https://taxpayeradvocate.irs.gov/reports/fy-2017-objectives-report-to-congress/full-report. IRS officials noted that the National Taxpayer Advocate was likely referring to reporting requirements for U.S. individuals under IRC section 6038D.

concern that unless U.S. individuals are required to report foreign retirement accounts via Form 8938, they will seek to avoid proper reporting on their tax returns when distributions are made.

IRS officials told us they have had extensive conversations about providing a possible exemption from reporting requirements under IRC section 6038D for certain U.S. individuals in foreign countries.[109] IRS decided the ability to review a taxpayer's foreign retirement data each year through filing a Form 8938 would allow regulators to evaluate whether contributions, earnings, and distributions were being identified and reported accurately. IRS officials stated that the agency's goal is to build a database with Form 8938 information on individual taxpayers with foreign assets.

IRS officials told us that, unlike individuals, foreign financial institutions in many countries are exempt from reporting retirement accounts under FATCA.[110] IRS officials said this is because such foreign retirement accounts are typically at low risk for tax evasion and Treasury officials told us that the exemption for foreign financial institutions was provided to reduce burden on such institutions. This sentiment was echoed by foreign government officials and retirement experts abroad, who said a retirement account is generally at low-risk for tax evasion both because governments regulate retirement accounts and individuals attempting to evade taxes through a retirement account would have to wait many years before seeing any benefit. With respect to IRC section 6038D, according to IRS officials and Form 8938 instructions, if a fair market value is not readily available for a foreign workplace DB plan, it does not have to be included in the taxpayer's calculation of the aggregate foreign assets used to determine whether the taxpayer meets the threshold to file Form

[109]According to IRS, FATCA is commonly used to refer to sections 501 and 511 of the Hiring Incentives to Restore Employment Act (codified at 26 U.S.C. §§ 1471-1474 and 26 U.S.C. § 6038D, respectively). Section 511 establishes reporting requirements for individuals, while section 501 (generally referred to in this report as FATCA) establishes reporting requirements for foreign financial institutions and certain other foreign entities. However, in describing our discussions with stakeholders, we use the term "FATCA" if stakeholders used this term but did not specify which provisions were being referred to.

[110]For example, Intergovernmental Agreements (IGAs), negotiated by Treasury, which have been concluded with 113 countries to date, may establish such exemptions.

8938.[111] If other foreign financial assets, in the aggregate, exceed the threshold, IRS officials said an individual must list their DB plan on Form 8938, but may list a zero balance if no distributions have been made. Given that IRS does not always require reporting of foreign retirement plans on Form 8938 if the plans cannot be readily valued, providing a broader exemption for other types of workplace plans or for other appropriate circumstances from the calculation of the foreign asset threshold could help ease the reporting burden on U.S. individuals. This would assist those individuals who hold most of their wealth in the form of foreign retirement savings in other types of workplace retirement plans, to avoid potentially high penalties that could diminish their retirement savings.

IRS has not systematically analyzed data from Form 8938 on foreign retirement accounts owned by U.S. individuals. As a result, they may not have evidence showing the effect of these reporting requirements on U.S. individuals who participate in foreign workplace retirement plans, for instance, how many enforcement actions related to retirement accounts resulted from filing Form 8938. Without IRS systematically analyzing Form 8938 data on foreign retirement accounts owned by U.S. individuals, the agency will continue to lack an understanding of how these accounts change over time and if they are definitively low-risk for tax evasion. Understanding the effects of these reporting requirements can provide IRS with information to consider whether IRS could offer individuals some form of exemption from reporting on their foreign retirement accounts. Currently, there is no way for IRS to clearly distinguish different types of accounts being reported on Form 8938. To do so would require the Form 8938 to be revised in order to allow taxpayers to clearly specify that the account being reported is a foreign retirement account or pension.[112] In addition, U.S. individuals participating

[111]According to IRS officials, this was done because it is difficult to determine the value of unvested benefits in a DB plan. When determining the value of an individual's interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan, the IRS instructions for Form 8938 state that if the individual received no distributions during the tax year and does not know or have reason to know based on readily accessible information the fair market value of his or her interest, to use a value of zero. See also 26 C.F.R. § 1.6038D-5.

[112]The instructions for Form 8938 currently direct taxpayers to report their interest in a foreign pension plan or foreign deferred compensation plan in Part VI of the form. The instructions further direct taxpayers to enter a description of the specified foreign financial asset being reported in this section for assets that are not maintained in a financial account.

in foreign workplace retirement plans, many of whom count their retirement savings as their primary financial asset, according to IRS officials, will continue to be caught up in IRS' enforcement efforts aimed at catching tax evaders. These U.S. individuals may continue to face potentially high tax preparation fees to complete the filing of Form 8938 and may be liable for penalties for failure to report foreign retirement accounts that may pose little or no risk for tax evasion.

Absent Specific Treaty Provisions, Current U.S. Tax Law Does Not Exempt from Taxation Transfers in Foreign Workplace Retirement Plans

IRS officials told us that U.S. individuals who participate in foreign workplace retirement plans may not realize that a routine transfer of their foreign retirement assets within plans[113] or from one plan to another should be reported as a taxable event, resulting in an incorrect filing and/or potential penalties. Changing jobs and transferring, or "rolling over" retirement savings to another qualified retirement plan is generally a tax-protected transaction for participants in U.S.-based retirement plans.[114] However, IRS officials told us that a U.S. individual who participates in a foreign retirement plan may owe U.S. taxes for similar transfers within or between foreign workplace retirement plans. Retirement plans in some countries routinely initiate administrative transfers of a participant's retirement savings between accounts within the plan, to the employee's new plan, or to a designated institution outside the plan when the

[113]For example, according to officials, when a participant (i.e., scheme member) terminates employment with their employer in Hong Kong, the balance of their retirement account, referred to as a "contribution account," will be automatically transferred after 3 months following the receipt of the notice of the employment cessation from the member's former employer to a "personal account" within the same scheme (i.e., plan). Personal accounts preserve the benefits in respect of previous employments but do not accept employee or employer contributions, according to officials. Further, officials said that the employee can elect to transfer the accrued benefits to his personal account under another scheme of his own choice, or to transfer the accrued benefits to the contribution account of his new employment. However, they said if no action is taken by the employee the benefits accumulated during previous employment will be moved from a contribution account to a personal account under the scheme of the former employer. See appendix III for additional information on Hong Kong's retirement system. In this report, we refer to this type of transfer as a transfer "within" the foreign workplace retirement plan. By contrast, transfers of investments within a plan, such as changing from one mutual fund investment to another, would not be taxable, according to IRS.

[114]In a direct rollover, a qualified workplace retirement plan makes a payment directly to another qualified plan or an IRA. In an indirect rollover, the plan makes a payment directly to the participant, who subsequently deposits it into another qualified retirement plan or IRA within 60 days. Indirect rollovers are subject to mandatory 20 percent withholding, so participants would have to use other funds in order to roll over the full amount. Rollovers are subject to other IRC requirements. See 26 U.S.C. § 402(c).

participant separates from their employer, according to officials in several of our case study locations. However, IRS officials told us the IRC does not recognize foreign retirement plans as tax-qualified plans,[115] and because these plans are not able to meet the criteria for qualification,[116] tax-deferred transfers or rollovers may not be possible unless a tax treaty provides otherwise. IRS generally considers routine administrative transfers of retirement assets that occur between or within foreign retirement plans to be distributions to the participant and therefore taxable income.

According to IRS officials with whom we spoke, the transfer of retirement assets within or between plans implies that the participant has some access to and control over their retirement funds. Tax preparers and regulators in three of our case study locations told us that such transfers routinely take place (see appendix III). In these situations, IRS officials told us that deferring taxes on retirement contributions and earnings under IRC section 402(b) pertaining to foreign trusts would no longer be applicable because that section of the IRC does not cover transfers—only contributions and earnings within a given foreign trust. Instead, according to IRS officials, the transfer would generally constitute a “constructive

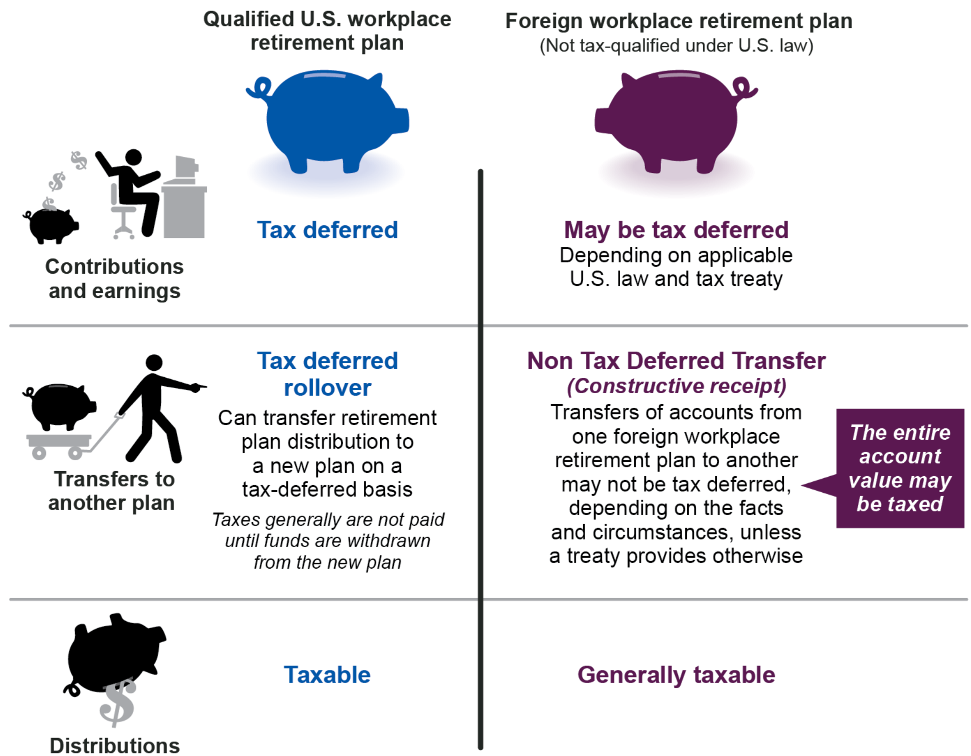
[115]In the United States, pre-retirement distributions from a qualified retirement plan can generally be “rolled over” by depositing the amount in another qualified retirement plan or IRA within 60 days. Financial institutions or plans may also directly transfer distributions to another plan or IRA. These rollovers are generally not taxed until money is withdrawn from the new plan. The rollover mechanism allows individuals to save for the future and have their money continue to grow tax-deferred.

[116]For example, among other things, for a 401(k) plan in the United States to be tax-qualified, it must meet minimum distribution requirements that generally require distributions to begin by the time the participant is 70½ years old or retires, whichever is later. 26 U.S.C. § 401(a)(9). Foreign workplace retirement plans may not meet these requirements. For example, according to officials with whom we spoke, the United Kingdom has no required minimum distribution age.

receipt of funds"[117] by the participant and would be reportable and taxable. As a result, a U.S. individual who participates in a foreign retirement plan could owe U.S. tax on the entire amount of their retirement savings when they separate from their employer and their account is transferred to another account within the plan or to a different workplace retirement plan (see fig. 4).

[117]In general, gains, profits, and income are to be included in gross income for the taxable year in which they are actually or constructively received by the taxpayer. 26 C.F.R. § 1.451-1(a). Under Treasury regulations, income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that the taxpayer could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. See 26 C.F.R. § 1.451-2. In some circumstances, according to IRS officials, workplace retirement funds may become technically available to U.S. individuals during the transfer of foreign retirement accounts between plans when the individual changes jobs or separates from his or her employer even though the individual takes no action to access the funds.

Figure 4: U.S. Taxation of Transfers between Defined Contribution Workplace Retirement Plans



Source: GAO analysis of information provided by IRS officials. | GAO-18-19

Treasury officials said they have been aware of this issue for some years, having discussed it in multiple negotiations with other countries, and have taken steps to incorporate a solution in U.S. model income tax conventions dating as far back as 1996.Treasury officials told us that the 2016 U.S. Model Income Tax Convention includes a clause that would generally exempt from U.S. income tax such transfers if they qualify as tax-deferred transfers under the laws of the other country. According to Treasury officials, few of the treaties currently in force address this issue and many countries do not have tax treaties with the United States.[118]

[118]See Article 17, paragraph 2 of the 2016 U.S. Model Income Tax Convention.

2016 U. S. Model Income Tax Convention Language Would Exempt Certain Transfers of Foreign Retirement Assets from Taxation

The Department of the Treasury developed the U. S. Model Income Tax Convention to be the starting point for negotiating tax treaties with other countries. Language in an actual treaty results from that negotiation and therefore may not include this language. According to Department of the Treasury officials, few treaties currently contain this language.

"2016 United States Model Income Tax Convention, Article 17, Paragraph 2(b)

Where a citizen of the United States who is a resident of ______ is a member or beneficiary of, or participant in, a pension fund established in _____, the United States may not tax the income earned by the pension fund as income of the individual unless, and then only to the extent that, it is paid to, or for the benefit of, that individual from the pension fund (and not transferred to another pension fund established in _______ in a transfer that qualifies as a tax-deferred transfer under the laws of _______)."

Source: Department of the Treasury. | GAO-18-19

IRS officials told us that if no treaty exists between the United States and the country where the U.S. individual is participating in a foreign workplace retirement plan, or the treaty does not specify how to treat these transfers, there is generally no form of transfer that will receive U.S. income tax-deferral. In these situations, IRS officials said, there is no way that the plan can structure the transfer to prevent the U.S. individual who is transferring assets within or between foreign plans from receiving a distribution and being subject to tax liability. Even in cases where a tax treaty is in place, the treaty may not provide special treatment for the transfer of retirement assets. This would be the case in at least two of the five case study locations we examined, where despite a tax treaty in place, we were unable to identify any provisions that address these types of transfers. In these cases, according to IRS, the U.S. individual must fall back on the IRC, which does not provide tax-deferral on such transfers. As a result, a U.S. individual who participates in a foreign workplace plan would lose any tax-deferrals on the transfer.

IRS officials and tax preparers told us that the transfer issue can cause tax consequences for holders of foreign retirement assets, but one tax preparer we spoke with noted that U.S. tax laws were not written with foreign retirement plans in mind. As a result, tax preparers said it can be difficult to determine how to report foreign workplace retirement assets under the IRC, making routine administrative transactions[119] costly for U.S. individuals who participate in these plans. They said this is because some or all of the account balance may be subject to tax and retirement account asset growth would be lower due to the loss of tax-deferral. Each time retirement assets are transferred, the transfer may be viewed as a distribution, and new contributions and growth could be subject to tax and a loss of tax-deferral. IRS officials also told us that the potential taxation of transfers between foreign plans may cause some individuals to avoid consolidating foreign retirement accounts.

Renegotiating a tax treaty can be time consuming and, according to Treasury officials, is unlikely to happen based on one issue, such as the transfer of retirement savings abroad. Treasury officials in the Office of Tax Policy said that the agency's approach to address these transfers would be to evaluate the issue on a treaty-by-treaty basis. However, this approach may not provide relief because there is no guarantee the

[119]An example of this type of administrative transaction is described earlier in this report with reference to routine administrative transfers of retirement accounts that can occur in Hong Kong when participants separate from their employer.

country negotiating a treaty with the United States will agree to include provisions for transferring retirement savings on a tax-deferred basis. In order to provide more immediate relief, these Treasury officials said Congress could pass legislation that would allow routine account transfers between two foreign workplace retirement plans in the same country to be free from U.S. tax if that country has a tax treaty with the United States. However, they cautioned that such efforts should be focused on foreign retirement plans that have already been examined by Treasury, for example, through the process of negotiating a tax treaty or as defined in FATCA IGAs, in order to avoid creating a tax evasion loophole. For example, foreign workplace retirement plans could be defined as those recognized by an existing tax treaty or other plans as deemed appropriate by Treasury's Office of Tax Policy. According to Treasury officials, transfers within or between such plans in the same country could be protected from unnecessary taxation by, for example, modifying Section 402(b) or other provisions of the IRC. Officials said that without legislation, U.S. individuals who participate in foreign workplace retirement plans must follow current law, which does not provide tax-deferral for transfers within or between foreign plans, even those that may be eligible for tax-deferred contributions and earnings in the foreign jurisdiction. However, by changing the IRC, Congress can ensure that U.S. individuals who participate in foreign workplace retirement plans can consolidate their accounts in a tax-deferred manner without being taxed on the entire balance when their account is transferred.

Conclusions

Plan participants in the current workplace retirement plan environment can accumulate multiple retirement accounts and possibly lose track of them over their careers. The shift to DC plans and the mobility of the American workforce have led to an increase in the number of workplace retirement accounts, with many workers having multiple accounts over the course of their careers. Yet currently, with millions of small retirement accounts left behind by participants with previous employers, plan sponsors are experiencing challenges locating missing participants. DOL has agreed to evaluate the possibility of convening a taskforce to consider the establishment of a national pension registry, in part to address the difficulty of linking missing participants to their former accounts. However, until this effort brings results or another comprehensive solution to unclaimed accounts emerges, there are a variety of improvements federal agencies may make in the short term to help eliminate the inefficiencies in the current system that may reduce participants' retirement savings. Since DOL audit findings show that ongoing plans have challenges staying in touch with missing participants,

and DOL has provided guidance on missing participants for terminating DC plans, providing such guidance for ongoing DC plans will help ensure that separated participants will receive information about their benefits.

In addition, IRS guidance on tax withholding does not address distributions of small unclaimed accounts sent to nonresponsive participants that are not always received by those participants. Some stakeholders mistakenly believe that IRS automatically credits all taxes withheld from such distributions toward taxes due. Following IRS guidance, plans generally withhold taxes on cash-outs from such accounts that the participant may not receive. By reviewing the issue of distributions made to participants who are unlikely to receive them, IRS has an opportunity to issue guidance clarifying the applicable tax withholding requirements in those situations.

IRS also has the potential to offer a service that delivers letters that participants are likely to open, is trusted by plan fiduciaries, and can help connect missing participants with their benefits. IRS was forwarding fewer than 50 letters at a time for plan sponsors at no charge, but decided to stop forwarding letters about unclaimed accounts in 2012. IRS can consider again helping connect participants with unclaimed accounts using the letter forwarding program. Lastly, IRS and SSA can take steps to address situations in which sponsors fail to update data to reflect payment of retirement accounts, rendering the data unreliable. Under the existing agreement between IRS and SSA with respect to the Form 8955-SSA data, the agencies can take steps to ensure participants have a more reliable source of information on their benefits in the future.

U.S. individuals who work abroad and participate in a foreign workplace retirement plan face challenges with reporting their accounts. Managing such accounts can be costly as individuals use expensive tax preparers for reporting their foreign retirement savings to IRS. These U.S. individuals are required to pay taxes on their worldwide income, but can become caught in a web of complex U.S. tax requirements governing how they report their foreign workplace retirement savings. By providing guidance on how to appropriately report foreign workplace retirement accounts, IRS can help U.S. individuals comply with these requirements and minimize their reporting burden.

IRS can also initiate a systematic analysis of Form 8938 data on foreign retirement accounts owned by U.S. individuals. Such data would help IRS gain a better understanding of how these accounts change over time, and to determine if they pose a low-risk for tax evasion. The outcome of this

analysis could allow IRS to consider offering these individuals an exemption from reporting requirements on their foreign retirement accounts, further easing the burden U.S. individuals face reporting their foreign retirement assets. Lastly, transferring accounts between foreign retirement plans can have negative tax consequences that threaten the ability of U.S. individuals abroad to save for retirement. Congress may wish to consider whether it can assist U.S. individuals who participate in foreign workplace retirement plans by permitting these individuals to transfer their retirement savings to a different account within the plan or to another foreign workplace retirement plan on a tax-deferred basis when they change jobs or separate from their foreign employer. Doing so would permit these U.S. individuals in foreign workplace retirement plans to receive the tax-deferred benefits available to other U.S. plan participants who reside in the United States and who participate in qualified retirement plans.

Matter for Congressional Consideration

We are making the following matter for congressional consideration.

Congress should consider legislation modifying the Internal Revenue Code to allow routine account transfers within the same foreign workplace retirement plan or between two foreign workplace retirement plans in the same country to be free from U.S. tax in countries covered by an existing income tax treaty that provides for favorable U.S. tax treatment of foreign workplace retirement plan contributions.

Recommendations

We are making a total of seven recommendations, including one to DOL, five to IRS, and one to SSA.

a. The Secretary of Labor should issue guidance on the obligations under ERISA of sponsors of ongoing plans to prevent, search for, and pay costs associated with locating missing participants. (Recommendation 1)

b. The IRS Commissioner should review taxation issues relating to distributions involving incorrect participant addresses and uncashed benefit checks and clarify for the public the Internal Revenue Code's requirements in these circumstances. (Recommendation 2)

c. The IRS Commissioner should consider revising the letter forwarding program in a cost-effective manner to again provide information on behalf of plan sponsors on unclaimed retirement accounts to participants. (Recommendation 3)

d. The IRS Commissioner should clarify how U.S. individuals are to report their foreign retirement accounts. The clarification could include addressing how these accounts should be designated and how the taxpayer should report contributions, earnings, and distributions made from the account. (Recommendation 4)

e. The IRS Commissioner should systematically analyze data reported through Form 8938 filings on foreign retirement accounts owned by U.S. individuals with the goal of developing an evidence-based understanding of how these accounts change over time and what level of risk these accounts pose for tax evasion. To assist with this analysis, IRS should consider revising Form 8938 to more clearly distinguish between retirement accounts and other types of accounts or assets being reported by taxpayers under current reporting requirements. (Recommendation 5)

f. The IRS Commissioner should take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future, for example, by working with the Social Security Administration as necessary. (Recommendation 6)

g. The Social Security Administration Commissioner should take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future, for example, by working with IRS as necessary. (Recommendation 7)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Labor, the Department of the Treasury, the Internal Revenue Service, the Social Security Administration, the Pension Benefit Guaranty Corporation, and the U.S. Department of State. DOL, Treasury and IRS, and PBGC provided technical comments, which we have incorporated where appropriate. DOL, IRS, SSA, and PBGC also provided formal comments, which are reproduced in appendices IV, V, VI, and VII, respectively. State did not have any comments. DOL agreed with our recommendation that additional guidance may be helpful to aid plan sponsors and plan fiduciaries of ongoing plans in meeting their existing fiduciary obligations to search for missing participants and to pay benefits. SSA agreed with our recommendation to take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future, for example, by working with IRS as necessary.

In its written comments, IRS stated that it generally agreed with the report and its findings. IRS specifically cited that the report identifies several challenges for participants to manage their retirement savings, such as updating former employers with address changes to continue receiving information about retirement plan accounts with former employers and responding to former employers regarding retirement plan accounts. IRS also stated that U.S. individuals participating in foreign retirement plans often do not know how to correctly report foreign retirement accounts and associated income due to complex federal requirements and treaty provisions governing the taxation of foreign retirement accounts. This recognition by IRS of the complex federal requirements and treaty provisions governing the taxation of foreign retirement accounts is in line with GAO's concerns about U.S. individuals with foreign workplace retirement accounts having trouble with routine account transfers within the same foreign workplace retirement plan or between two such plans in the same country. We have asked Congress to consider modifying the Internal Revenue Code to allow routine account transfers within the same foreign workplace retirement plan or between two foreign workplace retirement plans in the same country to be free from U.S. tax in countries covered by an existing income tax treaty that provides for favorable U.S. tax treatment of foreign workplace retirement plan contributions. Congress' ability to modify the Internal Revenue Code in such a way can help U.S. individuals participating in foreign workplace plans to better save for retirement by allowing them to consolidate accounts in a tax-deferred manner without being taxed on the entire balance when their account is transferred.

IRS agreed with two of our recommendations to improve the management of retirement savings. Specifically, IRS agreed to review taxation issues relating to distributions involving incorrect participant addresses and uncashed benefit checks and to clarify for the public the Internal Revenue Code's requirements in these circumstances. We believe that IRS' consideration of this recommendation and any subsequent actions the agency takes to clarify the issue will help to address questions about tax withholding from distributions in situations where the participant may be missing or where a distribution check remains uncashed after a period of time. IRS also agreed to work to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future, and agreed to take steps to ensure that the data reported on Form 8955-SSA are accurate and to advise plan sponsors of any changes to reporting these data. We commend IRS for recognizing the importance of addressing this issue for taxpayers and for its willingness to take steps to

ensure the accuracy of data reported by plans in the United States on vested benefits belonging to separated employees.

Lastly, IRS agreed with our recommendation to clarify how U.S. individuals are to report their foreign retirement accounts, which could include how the taxpayer should report contributions, earnings, and distributions made from the account. We encourage IRS to take the necessary steps to dispel any confusion U.S. individuals may have over how to properly classify and report their foreign retirement accounts on a U.S. tax return—such clarification should help ensure that these taxpayers can meet their tax reporting obligations.

IRS disagreed with two of our recommendations, citing the limited number of IRS staff and resources needed for the agency to implement these recommendations. First, IRS disagreed with our recommendation to consider revising the letter forwarding program in a cost-effective manner to again provide information on behalf of U.S. plan sponsors on unclaimed retirement accounts to participants. IRS commented that the IRS address of record for a participant would likely be of no greater value than addresses available through alternatives such as commercial locator services. However, our report does not cite the accuracy of IRS addresses, but rather other benefits that make a program revision worth considering, specifically the likelihood that individuals will open IRS correspondence, and the trust DOL places in the service as way for plan fiduciaries to meet their obligations. IRS also stated that the limited number of IRS staff and resources impact the feasibility of reinstating this program for plan participants. GAO continues to believe that expanding the letter forwarding program would be beneficial, and we encourage IRS to consider cost-effective ways to do so.

IRS also disagreed with our recommendation to analyze data provided through Form 8938 filings on foreign retirement accounts owned by U.S. individuals with the goal of developing an evidence-based understanding of how these accounts change over time and what level of risk these accounts pose for tax evasion. Our recommendation further stated that IRS should consider revising Form 8938 to assist with this analysis. In its comments, IRS did not disagree with this recommendation on its merits; IRS only cited a lack of resources to implement the recommendation. Specifically, IRS noted that although the modification to the Form 8938 suggested in this recommendation may seem minor, systemically collecting and analyzing the data would require resources beyond those currently available to IRS. However, as we describe in the report, IRS indicated to us that they already collect foreign account filing data through

the Form 8938 and that the current reporting requirements help the agency to “keep a line of sight” on U.S. individuals’ foreign pension arrangements. IRS told us that without such data being reported, U.S. individuals with foreign retirement accounts may seek to avoid proper reporting on their tax returns when distributions are made. However, without agreeing to take steps to analyze these data reported by taxpayers, the question remains why IRS continues to collect such information—which we show in the report to present a substantial reporting burden on taxpayers—if the agency has no plan to analyze the data in order to make an informed decision about the risk for tax evasion that such accounts present. It is also unclear to us how IRS would maintain a line of sight on foreign retirement accounts belonging to U.S. individuals without analyzing the data reported by taxpayers on such accounts. While we recognize that resource limits can impede an agency from taking on additional work and projects, we continue to believe that when staff and resources become available, IRS should modify the form and conduct a systematic analysis of these data—data that current law requires taxpayers to report—in order to assess the risk of tax evasion that foreign retirement accounts pose. Without such an analysis, IRS will have no basis to reach an evidence-based understanding of how these accounts change over time and what level of risk they pose for tax evasion. Further, as we have shown in the report, this reporting can be costly for U.S. individuals and could potentially lead to a decrease in their retirement savings. Without such an analysis by IRS, U.S. individuals who own foreign retirement accounts will continue to face these substantial reporting burdens without the knowledge that the data they are required to provide will be put to good use by the federal government.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Labor, Secretary of the Treasury, Commissioner of Internal Revenue, Director of the Pension Benefit Guaranty Corporation, Acting Commissioner of the Social Security Administration, the Secretary of State, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or jeszeckc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.

Sincerely yours,

Charles A. Jeszeck, Director
Education, Workforce, and Income Security Issues

Appendix I: IRS Instructions on Reviewing Tax Treaty Provisions Related to Foreign Retirement Accounts

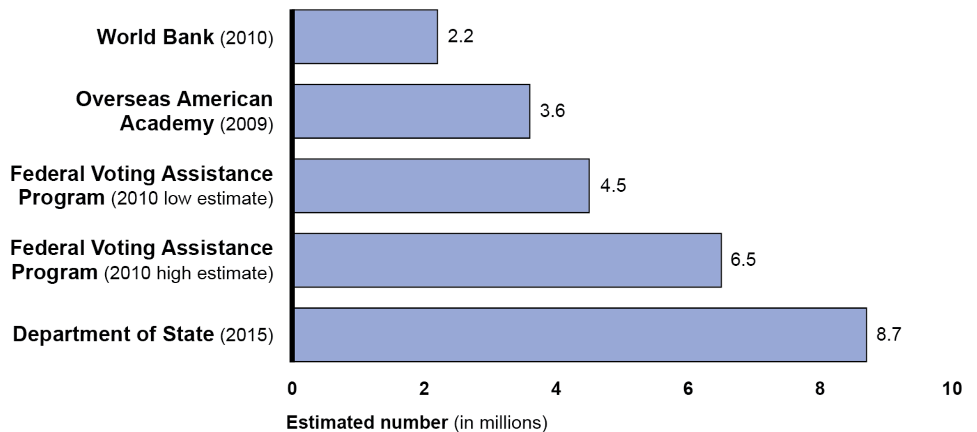
IRS advises U.S. taxpayers to review tax treaty provisions carefully to better understand how to report their foreign income, including the distribution of savings from foreign retirement accounts.[1] IRS specifically advises taxpayers to read the residency article in a tax treaty to find any special rules pertaining to reporting and taxing foreign income, including distributions from foreign workplace retirement plans. When deciding whether a tax treaty applies to a taxpayer, the taxpayer should first identify their tax residency (Article 4 under most treaties). According to IRS, a taxpayer's residency determines how treaty articles on pensions and annuities will be applied and taxpayers should use the domestic laws of each country to identify residency. If, after applying the domestic law of each country, the taxpayer determines they are a resident of both countries, the tiebreaker rules of the applicable treaty are applied to determine residency based on the country in which the taxpayer has closer personal and economic relations, the country of habitual abode for the taxpayer, or the country in which the taxpayer is a national, according to IRS. If none of the above tiebreaker rules apply, the treaty generally provides that residency will be decided by the competent authorities of each country upon request by the taxpayer. Taxpayers are also advised to read all the protocols of the treaty to see if the residency rules have been amended by a later protocol. As a general rule, according to IRS, the pension/annuity articles of most tax treaties allow the country of residence (as determined by the residency article) to tax the pension distribution or annuity under its domestic laws, unless the tax treaty provides an exception to that rule. According to IRS, some treaties, for example, provide that the country of residence may not tax amounts that would not have been taxable by the other country if the individual was a resident of that country. There also may be special rules for lump-sum distributions. If the taxpayer is a U.S. citizen, IRS guidance provides that they also may need to refer to the "saving clause" (typically found in Article 1) for special rules that allow the United States to tax income in some cases as if the treaty had not entered into force.

[1]The information in this appendix was gathered from the IRS' International Tax Gap Series, The Taxation of Foreign Pension and Annuity Distributions and through discussion with IRS officials.

Appendix II: Estimated Number of U.S. Citizens Living Abroad

Researchers and federal officials have identified a range of estimates for U.S. citizens living outside the United States.[1] (See fig. 5).

Figure 5: Estimates of U.S. Citizens Living Abroad



Source: Migration Policy Institute and the U.S. Department of State. | GAO-18-19

The U.S. Department of State (State) estimates that as of April 2015, 8.7 million U.S. citizens live abroad. Table 2 shows estimates of the number of U.S. citizens living abroad by geographic area that State's Bureau of Consular Affairs recently released to the Federal Voting Assistance Program.[2]

Table 2: U.S. Citizens Abroad by Geographic Region as of April 21, 2015

Region	Africa	East Asia and the Pacific	Europe and Eurasia	The Near East	South and Central Asia	Western Hemisphere	Total
Total Private and Official U.S. Citizen residents	231,854	1,135,114	2,027,914	1,019,457	618,772	3,706,577	**8,739,688**

Source: U.S. Department of State. | GAO-18-19

[1]See Migration Policy Institute, *Counting the Uncountable: Overseas Americans*. Joe Costanzo, Amanda Klekowski von Koppenfels; May 17, 2013.

[2]The Federal Voting Assistance Program is tasked with assisting U.S. citizens abroad with voting.

Appendix III: Efforts to Link Participants to Dormant or Unclaimed Retirement Accounts in Case Study Locations

We gathered the information in this appendix for each case study location by reviewing relevant documentation, publicly available research and reports, and interviewing relevant stakeholders, including government officials, plan sponsors, and service providers. We did not conduct an independent legal analysis to verify the information provided about the laws or regulations in the locations we selected for this study. Instead, we relied on appropriate secondary sources and interviews with relevant officials to support our work. We provided this information to appropriate officials in each case study location for their confirmation.

In the five case study locations we reviewed, participants, including U.S. individuals working in those locations, stay connected to their foreign workplace retirement savings through centralized institutions, direct contact with plans or government agencies, or through public pension registries. The low prevalence of unclaimed retirement accounts that we found in these locations is likely due, in part, to participants using these mechanisms to stay connected to their retirement savings.

Unclaimed Retirement Accounts Are Maintained Within Centralized Institutions or a Participant's Former Employer's Plan

In two of the five locations we reviewed, Australia and Switzerland, plans transfer dormant accounts belonging to separated employees to a centralized institution that is actively monitored by regulators. These accounts generally remain within these institutions until claims for benefits are made by the participant. For example, Swiss officials told us that in the event of a change of employment, the pension scheme (i.e., plan) of an insured person (i.e., participant) transfers the accumulated assets on behalf of that person to the pension scheme of the new employer. Vested benefits institutions are used to hold the assets when a person ceases to be subject to occupational benefits (workplace retirement) plans owing to termination of employment, e.g. in connection with a career break or being laid off.[1] In these cases, the pension scheme mandatorily transfers the assets to a vested benefits institution. This procedure ensures that the accumulated assets remain blocked in the pension cycle until the insured person joins a new pension scheme or an insured event occurs (old age, disability, or death). Once the person recommences employment and thus becomes subject to mandatory occupational benefits plans again, the termination benefits must be transferred by the vested benefits institution to the new pension scheme. If the pension scheme member or insured person does not become re-employed, the vested benefits

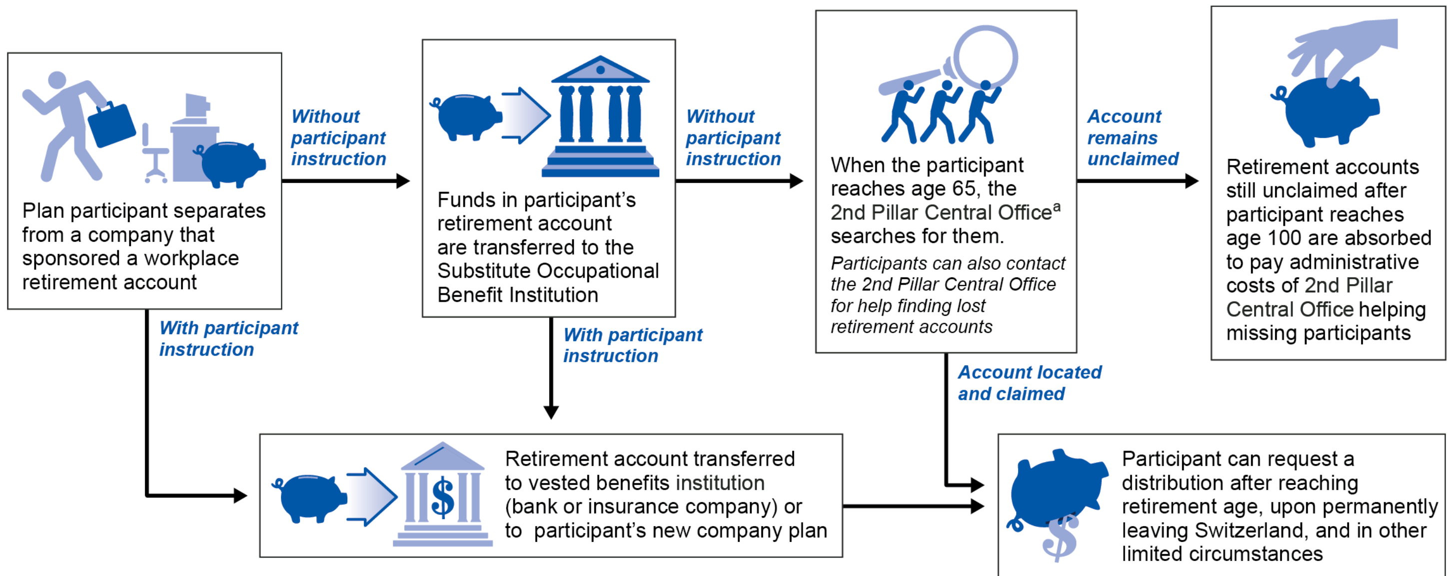
[1]Vested benefits institutions are subject to government regulation and are supervised by regional organized public authorities and registered in a directory. All regional authorities are under the supervision of a federal Occupational Pension Supervisory Commission.

institution keeps the assets until an insured event occurs (retirement, disability, or death). Further, if a separated employee fails to inform their former plan that they have a new employer, the participant's former plan automatically transfers the account after 6 months and within 2 years to the Substitute Occupational Benefit Institution.[2] This institution is a non-profit entity that the Swiss federal government commissioned in 1985; it works closely with the Swiss federal government to maintain Swiss retirement assets for participants and is charged with certain governmental responsibilities.[3] For retirement assets transferred to the Substitute Occupational Benefit Institution, account balances are not merely preserved until claimed or transferred, but grow according to returns on Switzerland's central fund investments. Figure 6 describes how accounts of separated employees in Switzerland are transferred to designated locations when they become dormant or unclaimed.

[2]Plans also can receive instructions from separated employees to transfer their benefits to a "vested benefits institution"—typically a bank or an insurance company. These transferred benefits will reside within a vested benefits account at a bank or a vested benefits policy at an insurance company until claimed by the participant or transferred with instructions from the participant to their new account set up with their new employer. Swiss officials said that after a period of ten years from the normal retirement age, any balances on accounts or on vested benefits policies shall be transferred to the Guarantee Fund. Claims for benefits that have not been made shall become statute-barred (i.e., no longer subject to benefits claims) when the member (participant) turns or would have turned 100. The assets shall be used for financing the 2nd Pillar Central Office, which oversees occupational benefits plans in Switzerland.

[3]The Substitute Occupational Benefit Institution is an occupational benefits organization supported by major employee and employer organizations. In January 1995, the Swiss government commissioned these organizations to take responsibility for organizing and managing vested benefit retirement accounts for participants. The Substitute Occupational Benefit Institution reports to the Swiss Supervision Commission for Occupational Pensions. The Commission is a supervisory authority responsible for ensuring uniform supervisory practices across the Swiss occupational pension system. The Commission oversees the supervisory authority of the nine regional supervisory authorities and is the licensing authority for occupational pension experts and asset managers in occupational pension plans.

Figure 6: Transfer Process for Dormant Workplace Retirement Accounts Belonging to Separated Employees in Switzerland



Source: GAO analysis of Switzerland's occupational benefits system. | GAO-18-19

Note: We did not conduct an independent legal analysis to verify the information provided about the laws or regulations in the locations we selected for this study. Instead, we relied on appropriate secondary sources and interviews with relevant officials to support our work.

[a]The 2nd Pillar Central Office is a government entity that oversees occupational benefits plans in Switzerland.

Swiss plans also transfer accounts belonging to separated employees to the employee's new plan once they receive instruction from the employee. This transfer along with account transfers to the Substitute Occupational Benefit Institution or a vested benefits institution, such as a bank or insurance company, contributes to the low prevalence of lost retirement accounts in Switzerland[4] because participants do not accumulate multiple retirement accounts with different plans when changing jobs throughout their career.

[4]As of January 2016, the Substitute Occupational Benefit Institution had reported that more than 2.97 billion francs (approximately $3.1 billion USD) in unclaimed retirement benefits were held in approximately 632,000 dormant accounts. These funds represent less than 1 percent of total assets held in Swiss pensions. Following a survey of the Swiss pension system, Aon Hewitt reported that for 2013/14, the Swiss pension system held $642 billion USD in pension assets. Willis Towers Watson has reported that the Swiss pension system held $817 billion USD in 2016.

In Australia, plans (also referred to as schemes or super funds) transfer unclaimed super accounts belonging to lost members (e.g., separated employees) to a centralized government institution, the Australian Taxation Office (ATO). These accounts generally remain within the ATO until claims for benefits are made by the member. While their money is being held by the ATO it earns interest at the consumer price index rate.

In three of the five locations GAO reviewed—Canada,[5] Hong Kong, and the UK—the participant's former employer's plan maintains dormant accounts until claimed or transferred to a new plan. For example, in Hong Kong, according to its retirement schemes (plan) regulator, the Mandatory Provident Fund Schemes Authority (MPFA),[6] whenever employees, including U.S. individuals working in Hong Kong, change to a new employer, they need to open a new Mandatory Provident Fund (MPF) "contribution account" under the MPF scheme in which the new employer participates to accumulate MPF contributions in respect of the new employment. If an employee who has ceased employment with an employer does not take action to transfer the benefits accrued from the previous employment to the new "contribution account" with their new employer's scheme (i.e., plan) or a "personal account" in an MPF scheme of the employee's choice, their former employer's scheme will automatically transfer their accumulated MPF benefits from the contribution account to a personal account[7] within the original scheme for

[5]An exception to this is found in several of Canada's provinces. Specifically, Alberta, British Columbia, and Quebec have unclaimed property legislation and regimes that provide for the transfer of unclaimed property, including retirement accounts, to an unclaimed property fund. For example, in Alberta, accounts within a registered retirement savings plan, registered education savings plan, or other tax-deferral plan will be considered unclaimed and prone to transfer 3 years after an attempted or required distribution is made to the participant.

[6]The MPFA is a statutory body established in 1998 to regulate and supervise the operations of Hong Kong's Mandatory Provident Fund retirement plans and occupational retirement plans. The MPFA's mission is to regulate and supervise privately managed provident fund retirement plans; to educate the working population about saving for retirement and the role of the MPF system as one of the pillars supporting retirement living; and to lead improvements to provident fund retirement plans to make them more efficient and user-friendly, and better meet the needs of the working population. The Mandatory Provident Fund system is a mandatory retirement program for Hong Kong residents; it has been in place in Hong Kong since 2000. The objective of this mandatory retirement system is to provide secured retirement benefits for the workforce of Hong Kong.

[7]The primary difference between these accounts is that personal accounts do not accept any contributions from employees or employers.

continuous investment. Government officials told us that MPF schemes keep the benefits of the scheme members (i.e., plan participants) within the scheme until the scheme member returns to make a claim or to issue instructions to transfer benefits in the account to another MPF scheme. The MPFA advises scheme members that failing to consolidate the MPF benefits accumulated from previous employments can result in accumulating multiple MPF accounts that can be difficult to manage—this can result in accounts becoming lost over time. To address this challenge, the MPFA conducts regular publicity programs and publishes pamphlets reminding scheme members that when they change employers they should consolidate the benefits under the previous employment to any existing personal accounts or to the new contribution account under the MPF scheme of their new employer.

In two of the five locations we reviewed—Australia and Switzerland—plans are required to regularly report to regulators on unclaimed accounts, missing participants, and account transfers made for separated employees, including those made on behalf of U.S. individuals. For example, in Australia, plans are required to communicate information on unclaimed accounts to the ATO.[8] Specifically, every 6 months plans are required to identify and report members who meet the definition of “lost”[9] and unclaimed accounts considered “uncontactable or inactive” to the ATO. Further, plans are also required to transfer unclaimed accounts to

[8]In Australia, a lost member’s plan will transfer unclaimed retirement accounts to a centralized government institution (the ATO) after the member is uncontactable or inactive and these accounts meet the definition of ‘unclaimed super money’. For example, this can occur if the missing participant turns 65, or if the balance of the dormant account is under the small lost member account dollar threshold (currently $6,000 AUD). As a result, participants, including U.S. citizens with an Australian retirement account, know where to search for their lost accounts or unclaimed benefits, and participants can claim this money at any time.

[9]Australian officials told us that a participant becomes “lost” when the superannuation provider has lost contact with the participant or has not received a contribution or rollover from that participant within the last 5 years. However, a participant would not be considered lost if the superannuation provider has no reason to believe any address held is incorrect or if the participant indicated or notified the superannuation provider of their existence.

the ATO when certain unclaimed super money criteria are met.[10] In Switzerland, before the end of January each year, occupational benefits institutions and institutions that manage vested benefits accounts or policies are required to report to the 2nd Pillar Central Office all persons for whom assets were held in December of the previous year.

Plans in two of the locations we reviewed provide separated participants information on account transfers that can help them stay connected to their retirement savings. For example, in Hong Kong, MPF schemes (plans) provide a transfer statement to members once the transfer of benefits to another MPF scheme is completed.[11] The MPF scheme that receives the transfer must, as soon as practicable after receiving the transferred benefits, provide the member written notice confirming the transfer and stating the monetary value of those benefits. In Switzerland plans must regularly contact their participants and if unable to do so, must inform the 2nd Pillar Central Office, who will try to reestablish contact between the plan and their participants.[12]

Unclaimed Retirement Accounts Are Accessed Through Contact with Government Agencies or Through Public Pension Registries

Participants in three of the five locations we reviewed can access information on their retirement accounts by contacting a government agency. According to government and retirement plan officials in Australia, participants can access their retirement account details by logging onto the myGov platform, which is a secure way to access government online services. Participants, including U.S. individuals, who have registered online via myGov and have their personal accounts linked to ATO online services can view their retirement accounts online

[10]Plans are required to transfer 'unclaimed super money' to the ATO for (a) members aged 65 or older; non-member spouses; or deceased members, (b) small lost member accounts and insoluble lost member accounts (when participant has lost touch with the plan or the account has not been used for 5 years), and (c) if unclaimed super money belonging to former temporary residents who are eligible to claim the "Departing Australia Superannuation Payment" have not done so, and a minimum of at least 6 months has elapsed since they departed Australia and their visa ceased to be effect—in this case, the holding super fund is required to transfer the unclaimed super money to the ATO.

[11]The transfer statement should include, among other things, the following details: name of transferring trustee; name of scheme and account number of the account from which the transfer was made; name and address of the scheme member; amount of accrued benefits transferred; name of scheme to which the benefits have been transferred; and date on which the transfer was made.

[12]The 2nd Pillar Central Office also handles inquiries from participants or their heirs, compares personal data with notifications received from occupational benefits institutions, and communicates the results to those making the inquiry, who can then claim their benefits from the institution in question.

and can claim their money at any time. For those that choose not to register for myGov, they can use the Departing Australia Superannuation Payment online service to claim their super funds once they have departed Australia and their visa has ceased to be in effect. In Hong Kong, MPFA officials told us that scheme members seeking information on their personal accounts or on unclaimed retirement benefits with any MPF scheme (plan) can approach MPFA to request a search of the Personal Accounts Register[13] or Unclaimed Benefits Register,[14] respectively. The MPFA's website includes instructions for initiating these inquiries. In Switzerland, government officials told us that participants, including U.S. individuals, can directly contact the 2nd Pillar Central Office, which can locate all the institutions holding vested benefits on the participant's behalf.

In two of the five case study locations, Australia and the UK, participants can access information on their retirement accounts by using pension registries or other government supported services.[15] For example, in the UK, the government provides all participants, including U.S. individuals with a UK retirement account, access to the Pension Tracing Service to

[13]The MPFA maintains a Personal Account Register for scheme members to check for free. Information available includes whether a member has any personal accounts and, if so, the name and contact number of the scheme maintaining the personal account(s). MPF scheme members, including U.S. individuals, who would like information to help them identify and locate their personal accounts, contact the MPFA for assistance.

[14]The MPFA maintains an Unclaimed Benefits Register for members of the public to check for free. Information available includes whether a participant has any unclaimed benefits and, if so, the name and contact number of the plan where the benefits reside. Participants must directly communicate with MPFA and make an inquiry about their benefits. Participants can make an inquiry into their unclaimed benefits by sending relevant forms to MPFA via fax or mail or by visiting MPFA in person. In pension clauses and certain provisions, under the following special circumstances, a participant's accrued benefits may be classified as "unclaimed benefits" if: (1) the participant reaches the age of 65 but has not withdrawn his/her accrued benefits from the plan and remains unreachable despite attempts by the plan to search and locate the participant; or (2) a participant requests a distribution from their plan for accrued benefits; the plan issues a check but the check remains uncashed after 6 months from the issue date and the participant remains unreachable despite search attempts by the plan sponsor to locate the participant.

[15]For information on how participants use a pension registry in Australia to access information on unclaimed retirement accounts, see GAO, *401(k) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, GAO-15-73 (Washington, D.C.: Nov. 21, 2014).

help them locate their lost retirement accounts.[16] The UK government has also established other organizations and services to help participants locate their lost retirement accounts. The Pensions Advisory Service is an independent organization that is funded by the UK government.[17] Officials told us that the service was implemented because retirement accounts and pensions in the UK had become excessively complicated. The service sometimes receives questions from participants living abroad, such as in the United States, or from U.S. individuals living in the UK. Service officials told us that it is particularly challenging for these foreign participants to know how to repatriate their retirement benefits and to locate missing retirement accounts. Government officials told us that the UK government is committed to ensuring that members of the public can access good-quality, free-to-client, impartial financial guidance and debt advice which is currently provided by three different organizations. These officials said that a bill was introduced in June 2017 that would set up a new single financial guidance body to provide guidance and information on all matters relating to occupational and personal pensions. Officials said they expect that this single financial guidance body to go live no earlier than October 2018.

The UK government is also currently developing a new pension online tool, the Pensions Dashboard. The dashboard is being developed as a joint project between the UK government and the country's retirement industry; 17 of the UK's largest pension firms developed a prototype

[16]To do so, participants provide the service with personal and employment information and the service will trace and identify contact details of the retirement plan in question—this is similar to services provided to participants in the United States by DOL's benefits advisors. The service can only put an individual in contact with a lost retirement plan and does not have access to private retirement account details—the participant must contact their former plan directly once it has been traced in order to find out what their retirement account is worth.

[17]The Pension Advisory Services receives grants from the UK's Department for Work and Pensions. The service provides people with free professional, independent and impartial assistance with their retirement accounts. The service offers information and guidance to participants through a variety of channels including a telephone helpline, web chat, written inquiries, online inquiries, and the service's website. The service is delivered by in-house retirement specialists and a nationwide network of volunteer advisers who have typically worked in the retirement industry in roles that have required a high level of technical knowledge. The service answers thousands of calls a year from participants about any aspect of their retirement benefits. Officials said that in 2016, the service received about 250,000 calls, and about 1 in 6 of those calls was about a lost retirement account. A fair proportion of those calls are due to participant migration to and from other countries.

demonstrating that the technology for the dashboard works.[18] The goal of the dashboard is to allow participants to log into one portal to locate all of their pension data, including information on the value and the location of different retirement savings accumulated throughout their career.[19] Currently, a UK ID verification system is available to UK residents to review their tax bills and other financial information online, and officials are considering permitting participants to use this system with proper credentials to access the dashboard.[20] In time, UK government officials said that the dashboard may replace the UK's Pension Tracing Service, but not for many years. Other officials added that they are uncertain whether the dashboard will include all plans. One concern is that many lost accounts may be with old defined benefit plans or small defined contribution plans that do not have online systems that can be integrated into the dashboard. As a result, some of the plans most likely to have lost participants may also be the least likely to participate in the dashboard.

[18]These pension firms include Abbey Life, Aon, Aviva, Fidelity International, HSBC, L&G, LV=, NEST, NOW, People's Pension, Phoenix, Prudential, Royal London, Scottish Widows, Standard Life, Willis Towers Watson, and Zurich.

[19]According to the UK government, on average, a person can have 11 employers over their working life, which means that they could end up with almost a dozen retirement accounts by the time they retire. At the moment there is no way for people to see the value of all of their retirement accounts in one place and research has shown that over a third of people approaching retirement find it difficult to keep track of their retirement accounts. The dashboard aims to also provide a link to "lost" retirement accounts with previous employers and could help release the £400 million worth of retirement savings that the UK's Department for Work and Pensions estimates is currently unclaimed.

[20]These credentials could include use of a UK resident's National Insurance number, their UK passport number, and the resident's verified UK address. For U.S. individuals wanting to access the dashboard, UK officials told us that they would at least need to use their National Insurance number as a credential, but it is likely that additional information would be required of U.S. individuals and it is unknown if they could access the system from outside the UK.

Appendix IV: Comments from the Department of Labor

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

November 28, 2017

Charles A. Jeszeck
Director, Education, Workforce, and Income Security
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled "Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings" (GAO-18-19). The draft report recommends that the Department of Labor (Department) issue guidance on the ERISA obligations of sponsors of ongoing plans to prevent, search for, and pay costs associated with locating missing participants.

As your report notes, large numbers of participants of retirement age are not receiving their retirement income when due as the result of out-of-date mailing addresses, failure to maintain accurate records, and inadequate searches for missing participants. In an effort to help plan officials meet their fiduciary obligations under ERISA to reunite missing participants with their benefits, the Department's Employee Benefits Security Administration (EBSA) has issued the following guidance:

- 29 CFR § 2550.404a-2 - Safe Harbor for Automatic Rollovers to Individual Retirement Plans relating to mandatory cash-outs ($5,000 or less) from ongoing defined benefit and defined contribution plans;
- 29 CFR § 2550.404a-3 - Safe Harbor for Distributions from Terminated Individual Account Plans;
- 29 CFR § 2578.1 –Termination of Abandoned Individual Account plans; and
- Field Assistance Bulletin (FAB) 2014-01 – Fiduciary Duties and Missing Participants in Defined Contribution Plans, which sets out search steps for finding missing participants that EBSA would treat as meeting the fiduciary requirements of section 404 of ERISA.

More recently, the Department worked closely with the Pension Benefit Guaranty Corporation (PBGC) on its final rule regarding missing participants under section 4050 of ERISA.[1] After PBGC publishes its final rule, EBSA expects to revisit its guidance under 29 CFR § 2550.404a-3, 29 CFR § 2578.1, and FAB 2014-01 to facilitate the use of the PBGC missing participants program. EBSA also provided input to the Internal Revenue Service on its October 19, 2017 memorandum to its Employee Plans Examination employees regarding missing participants and

[1] PBGC's final rule is currently under review by OIRA.

minimum required distributions. Finally, EBSA currently is engaged in a major enforcement initiative (the “Terminated Vested Participant Project” or “TVPP”) examining whether plan officials are meeting their fiduciary obligations under section 404 of ERISA to find missing participants and pay them their benefits.[2] As noted in the GAO report, the TVPP uncovered a number of failures to update addresses, maintain records, and adequately search for missing participants. As the result of the problems uncovered by the TVPP, EBSA is considering the need for additional guidance regarding the duty of plan fiduciaries to maintain updated addresses and other records.

With regard to GAO’s recommendation, EBSA agrees that additional guidance may be helpful to aid plan sponsors and plan fiduciaries of ongoing plans in meeting their existing fiduciary obligations to search for missing participants and to pay benefits.

We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have any questions concerning this response or if we can be of further assistance.

Sincerely,

Jeanne Klinefelter Wilson
Deputy Assistant Secretary for Policy

[2] Under ERISA section 404(a)(1) a plan fiduciary must “discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— (A) for the exclusive purpose of:
(i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; [and] (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims ….”

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Appendix V: Comments from the Internal Revenue Service

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

December 14, 2017

Charles A. Jeszeck, Director
Education, Workforce, and Income Security
United States Government Accountability Office
441 G Street, NW, Room 5968
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the draft report of the Government Accountability Office entitled "WORKPLACE RETIREMENT ACCOUNTS: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings" (GAO-18-19). We generally agree with the report and its findings. The focus of the report is to identify steps that federal agencies can take to assist participants in complying with federal reporting and withholding requirements and managing their retirement savings. The Department of the Treasury, the Internal Revenue Service (IRS), the Department of Labor, the Department of State, the Pension Benefit Guaranty Corporation, and the Social Security Administration (collectively, the Agencies) regulate these requirements.

The IRS is committed to helping U.S. taxpayers understand and meet their tax responsibilities. The draft report identifies several challenges to managing those savings, such as updating former employers with address changes (to continue receiving information about retirement plan accounts with former employers) and responding to former employers regarding retirement plan accounts. In addition, U.S. individuals participating in foreign retirement plans often do not know how to correctly report foreign retirement accounts and associated income due to complex federal requirements and treaty provisions governing the taxation of foreign retirement accounts.

The report provides several recommendations to the Agencies that are aimed at facilitating the linking of missing participants to their retirement plan accounts and clarifying how to appropriately report foreign workplace retirement accounts. With that as background, enclosed are comments on the draft report's recommendations directed to the IRS.

2

We appreciate having the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,

Kirsten B. Wielobob
Deputy Commissioner for
Services and Enforcement

Enclosure

Enclosure

Comments on the GAO Recommendations directed to the IRS

Recommendation 2:
The IRS Commissioner should review taxation issues relating to distributions involving incorrect participant addresses and uncashed benefit checks and clarify for the public the Internal Revenue Code's requirements in these circumstances.

Comment:
The IRS agrees with this recommendation and will take steps to review these taxation issues and clarify the Internal Revenue Code's requirements for the public.

Recommendation 3:
The IRS Commissioner should consider revising the letter forwarding program in a cost-effective manner to again provide information on behalf of plan sponsors on unclaimed retirement accounts to participants.

Comment:
The IRS disagrees with the recommendation. The premise behind the Letter Forwarding Program is based on a belief that the IRS address of record is a better source of information than what could be found with the use of other alternatives. With advances in web-based technology and the widespread use of commercially available locator services, the address available from the IRS would likely be of no greater value than what could be obtained without a Letter Forwarding process. In fact, the guidance the Department of Labor issued in 2014 affirms the steps plan administrators can take to locate missing participants which is based on the availability of alternative sources of information. Based on the limited IRS staff and resources and the many commercially available services, it is not feasible to reinstate this program.

Recommendation 4:
The IRS Commissioner should clarify how U.S. individuals are to report their foreign retirement accounts. The clarification could include addressing how these accounts should be designated and how the taxpayer should report contributions, earnings, and distributions made from the account.

Comment:
The IRS agrees with this recommendation and will take steps to provide additional information on the Internal Revenue Code's requirements for U.S. individuals reporting their foreign retirement accounts.

Recommendation 5:
The IRS Commissioner should systematically analyze data reported through Form 8938 filings on foreign retirement accounts owned by U.S. individuals with the goal of developing an evidence-based understanding of how these accounts change over time

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and what level of risk these accounts pose for tax evasion. To assist with this analysis, IRS should consider revising Form 8938 to more clearly distinguish between retirement accounts and other types of accounts or assets being reported by taxpayers under current reporting requirements.

Comment:
The IRS disagrees with the recommendation. The modification to the Form 8938 suggested in this recommendation may seem minor, but systemically collecting and analyzing the data would require resources beyond those currently available to IRS.

Recommendation 6:
The IRS Commissioner should take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future.

Comment:
The IRS agrees with this recommendation and will take steps to ensure that the data reported on Form 8955-SSA is accurate. As IRS takes such steps, plan sponsors will be advised.

Appendix VI: Comments from the Social Security Administration

SOCIAL SECURITY

Office of the Commissioner

November 9, 2017

Mr. Charles Jeszeck
Director, Education, Workforce, and Income Security
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the draft report, “WORKPLACE RETIREMENT ACCOUNTS: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings” (GAO-18-19). Please see our enclosed comments.

If you have any questions, please contact me at (410) 965-9704. Your staff may contact Gary S. Hatcher, Director, Audit Liaison Staff, at (410) 965-0680.

Sincerely,

Stephanie Hall

Stephanie Hall
Acting Deputy Chief of Staff

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE DRAFT REPORT, "WORKPLACE RETIREMENT ACCOUNTS: BETTER GUIDANCE AND INFORMATION COULD HELP PLAN PARTICIPANTS AT HOME AND ABROAD MANAGE THEIR RETIREMENT SAVINGS" (GAO-18-19)

GENERAL COMMENTS

We are committed to improving the "*Potential Private Retirement Benefit Information*" notice (Form 8955-SSA), as we understand the importance of the information it may provide individuals as they prepare for retirement. We will continue our partnership with the Internal Revenue Service (IRS) and meet with them on a bi-monthly basis to discuss the Employee Retirement Income Security Act of 1974 related activities. In addition, to improve the accuracy of the notice, we plan to meet with the IRS starting next month with the objective to review Form 8955-SSA to ensure we are capturing the necessary information on the form and update instructions as necessary.

Recommendation 1

The Social Security Administration Commissioner should take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future, for example, by working with the IRS as necessary.

Response

We agree.

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Appendix VII: Comments from the Pension Benefit Guaranty Corporation

Office of the Director

December 8, 2017

Charles A. Jeszeck
Director, Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street NW
Washington DC 20226

RE: Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings

Dear Mr. Jeszeck:

Thank you for your helpful report on the challenges American workers face when attempting to claim earned retirement benefits from previous employers. We are grateful for the opportunity to work with GAO on this important issue. We've provided brief technical comments on the draft under separate cover.

The draft report states that from 2004 through 2013, over 25 million participants in workplace plans separated from employment and left at least one retirement account behind. Many of these participants lose track of those accounts or their plans lose track of the participants. PBGC is proud to provide one part of the solution through its current Missing Participants Program, and we are expanding that solution so that many more workers and retirees can be united with their benefits in the future.

For more than 20 years, PBGC's Missing Participants Program has connected people who were missing when their pension plans terminated to their retirement benefits. Currently the program is open only to terminated PBGC-insured single-employer plans. On September 20, 2016, PBGC issued a proposed rule that would expand its existing Missing Participants Program to cover terminated 401(k) and other defined contribution plans and certain defined benefit plans that aren't currently covered by the program. PBGC anticipates having the expanded program available in 2018 (for plans that terminate after 2017).

We're looking forward to offering our missing participants program to a new group of customers, and we believe this program will be a great resource for employers and workers alike.

Charles A Jeszeck

GAO's continued exploration of these important issues is certainly welcome, and we look forward to continued collaboration.

Sincerely,

W. Thomas Reeder
Director

Appendix VIII: GAO Contact and Staff Acknowledgments

GAO Contact

Charles Jeszeck, (202) 512-7215 or jeszeckc@gao.gov.

Staff Acknowledgments

In addition to the contact named above, Tamara Cross (Assistant Director), Ted Burik (Analyst-in-Charge), Ted Leslie, and Jessica Rider made key contributions to this report. Also contributing to this report were Susan Aschoff, James Bennett, Amy Bowser, Sherwin Chapman, Sarah Cornetto, Brian James, Kristy Kennedy, Jonathan McMurray, Sheila McCoy, Jennifer Lutzy McDonald, Dan Meyer, Mimi Nguyen, Amrita Sen, Deborah Signer, Andrew Stephens, Walter Vance, Kathleen Van Gelder, Adam Wendel, and Seyda Wentworth.

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