



January 2019

RETIREMENT ACCOUNTS

Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States

Accessible Version

GAO Highlights

Highlights of [GAO-19-88](#), a report to the Ranking Member, Committee on Finance, U.S. Senate

Why GAO Did This Study

Over the course of individuals' careers, their retirement savings can be spread across multiple retirement accounts and they can change jobs, both of which can cause their savings to become unclaimed and even lost. Prior GAO work has found that unclaimed retirement savings are sometimes transferred to the states. GAO was asked to review such transfers.

This report examines (1) how much in retirement savings is transferred to states as unclaimed property and what happens to those savings once transferred and (2) the steps IRS and DOL have taken to oversee these transfers and what improvements are needed. GAO interviewed federal and state officials, industry representatives, and other stakeholders, and surveyed all 50 states and the District of Columbia (and received 22 responses). GAO also surveyed 401(k) plan service providers and IRA trustees regarding the volume of retirement savings transferred to states and their federal tax reporting and withholding practices for those transfers.

What GAO Recommends

GAO is making three recommendations, including that IRS should consider clarifying whether transfers from employer-based plans (such as 401(k) plans) to states constitute reportable and taxable distributions and consider modifying its list of permitted reasons for rolling over savings after the 60-day rollover deadline. IRS agreed with our recommendations and noted that it will work with the Department of the Treasury to address them.

View [GAO-19-88](#). View a GAO video regarding transfers of retirement savings at <https://www.gao.gov/products/GAO-19-88>. For more information, contact Charles Jeszeck at (202) 512-7215 or jeszeckc@gao.gov.

January 2019

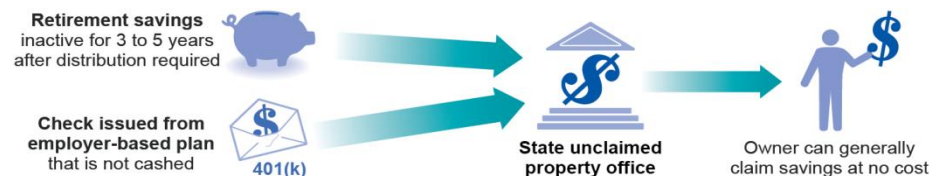
RETIREMENT ACCOUNTS

Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States

What GAO Found

Millions of dollars in retirement savings are transferred to states as unclaimed property, only some of which is later claimed by owners. Of the 22 states responding to GAO's survey, 17 states provided data indicating that \$35 million in unclaimed retirement savings was transferred to them from employer plans and individual retirement accounts (IRAs) in 2016. When account owners do not claim money from retirement savings accounts or cash checks from their plans, the funds may be transferred to state unclaimed property offices (see fig.). Assets and uncashed checks from employer plans (such as 401(k) plans), were the most common form of retirement savings transferred to states. After funds are transferred, owners can claim their savings from the state. According to the 15 states providing data on this, owners claimed about \$25 million in retirement savings in 2016: \$601, on average, from 401(k) plan checks, and \$5,817, on average, from traditional IRAs. States reported using a range of strategies to maintain the value of retirement savings while holding these funds, such as applying interest. States also reported various efforts to locate owners. However, not all savings will be claimed because, among other reasons, owner information is not always associated with transferred savings when the amount is small, which complicates state efforts to locate some owners.

Stakeholders Described How Retirement Savings Are Transferred to and Claimed from States



Source: GAO analysis of survey data and interviews with unclaimed property experts. | GAO-19-88

The Internal Revenue Service (IRS) and the Department of Labor (DOL) have issued guidance on transferring retirement savings to states; however, IRS has not clarified certain responsibilities or ensured that the retirement savings that owners claim from states can be rolled over into other tax-deferred retirement accounts. IRS is responsible for communicating and enforcing tax responsibilities, but has not specified whether 401(k) plan providers should report state transfers to IRS as distributions and withhold federal income taxes. IRS officials said the agency has not issued guidance to clarify this issue because of competing priorities. As a result, 401(k) plan provider practices vary—some providers withhold taxes when transferring savings to states while others do not. This makes the IRS less likely to collect federal income taxes that may be due if transfers are taxable events. IRS also has not taken action to ensure that individuals who claim 401(k) savings from a state can roll over these savings to other tax-deferred retirement accounts after IRS's 60-day deadline. IRS allows individuals to roll over savings after 60 days for several reasons, none of which include claiming 401(k) savings from a state. Federal law seeks to protect the interests of participants in retirement plans. Account owners who are unable to roll over their reclaimed savings forgo the opportunity to continue investing the funds on a tax-deferred basis.

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Abbreviations

DC	defined contribution
DOL	Department of Labor
ERISA	Employee Retirement Income Security Act of 1974
ICI	Investment Company Institute
IRA	individual retirement account
IRS	Internal Revenue Service
NAUPA	National Association of Unclaimed Property Administrators
PBGC	Pension Benefit Guaranty Corporation
RMD	Required Minimum Distribution
UUPA	Uniform Unclaimed Property Act

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January 18, 2019

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

Dear Senator Wyden:

In 2017, U.S. workers held about \$17 trillion in retirement savings accounts, specifically employer-based defined contribution accounts, like 401(k) plans, and individual retirement accounts (IRAs).¹ An individual's retirement savings can be spread across multiple accounts of the same type, such as multiple 401(k) plans, as well as across 401(k) plans and IRAs. In addition, during the course of their careers, individuals can change jobs multiple times and retirement plans can terminate. Each event can cause an individual to lose their connection to some or all of their retirement savings, in some cases permanently. As U.S. workers continue to change jobs and leave behind retirement savings accounts, retirement savings are more likely to be unclaimed.²

While an exact figure is not known, the amount of unclaimed retirement savings in the United States has been estimated to exceed \$100 billion.³

¹ Investment Company Institute (ICI), 2018 Investment Company Fact Book (Washington, D.C.: 2018). Data are year-end 2017. Defined contribution (DC) plans, such as 401(k) plans, provide retirement benefits that are based on contributions and the performance of the investments in participants' individual accounts. Retirement savings in DC accounts totaled \$7.7 trillion in 2017, according to ICI's 2018 Factbook. ICI specifies that the DC plan data include private employer-sponsored DC plans (including 401(k) plans), 403(b) plans, 457 plans, and the Federal Employees Retirement System's Thrift Savings Plan. Two common types of IRAs are Traditional and Roth IRAs, for which contributions are tax-deferred and after-tax, respectively. IRA assets nationwide totaled about \$9.2 trillion in 2017, according to ICI's 2018 Factbook. ICI's data for IRAs include traditional IRAs, Roth IRAs, and employer-sponsored IRAs (SEP IRAs, SAR-SEP IRAs, and SIMPLE IRAs) and are estimated.

² E.A. Bruce & J. Turner, *Lost Pension Money: Who is Responsible? Who Benefits?*, 3 J. Marshall L. Rev. 695 (2004).

³ Bruce and Turner, *Lost Pension Money*. The authors of this article specifically used the term "lost pension", defined as "money held by a qualified pension plan that the party entitled to it has not claimed." The article states that lost pension money may be from a defined benefit plan or a DC plan, may be owed to either a retiree or retiree's beneficiary, and may include employer or employee contributions. *Id.* at 697-98.

Retirement savings can be classified as unclaimed property when an account owner has forgotten about an account or when owner-associated activity on a retirement account—such as logging in online to check an account balance—has ceased for a certain amount of time generally specified under state laws. In certain circumstances, unclaimed retirement savings may end up transferred to a state.⁴ Although estimates exist for the amount of unclaimed retirement benefits in the United States, little is known about the amount of unclaimed retirement savings ultimately transferred to states as unclaimed property.

You asked us to review issues related to the transfer of retirement savings to the states as unclaimed property. This report examines (1) how much in retirement savings is transferred to states as unclaimed property and what happens to those savings once transferred, and (2) the steps the Internal Revenue Service (IRS) and the Department of Labor (DOL) have taken to oversee the transfer of unclaimed retirement savings to the states and what improvements, if any, are needed.

To identify the amount of retirement savings transferred to states and what happens to those savings once transferred, we sent surveys to the unclaimed property offices of all 50 states and the District of Columbia (our state survey). We focused our analysis on employer-based defined contribution (DC) plans, such as 401(k) plans, and IRAs.⁵ Our analysis includes responses from 22 states (including the District of Columbia) with populations that together comprise 57 percent of the U.S. population; 17 of the 22 states provided data on retirement savings transferred to their states in 2016, which was the most recently completed year at the time of our review; and 15 of the 22 states also provided data on the amount owners claimed that year. We assessed the quality of the data we collected by including questions in the survey to help us determine data completeness and accuracy. Although we identified some limitations in

⁴ Although some states may refer to some unclaimed property as abandoned property, in this report we refer to retirement savings that, as a result of a lack of owner-associated activity for a certain period of time, have been designated as unclaimed property under state laws as “unclaimed retirement savings” or “unclaimed savings.” For ease of reference, we use these terms to describe property both before and after it has been transferred to a state.

⁵ 401(k) plans are the predominant type of employer-based plan in the United States, according to Department of Labor data. See Employee Benefits Security Administration, United States Department of Labor, *Private Pension Plan Bulletin: Abstract of 2015 Form 5500 Annual Reports Data Extracted on 7/7/2017* (Feb. 2018). IRAs are key retirement savings vehicles for workers not covered by an employer-based plan.

the quality of the data, we determined that the data were sufficient for the purposes of our reporting objectives. See appendix I for more information about our methodology and data quality.

To gain further insight into the amount of savings transferred to states, we surveyed companies that belong to two industry associations. For the first industry association, we conducted a nongeneralizable survey of all 129 transfer agent companies that are members of the Investment Company Institute to obtain IRA transfer data (our IRA transfer agent survey).⁶ Of the 129 companies surveyed, we received and analyzed survey responses from 21 companies that collectively managed \$299 billion in IRA assets in 2016, or about 4 percent of total assets managed in the IRA market, based on industry data.⁷ For the second industry association, we conducted a nongeneralizable survey of all 32 401(k) plan service provider companies that are members of the SPARK Institute to obtain 401(k) plan transfer data (our 401(k) plan service provider survey).⁸ We received and analyzed responses from seven companies that collectively managed more than \$580 billion in 401(k) assets in 2016 (one survey respondent did not report the amount of assets managed), or more than 13 percent of total 401(k) assets nationwide, based on DOL data.⁹ To

⁶ ICI is an association that represents mutual fund companies. Transfer agents are companies that maintain records of mutual fund shareholder accounts. According to its website, ICI members manage total assets of \$22 trillion in the United States, serving more than 100 million U.S. shareholders. Most IRA assets are invested in mutual funds. In 2015, the largest portion (48 percent) of IRA assets was invested in mutual funds, according to industry data. See Cerulli Associates, *The Cerulli Report: U.S. Evolution of the Retirement Investor 2016: Regulation and Investor Addressability*. Our survey results are not generalizable because the transfer agents that completed the surveys are voluntary members of ICI. Therefore, they may differ from companies that are not ICI members in terms of their knowledge of or concern about the issues addressed in the surveys, which has implications on their survey responses.

⁷ Cerulli Associates, *The Cerulli Report: U.S. Evolution of the Retirement Investor 2016: Regulation and Investor Addressability*.

⁸ The SPARK Institute is an association that represents DC plan service providers. SPARK members include 401(k) record keepers as well as representatives from mutual fund companies and investment brokerage firms, and serve approximately 85 million participants in 401(k) and other DC plans. Our survey results are not generalizable because the plan service providers that completed the surveys are voluntary members of the SPARK Institute. Therefore, they may differ from companies that are not SPARK Institute members in terms of their knowledge of or concern about the issues addressed in the surveys, which has implications on their survey responses.

⁹ Employee Benefits Security Administration, United States Department of Labor, *Private Pension Plan Bulletin: Abstract of 2015 Form 5500 Annual Reports Data Extracted on 7/7/2017* (Feb. 2018).

assess the quality of the data we obtained through these surveys, we included questions in the surveys that asked respondents to identify the data sources they consulted and any data limitations. An overview of our three surveys is provided in table 1.

Table 1: Overview of GAO Surveys Used to Obtain Data on Transfers of Unclaimed Retirement Savings to States

GAO Survey	Entities surveyed	Responses
State survey	50 states and D.C.	22 states responded, whose populations amount to 57% of the total U.S. population. 17 provided data on retirement savings transferred.
IRA transfer agent survey	129 IRA transfer agent companies that are members of industry group Investment Company Institute.	21 transfer agents, holding about 4% of total IRA assets nationwide.
401(k) plan service provider survey	32 401(k) plan service providers, such as record keeping companies, that are members of industry group SPARK Institute.	7 companies responded, covering more than 13% of total 401(k) assets nationwide. 5 reported that they made transfers and 2 reported they did not make such transfers.

Source: GAO description of research methodology. | GAO-19-88.

In addition, we obtained IRA transfer data from four large companies that collectively managed over \$1.4 trillion in IRA assets in 2016, or about 20 percent of the IRA market, based on industry data.¹⁰ These data collection efforts together provided us with insight on transfer activity from the perspectives of the stakeholders that are involved in the transfer process.

To determine the steps that IRS and DOL have taken to oversee the transfer of unclaimed retirement savings to the states and whether any improvements are needed, we reviewed relevant documentation from IRS and DOL, including guidance issued on topics such as the permissibility of certain transfers of savings to states and the tax related requirements that apply to those transfers. We also included questions in all of our surveys that asked respondents to provide their perspectives on whether additional federal guidance is needed on the transfer of retirement savings to the states, such as guidance on the tax related requirements that apply to transfers. In addition, our surveys of IRA transfer agents and 401(k) plan service providers included questions that asked respondents to identify whether federal income taxes were withheld from the amounts

¹⁰ Cerulli Associates, *The Cerulli Report: U.S. Evolution of the Retirement Investor 2016: Regulation and Investor Addressability*.

they transferred to the states in 2016. We also reviewed relevant federal laws and regulations and interviewed IRS and DOL officials as well as relevant industry groups.

We conducted this performance audit from October 2016 to January 2019 in accordance with generally accepted government auditing standards. Those standards require that we 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Unclaimed Retirement Savings

Unclaimed retirement savings are savings that individuals are entitled to receive, but have not claimed because employers or other entities that maintain their retirement accounts cannot locate the individuals or because the individuals have forgotten about the savings. Individuals can lose track of retirement savings held in multiple accounts across different employers. As we have previously reported, when employees change jobs some leave their savings in their former employers' 401(k) plans.¹¹ This may be a prudent choice under some circumstances, but it opens up the person to the risk of forgetting the account. Unclaimed retirement savings often come in the form of uncashed distribution checks—checks made out to individuals to comply with required minimum distribution (RMD) requirements,¹² or for other reasons, that go uncashed. Plan terminations can also result in unclaimed retirement savings if a terminating plan, which must distribute savings to complete the termination process, cannot obtain instruction from the account owner on what to do with the savings. According to the Department of Labor, 19,155 401(k) plans terminated in 2016.

¹¹ GAO, *401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, [GAO-15-73](#) (Washington, D.C.: Nov. 21, 2014).

¹² Under the Internal Revenue Code, individuals age 70½ or older who are participants in qualified DC plans or who have an IRA generally must receive minimum annual payments from their plan account or IRA based on their account balance and remaining life expectancy. RMDs apply to employer plans and traditional IRAs. RMDs do not apply to Roth IRAs while the owner is alive.

State Laws Generally Govern the Transfer of Unclaimed Retirement Savings to the States

According to literature and unclaimed property experts, all 50 states and the District of Columbia have laws that generally govern the transfer of unclaimed retirement savings to the state once certain requirements are met.¹³ According to the National Association of Unclaimed Property Administrators (NAUPA),¹⁴ the vast majority of state unclaimed property law provisions relating to retirement savings come from one of the versions of the Uniform Unclaimed Property Act, which the states and the financial services industry jointly drafted. State laws generally identify an event that triggers the start of a dormancy period for retirement savings, or the amount of time in which no activity has occurred on the account before it can be transferred as unclaimed savings to a state and, according to NAUPA officials, during which time the entities in possession of the accounts are not able to locate the owners.¹⁵ Retirement savings may come to satisfy a state's dormancy period after an event that results

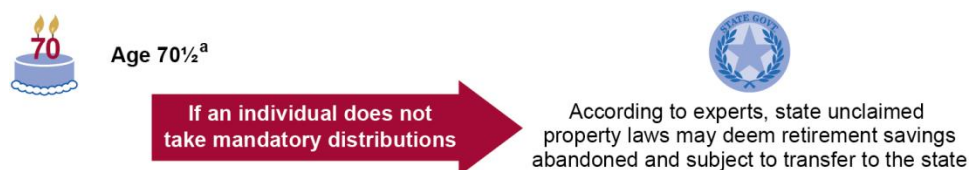
¹³ Throughout this report, our statements about state unclaimed property laws and the process for transferring unclaimed retirement savings to the states are solely based on our review of available literature, including state unclaimed property guidance, as well as information from unclaimed property experts. GAO did not independently review states' unclaimed property laws. When unclaimed savings are transferred to a state, they are transferred to the state where the account owner last resided or, if unknown, the state where the holder—such as a plan administrator or IRA trustee—is located. State unclaimed property laws address various types of property and are not specific to retirement savings. However, for purposes of this report, our discussion of state laws is limited to how they affect retirement savings. In addition, under certain circumstances, federal requirements may apply to transfers of retirement savings to states. For example, as discussed later, a DOL advisory opinion expresses DOL's view that the Employee Retirement Income Security Act of 1974 (ERISA) preempted a state's law as it related to requiring a plan to transfer unclaimed amounts held in plan accounts to the state—meaning the plan was not required to transfer the funds to the state. ERISA provides the legal framework for most private sector workplace retirement plans. See 29 U.S.C. § 1001 et seq..

¹⁴ NAUPA is a non-profit organization affiliated with the National Association of State Treasurers. NAUPA's members are unclaimed property officers from all states and the District of Columbia as well as other jurisdictions. NAUPA holds meetings and seminars to provide professional education opportunities to holders, and maintains an informational website. According to NAUPA officials, the organization created and periodically updates a common electronic reporting format for use by all the states.

¹⁵ For example, according to one state's unclaimed property guidance, an owner can demonstrate activity by logging into their account online to check their balance. In the context of unclaimed retirement savings, owners are those individuals with a legal right to claim the retirement savings, such as 401(k) plan participants, owners of IRAs, and the heirs of deceased participants or owners.

in a payment being due, such as an owner's death or owners reaching the age when they must begin taking required minimum distributions of their savings, as shown in figure 1.¹⁶

Figure 1: According to Stakeholders, Required Minimum Distribution Rules Sometimes Lead to the Transfer of Unclaimed Retirement Savings to a State



Source: GAO analysis of information from state unclaimed property experts and federal law. | GAO-19-88

Note: This figure does not address all potential consequences of failing to take required minimum distributions.

^a Under the Internal Revenue Code, individuals age 70 ½ or older who have savings in certain retirement accounts generally must receive minimum annual payments from their accounts.

From a state's perspective, savings are unclaimed and must be transferred to the state after the dormancy period has expired. Holders—those entities in possession of unclaimed savings and responsible for the maintenance of those savings accounts, such as plan administrators or IRA trustees—transfer the savings to the state.¹⁷ According to NAUPA, holders are responsible for making a reasonable effort to locate the owners of otherwise unclaimed accounts before transferring them to state custody. States may also accept transfers of retirement savings in other specific circumstances. For example, according to NAUPA officials, a terminating 401(k) plan sponsor may transfer retirement savings to the state if the owners remain missing after the plan takes certain steps to

¹⁶ The term “plan participant” describes the owner before their savings are transferred to the state, while “owner” describes them even after their savings are no longer in the plan.

¹⁷ According to literature, this process is commonly referred to as “escheatment”. However, DOL officials indicated that their understanding was that “escheatment” as a technical matter occurs if the state assumes ownership of the retirement savings. Because states act as custodians for transferred retirement savings and owners generally maintain the right to claim their savings indefinitely, according to literature, the savings are not technically escheated. However, true escheatment of unclaimed property to states may start to occur. According to NAUPA officials, until recently all state laws had provided for owners’ indefinite eligibility to claim their property. However, in March 2018, Arizona passed a law capping at 35 years (from the time the state receives the property) the length of time in which an owner can claim property—including retirement savings—from the state. Similar legislation proposed in Louisiana would have set a 30-year cap on claims.

contact them, as outlined in federal guidance.¹⁸ See table 2 below for examples of when savings are transferred from 401(k) plans and IRAs.

Table 2: Examples of Circumstances Under Which Unclaimed Retirement Savings Are Transferred to States, According to a Variety of Sources GAO Reviewed

Type of account	What is transferred to the states?	Under what conditions?
Active 401(k) plan	Account balances	If, after a participant turns age 70 ½, there is no activity in an account, mail is returned, and the state dormancy period is met.
Active 401(k) plan	Uncashed checks	Once a check has remained uncashed for 6 months, there has been no contact with the owner, and the state dormancy period has been met.
Terminating 401(k) plan	Account balances	If a plan terminates and has made certain efforts to locate owners, funds can be transferred before the expiration of the state dormancy period.
Individual Retirement Account (IRA)	Account balances	If there is no account activity or contact for three years after the account owner dies or turns age 70 ½ and the funds are not claimed during this period.
Individual Retirement Account (IRA)	Uncashed checks	Once a check has remained uncashed for 6 months, there has been no contact with the owner, and the state dormancy period has been met.

Source: Information from 401(k) plan service providers, an unclaimed property expert, state documentation, and an IRA provider. | GAO-19-88.

Note: For the purposes of this report, when we refer to the transfer of uncashed checks to the states, we are not referring to the physical checks themselves, but rather the funds underlying the checks.

Federal Laws, Regulations, and Oversight

The Internal Revenue Service (IRS) and the Department of Labor (DOL) share enforcement responsibility for the Employee Retirement Income Security Act of 1974 (ERISA). The IRS's mission is to help U.S. taxpayers understand and meet their tax responsibilities under the Internal Revenue Code. To help achieve its mission, IRS issues tax regulations and other guidance. The IRS is responsible for helping to ensure that individuals pay income taxes on distributions from tax-deferred retirement accounts and any additional tax for distributions before age 59½.¹⁹ IRS also establishes guidelines regarding the calculation of RMDs from qualified plans as well as the federal tax reporting and withholding requirements

¹⁸ An unclaimed property expert and representatives from an industry association told us that terminating plans can transfer unclaimed savings to states prior to the end of the dormancy period typically required to designate savings as unclaimed property.

¹⁹ Distributions of amounts attributable to employee elective contributions prior to age 59-1/2 generally require a distribution event—such as death or hardship—to occur. See 26 C.F.R. §1.401(k)-1(d).

that apply to RMDs and other plan distributions.²⁰ Additionally, IRS enforces the requirements within the Internal Revenue Code, including requirements related to the potential transfer of unclaimed retirement savings to states:

- When distributions from 401(k) plans and IRAs occur, plan sponsors and IRA administrators are generally required to withhold and remit to the IRS a percentage of the amount distributed from a qualified retirement account to cover anticipated federal income taxes. The amount withheld varies from generally 10 percent for certain traditional IRA and 401(k) plan distributions to 20 percent for eligible rollover distributions.²¹ Qualifying Roth IRA and Roth plan account distributions are not subject to federal income taxes.²²
- If, within 60 days of receipt, an individual deposits eligible rollover distributions into another qualified account—an indirect rollover—the distribution is not treated as income for federal income tax purposes.²³ However, the amount deposited must be the full amount distributed, including the amount of any income tax withheld. Otherwise, the distribution amount not rolled over is taxable and may be subject to additional tax for early distribution if the individual is younger than age 59½.
- Individuals must take RMDs from their qualified retirement accounts—both 401(k) plan accounts and traditional IRAs—according to a

²⁰ Distributions of retirement savings are reported to IRS and individuals on Form 1099-R. Form 1099-R shows the amount of funds distributed from a retirement account and the amount of taxes withheld from the distribution.

²¹ See 26 U.S.C. § 3405(b)(1) & (c)(1)(B). In some instances, individuals can choose to have no taxes withheld from distributions. For example, recipients of periodic distributions from plans and IRAs can choose to forgo tax withholding.

²² Roth distributions that are not qualified distributions may be subject to withholding. Enacted as part of the Taxpayer Relief Act of 1997, Roth IRAs allow eligible individuals to make nondeductible contributions to these accounts but generally receive tax-free distributions. According to IRS guidance, a designated Roth plan account is a separate account in a 401(k) plan that holds designated Roth contributions. The amount contributed to a designated Roth account is includible in gross income in the year of the contribution, but eligible distributions from the account (including earnings) are generally tax-free.

²³ See 26 U.S.C. §§ 402(c) and 408(d)(3). Certain distributions are not eligible rollover distributions and therefore cannot be rolled over. Distributions that are not eligible to be rolled over include required minimum distributions, hardship distributions, and life annuities.

schedule set by the IRS.²⁴ These distributions, which cannot be rolled over to another qualified account, generally must begin by April 1st of the calendar year following the calendar year in which an individual turns age 70½ or retires.²⁵

- Prior to the later of age 62 or normal retirement age, plans are restricted in their ability to take actions with respect to savings left behind by inactive²⁶ participants if the individuals did not provide distribution instructions. An inactive account owner's vested balance up to \$5,000 can be forced out of an active plan.²⁷ Without the account owner's instructions for where to transfer the account, balances greater than \$1,000 and less than or equal to \$5,000 may only be transferred to an IRA, while smaller balances may be "cashed out" meaning a check is issued to the owner.²⁸ Generally, balances in excess of \$5,000 may not be distributed without the consent of the owners. However, federal law permits plans to exclude rollover contributions from the account balance that they use to determine if the account is small enough to force out.²⁹

DOL's Employee Benefits Security Administration is generally responsible for issuing guidance to plan sponsors and other plan fiduciaries on compliance with Title I of ERISA. A plan's decision regarding what to do with unclaimed retirement savings, which can include transferring these

²⁴ See 26 U.S.C. §§ 401(a)(9) and 408(a)(6). RMDs also apply to individuals who inherit Roth IRAs from deceased account owners.

²⁵ In 2016, 2.5 million people were age 70 and by 2050 about 4 million are projected to be 70 each year, according to U.S. Census data. See <https://www.census.gov/data/datasets/2017/demo/popproj/2017-popproj.html>.

²⁶ We use the term "inactive" to refer to individuals who have changed jobs and are no longer making contributions.

²⁷ Vesting policies are plan policies that require employees to work for a minimum length of time before their employer's contributions become fully nonforfeitable or "vested," meaning employees have an unconditional and legally enforceable right to keep their employer contributions if they separate from their job. An employee's own contributions and any returns on those contributions always belong to the employee and are not forfeitable to the plan if they leave their employer. For more information on force-outs from plans, see GAO, *401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, [GAO-15-73](#) (Washington, D.C.: Nov. 21, 2014).

²⁸ See 26 U.S.C. §§ 401(a)(31)(B) and 411(a)(11).

²⁹ See 26 U.S.C. § 411(a)(11)(D). Rollover contributions are amounts transferred into a new plan from another workplace plan or an IRA.

savings to the states,³⁰ is a decision that is subject to ERISA's fiduciary standards.³¹ In Advisory Opinion 1994-41A, DOL expressed its view that ERISA preempted a state unclaimed property law as it related to requiring a plan to transfer amounts held in plan accounts to the state. This means that, in DOL's view, the state law could not compel the plan to transfer unclaimed retirement savings to the state.³² DOL has issued guidance for terminating DC plans that specifically permits them to transfer certain participant accounts to state unclaimed property funds, generally small accounts of \$1,000 or less, when the participant is missing or fails to respond to notices requesting an election of a form of distribution if certain conditions are met.³³

³⁰ Other potential options for handling unclaimed savings include rolling them into an IRA or transferring them to a federally insured bank account. For more information on this topic, see our prior report: GAO, *401(k) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, [GAO-15-73](#) (Washington, D.C.: Nov. 21, 2014).

³¹ DOL, *Field Assistance Bulletin 2014-01* (Washington, D.C.: 2014). ERISA contains various provisions intended to protect the interests of plan participants and beneficiaries in workplace retirement plans. These provisions include fiduciary standards to which plans must adhere to ensure that workplace retirement plan funds are handled prudently and in the sole interest of participants.

³² See DOL Advisory Opinion 1994-41A, Dec. 7, 1994. According to NAUPA officials, some states have expressed disagreement with DOL's advisory opinions on this matter.

³³ See 29 C.F.R. § 2550.404a-3, 29 C.F.R. § 2578.1, and Field Assistance Bulletin 2014-01.

Available State Survey Data Show that Seventeen States Received \$35 Million in Unclaimed Retirement Savings in 2016, and Took Steps to Locate the Owners

Seventeen States' Survey Data Show They Received \$35 Million in Unclaimed Retirement Savings

Survey data provided by 17 states show that, in 2016, they collectively received approximately 54,000 transfers of retirement savings worth about \$35 million.³⁴ Because transfers occur every year, the cumulative dollar value of savings held by states is larger than the amount transferred during the one year covered by our state survey. In the context of about \$17 trillion in retirement savings accounts nationwide in 2017,³⁵ \$35 million may seem relatively small. However, for individuals, losing track of savings can negatively affect their retirement security.

Transfers of unclaimed retirement savings from employer-sponsored plans

Assets and uncashed checks from employer-based DC plans (employer plans) were the most common form of retirement savings transferred to states, accounting for 84 percent of accounts transferred to the 17 states

³⁴ We surveyed all 50 states and the District of Columbia. Twenty-two states responded to our survey, and 17 provided aggregate transfer data for specific retirement-related property-type codes. As described in appendix I, the accuracy of states' data depends largely on the accuracy of information provided by holders when they send savings to states. Most states reported that they did not know how accurately holders may have applied the property-type codes used to report transfers to the states, while four states indicated that they thought holders applied the codes somewhat accurately. Because holders using an incorrect property-type code could result in both over and underreporting of retirement savings, we cannot determine whether such errors, if they exist, have resulted in the reported transfer totals being high or low. Also, the dollar value of transfers is underreported because retirement savings transferred in the form of securities often have no associated value recorded, according to several state survey responses. Given these data quality concerns, our state survey is not generalizable, but the values reported by states provide a sense of the scale for such activity.

³⁵ Investment Company Institute, 2018 Investment Company Fact Book (Washington, D.C.: 2018). This amount includes assets held in both IRAs and DC plans like 401(k) plans. ICI estimated the value of IRA assets.

that provided retirement savings-related transfer data in responding to our state survey.³⁶ In 2016, \$22.4 million was transferred from employer plans to those states. The average dollar value of transfers was generally small—\$628 from plans and \$301 from retirement plan checks.³⁷

Federal law restricts the amount of retirement savings that can be forced out of a plan and outlines rules for how to calculate the amount of savings that can be forced out, both of which affect the size of transfers from plans to states. Forced distributions from employer plans were generally small, based on our state survey data, likely because federal law restricts the size of accounts that can be forced out of a plan.³⁸ According to a 401(k) plan service provider that we interviewed, when individuals do not cash forced distribution checks, those checks can be transferred to states as unclaimed property. However, forced distributions can also be large, which can mean that significant amounts of retirement savings potentially lose the protections afforded by ERISA. Large account balances can be forced out of a plan because federal law permits plans to exclude rollover contributions when calculating whether the balance is small enough to force out.³⁹ Therefore, if plans exclude rollover balances, accounts larger than \$1,000 can be cashed-out and might end up being transferred to a state after the forced-distribution check goes uncashed.

³⁶ 401(k) plans are the predominant type of employer-based DC plan in the U.S. See Employee Benefits Security Administration, United States Department of Labor, *Private Pension Plan Bulletin: Abstract of 2015 Form 5500 Annual Reports Data Extracted on 7/7/2017* (Feb. 2018).

³⁷ We calculated this average based on the total dollar value of accounts transferred divided by the number of transfers reported by states. While state data only identify unclaimed retirement savings as savings from “pension or profit sharing plans” and as “pension checks”, interviews with industry experts indicate these savings typically exclude defined benefit plans and reflect transfers from DC plans that occur under the varying circumstances described in the background of this report. According to experts we interviewed, “pension checks” can actually be distribution checks from (a) active DC plans, made to former employees, which remained uncashed for a lengthy dormancy period and (b) terminating DC plans, which were uncashed and may be transferred to states prior to the end of the dormancy period typically required to designate savings as unclaimed.

³⁸ A former employee’s vested balance of up to \$5,000 can be forced out of an active plan. Without the former employee’s instructions for where to transfer the account, balances greater than \$1,000 and less than or equal to \$5,000 may only be transferred to forced-transfer IRAs, while smaller balances may be “cashed out,” meaning a check is issued to the owner. See 26 U.S.C. §§ 401(a)(31)(B) and 411(a)(11).

³⁹ See 26 U.S.C. § 411(a)(11)(D) and 29 U.S.C. § 1053(e)(4). Large account balances could also be forced out as a result of death and other circumstances.

Recognizing the significance of forced distributions of large balances that include rollover savings, we previously recommended that Congress consider repealing the provision that allows plans to disregard amounts attributable to rollovers when determining if a participant's plan balance is small enough to forcibly transfer it.⁴⁰ In a prior report, we concluded that requiring plans to include rollover balances would ensure that larger balances receive the extra protection of remaining in an ERISA-covered plan. Remaining in the plan would also give missing participants more time to reconnect with their plans before savings are potentially transferred to a state.

According to our 401(k) plan service provider survey data, transfers from employer retirement plans often include savings from terminating plans and can affect individuals of all ages. Survey data from the seven service providers responding to our survey—whose plan assets under management make up more than 13 percent of the 401(k) marketplace (one survey respondent did not report the amount of assets managed)—show that the majority of savings these providers transferred to states in 2016 included savings from terminating 401(k) plans. Specifically, survey data from the three providers that could supply such detail show that, of \$2.25 million transferred to states, \$2.19 million involved savings from terminated plans.⁴¹ Since transfers of savings from employer plans to states can occur as a result of plan terminations, they can affect individuals of all ages. The one 401(k) plan service provider that supplied age-specific data in responding to our survey indicated that transfers it made in 2016 often affected individuals who were younger than 70½, the age at which individuals generally must begin taking required minimum distributions (RMD) of their savings. In fact, the data showed that very few of the participants who had savings transferred to states in 2016 (4 out of

⁴⁰ GAO, *401(K) Plans: Greater Protections Needed for Forced Transfers and Inactive Accounts*, [GAO-15-73](#) (Washington, D.C.: Nov. 21, 2014). At the time of our review, Congress had not taken action on this recommendation.

⁴¹ Five survey respondents reported that they transfer unclaimed savings to states. However, only three of these respondents were able to provide the amount of savings transferred to states in 2016 *and* describe the circumstances under which savings were transferred, with two specifying that they transfer savings from terminating plans. These data reflect the responses of these two respondents.

253) were older than 70½.⁴² The same provider reported that they only transfer savings to states when plans terminate.

Transfers of unclaimed retirement savings from IRAs

According to our state survey data, in 2016, transfers from IRAs accounted for 16 percent of the retirement savings accounts transferred to the 17 states that could provide retirement savings-related transfer data.⁴³ During this year, a total of \$12.6 million was transferred from IRAs to the 17 states responding to our survey and the average amount transferred from traditional IRAs was \$1,610.⁴⁴ The state survey data only reflect aggregate amounts transferred; therefore, we did not capture data on the size of individual account balances transferred. However, it is possible for large IRA balances to be transferred to states because IRAs, unlike employer plans, are subject to neither forced distributions nor limits on the size of distributions.

⁴² This 401(k) plan service provider reported that it was the trustee/custodian for more than \$46 billion in 401(k) assets in 2016. This was the only provider that reported age-specific transfer data.

⁴³ According to unclaimed property experts we interviewed and state survey responses, states are uncertain about the accuracy of the property-type codes used by holders when reporting and transferring property, including retirement savings, to the states. Therefore, if property codes were applied inaccurately, this percentage could be more or less than what we found. See appendix I for more information about data quality issues for the state survey.

⁴⁴ We calculated this average based on the total dollar value of traditional IRA accounts transferred divided by the number of such transfers reported by states. Transfers from Roth IRAs, which consist of post-tax contributions, were uncommon and accounted for just 568 transfers worth \$277,258, a relatively small portion of the retirement-related assets transferred. Some states reported additional IRA transfers that did not distinguish between traditional and Roth IRAs, so more Roth transfers may be included in these data. Most of the IRA assets transferred were in the form of cash (72 percent) compared to mutual funds (11 percent) and securities (2 percent). No asset type was identified for the remaining 15 percent of IRA savings transferred.

Dormancy period

According to our analysis of the sources noted below, a dormancy period is the period of time that typically must pass before unclaimed savings can be transferred to a state and during which time owners do not demonstrate activity on or acknowledge their accounts and the holder of the savings is unable to locate the owner. According to these sources, dormancy periods are governed by state laws and are typically triggered by an event that results in a payment being due, such as an individual retirement account (IRA) owner reaching the age when the Internal Revenue Code requires that they begin taking required minimum distributions of their savings, generally age 70½. For example, if an IRA account holder cannot locate an account owner for several years after the owner has turned 70½, the state where the owner is last known to have lived may consider the savings to be unclaimed and require the IRA holder to transfer the savings to the state.

Source: GAO analysis of interviews and information from the National Association of Unclaimed Property Administrators, retirement industry officials, and unclaimed property experts; and Reid, Tracey L., *Unclaimed Property: A Reporting Process and Audit Survival Guide* (Hoboken, New Jersey: 2008). | GAO-19-88

Our IRA transfer agent survey found that most of the unclaimed savings from IRAs transferred to states by the 16 transfer agents that responded to our survey was for individuals older than 70½.⁴⁵ Specifically, these survey data show that, out of 667 IRA owners who had savings transferred to states in 2016 and for whom respondents provided age information, 583 were older than 70½.⁴⁶ This suggests that these IRA savings were transferred in accordance with state unclaimed property laws for retirement savings, as described by unclaimed property experts we interviewed. (See the sidebar for additional information on dormancy periods.)

With the Help of States, Owners Claimed About \$25 Million in Retirement Savings from 15 States in 2016, According to GAO Survey Results

In 2016, owners claimed about \$25 million in retirement savings, according to the 15 states that responded to our survey and could provide retirement savings-related claims data.⁴⁷ After they learn that the states have their savings and satisfy the states' requirements for proving ownership, owners or their beneficiaries can, according to information provided by the National Association of Unclaimed Property Administrators, claim retirement savings from the state.⁴⁸ Most retirement savings claimed from states are originally from employer plans, which is not surprising because most of the retirement savings transferred to the 17 states that responded to our survey were from employer plans.

⁴⁵ We received survey responses from 21 transfer agents, but only 16 provided data on the age of individuals who had IRA savings transferred to states.

⁴⁶ This analysis is based on just the IRA savings reported along with age data and excludes additional savings reported for which no age data were provided. We collected data on whether individuals with savings transferred were younger or older than 70½ because turning 70½ is a common dormancy period trigger for retirement savings. The actual age of individuals with savings transferred because of dormancy would be 70½ plus the number of years required by a state's dormancy period.

⁴⁷ These claims were of savings transferred in all years, including but not limited to 2016. We asked for claims data in this way because property may be reported to states as infrequently as once per year, so the property reported in 2016 could not, in many cases, also be claimed in that same year. One state reported only claims of property also transferred in 2016, which results in an underreporting of claims in that state for the year. Other states that responded to our state survey did not provide claims data.

⁴⁸ This process can often be accomplished by mail, but state unclaimed property offices also typically provide assistance by telephone and online claims can also be an option.

According to our state survey data, about two-thirds of retirement savings dollars claimed were from employer plans, while the remaining third was from IRAs.⁴⁹ (See table 3 below).

Table 3: Retirement Savings Claimed by Owners from 15 States in 2016, According to GAO's State Survey

Type of savings claimed from states	Number of retirement savings properties claimed	Dollar value (rounded)
All retirement savings	15,406	\$25 million
All retirement savings: Employer-based plans	13,941	\$17 million
All retirement savings: IRAs	1,465	\$8 million

Source: GAO analysis of responses from a survey of states and DC, based on 2016 data. | GAO-19-88.

Note: As with retirement savings transferred to states, the savings in a single individual retirement account (IRA) could be split up by asset type and result in multiple, separate properties that may be claimed by an owner. An owner might also have several different retirement accounts that were transferred to the states. For these reasons the number of retirement-savings properties claimed is not equivalent to the number of people who claimed retirement savings.

As shown in figure 2, states' unclaimed property offices receive retirement savings transfers in the form of cash or securities, including mutual fund shares.⁵⁰ The form of the retirement savings claimed from the state—a payment made from the state to the owner for the cash value of their savings or a transfer of securities—is based on the states' policies. For example, the form could depend on whether and for how long a state will hold securities or whether a state will sell the securities immediately and reimburse the owner for the sale price.⁵¹ No matter how the states receive

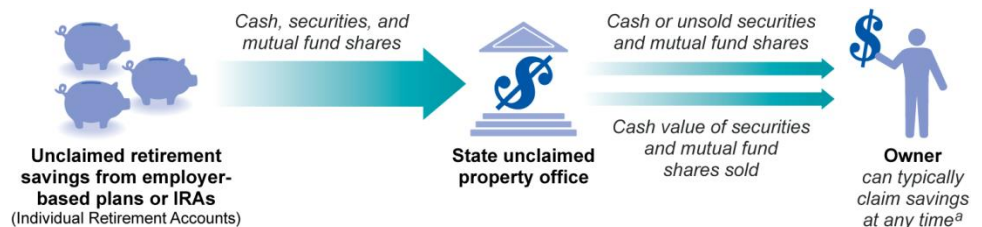
⁴⁹ We do not know whether data from all the states would also reflect that a majority of retirement savings transfers were from employer-based plans.

⁵⁰ About 59 percent of the \$7.7 trillion held in DC plans, which include 401(k) plans, was invested in mutual funds according to ICI data. Investment Company Institute, 2018 Investment Company Fact Book (Washington, D.C.: 2018).

⁵¹ The Revised Uniform Unclaimed Property Act (RUUPA) states that a state unclaimed property administrator may not sell securities until 3 years after the administrator receives the securities and gives the apparent owner notice and that if the apparent owner claims the securities within 6 years of the delivery of the securities to the state administrator, the apparent owner may request a replacement of their securities or the market value of those securities at the time of their claim, and not at the time of the securities' sale, plus dividends, interest, and other increments on the security up to the time the claim is paid. See Rev. Unif. Unclaimed Prop. Act §§ 702-703 (2016). States are not required to follow the RUUPA. However, all states have their own unclaimed property laws and, according to materials provided by NAUPA, most have adopted language similar to the model law. For instance, a Florida statute requires that, generally, the state administrator will sell securities upon receipt and, if the owner claims their property, the owner is entitled to the value at the time of the securities' sale, not the value at the time of the claim.

the funds, owners may not necessarily be able to claim their savings in the same form if the state has converted it to cash. This can affect the amount of an individual's savings depending on market conditions. If, for example, a state receives retirement savings in the form of securities and sells them before they are claimed, owners could lose the opportunity to sell their securities at a profit when they claim their savings if the market value of the securities increased after the state sold them.⁵² Of 22 states responding to our survey, 10 states always or sometimes sell securities, including mutual fund shares, immediately after such properties are transferred to them.

Figure 2: States Receive Retirement Savings in Cash, Securities, and Mutual Fund Shares but Owners May Not Necessarily Be Able to Claim Savings in the Same Form



Source: GAO analysis of state survey data and information from unclaimed property experts. | GAO-19-88

^a Until recently owners could indefinitely claim their property from each state, but at least two states have taken steps to cap the claims period at 30 and 35 years, according to unclaimed property experts.

The amount of claimed retirement savings from the state can end up being less than the amount owners left behind in their employer-based retirement plans or IRAs if owners use third-party “heir-finders.” Although it is unnecessary for owners to use heir-finders to claim their retirement savings, according to state officials we interviewed, these heir-finders offer to help owners locate and collect their unclaimed retirement savings and typically charge owners a percentage of their recovered savings as a fee. One state official said she had seen a finder fee as high as 40 percent of the claimed property’s value. Seventeen of 22 states responding to our survey reported that they always or sometimes limit finder fees; those limits ranged from 10 to 25 percent of property value. Nevertheless, one state official we interviewed emphasized that owners

⁵² Securities refer to certificates or records that prove ownership of stocks or bonds. There is no guarantee that investments will increase in value over time; their value could also decrease.

who work directly with the state to claim their retirement savings can do so at no cost and keep all of their savings.

Although no data exist on the number of heir-finders operating nationwide, state efforts to regulate them indicate that they are prevalent enough to warrant states' attention. Of states responding to our survey, 19 limit heir-finder or related services after property is transferred to the states, and 11 said they require that heir-finders or related persons are licensed in the state. An unclaimed property official from one state surveyed said that she was concerned about heir-finders who contact owners before savings have even been transferred to the state, adding that these locators are not regulated by anyone. See figure 3 for an example of one state's approach to restricting these fees after property is transferred to the state, which asserts that a finder's fee is "unenforceable" if property claimed has been with the state less than 2 years. An unclaimed property expert we interviewed said that owners can claim their savings at no cost in almost every state, although he noted two states that do charge a fee—one does so based on a percentage of the property claimed while the other can reduce property values to reflect any costs in connection with the sale of the property, efforts to locate the owner, and a "reasonable" service charge.

Figure 3: Example of a State Protecting the Value of Property by Regulating Finders' Fees

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Finder's Fees

The state of [REDACTED] does not charge a fee for returning your property to you. Signing an agreement to have someone assist you in recovering unclaimed property may entail the payment of substantial fees. Effective July 1, 1991, such an agreement is unenforceable in [REDACTED] if it covers property which has been in the state's custody for less than two years.

All services provided by the state Comptroller's Office are free. [REDACTED] law provides that you do not have to pay a fee to anyone for assisting you in recovering any property within 24 months of the date it was turned over to this office. Contracts which provide for a fee for such claims are unenforceable.

Source: A state unclaimed property claims form, obtained by GAO from the state's website. | GAO-19-88

Even though individuals are generally entitled to claim their retirement savings, according to information from unclaimed property experts, not all

owners will be able to do so because savings are sometimes transferred with no owner information, making it difficult for the state to search for the owner. An unclaimed property expert we interviewed said that each year states receive a large amount of unclaimed property without owners' names or addresses. One official responding to our state survey explained that property without owner information is difficult to advertise to potential owners. Another factor that reduces the likelihood of individuals claiming their savings is that some states accept aggregate transfers of multiple relatively small accounts bundled together without information about individual owners.⁵³ States would have no way to link these transfers back to their owners, so they would remain unclaimed unless owners obtain their own records of the transfers from their retirement plans or IRA providers.⁵⁴ Even with a name and address, returning retirement savings can be challenging because, as one state unclaimed property official noted, in his state, it is presumed that holders have already done their due diligence to locate owners when savings are transferred to the state—so owners who were easy to locate typically would not have their savings transferred to the state.

When owners are able to claim their savings from states and avoid heir-finder fees, their retirement income security may still be reduced. That is because the savings claimed from states are no longer in tax-qualified retirement accounts, which permit invested savings to grow tax-deferred over time. That feature is important for individuals to achieve better financial security in retirement.

States responding to our survey use a range of strategies to maintain the value of unclaimed retirement savings. State strategies to maintain the value of savings are consistent with their assertion that the property does

⁵³ According to NAUPA, such aggregate transfers are made up of properties valued at less than \$50 in most states and are not mandatory but are made at the election of the holder.

⁵⁴ An IRS advisory group has twice recommended that the agency add a code to the form used to report transfers out of a retirement plan (the 1099-R), which would convey that savings were transferred to a state as unclaimed property. Such IRS records could potentially help an individual to track down their retirement savings after it is transferred to a state, even if their name was not associated with it—as in the case of these aggregate transfers. IRS officials told us that they are considering adding such a code, but have no timeframe for when that might occur.

not belong to the holder of the savings but to the individual owner.⁵⁵ The most commonly reported strategy used to maintain the value of unclaimed savings is the delayed liquidation of savings received in the form of securities (used by 16 of 22 states responding to our state survey). Some states (7 of 22) apply interest to savings held for owners. (See appendix III for full survey results concerning state treatment of unclaimed property, which includes retirement savings.)

States responding to our survey also use a combination of strategies to locate owners of unclaimed savings. Some of these strategies are required by states' own unclaimed property laws which, according to materials provided by NAUPA, are typically based on some version of the uniform laws on unclaimed property.⁵⁶ For example, the Revised Uniform Unclaimed Property Act from 2016 would require a conforming state to, among other things, publish information about specific unclaimed properties in the newspaper, post property information on a database, and send notification letters. These are indeed among the most commonly reported strategies⁵⁷ for locating owners that were reported by the 22 states that responded to our state survey: 17 publish information in the newspaper; 19 post information to a national database (21 post to their state's own website); and 19 use direct mailings to contact owners.⁵⁸ One state responding to our survey described a tiered-approach whereby owner names for new transfers are uploaded to a web-based information services company nightly for a search of its databases for up-to-date contact information, which is downloaded to the state each morning. For retirement savings of any amount, the state unclaimed property office then sends a letter to any contacts for which it has a new address. For amounts that are \$25,000 or higher, an individual staff person is assigned to track down the owner, according to a state official.

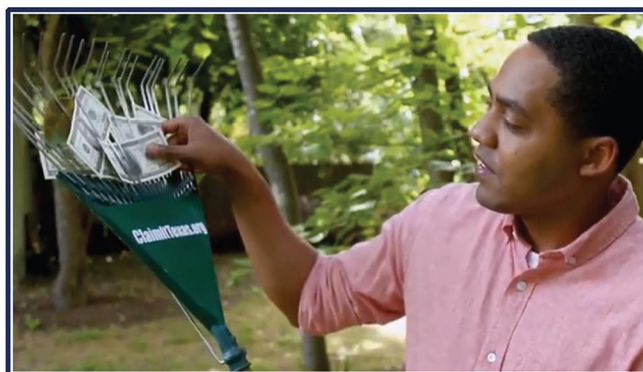
⁵⁵ See Rev. Unif. Unclaimed Prop. Act § 503 (2016) ("Property received by the administrator under this [act] is held in custody for the benefit of the owner and is not owned by the state.") States are not required to follow the Uniform Unclaimed Property Act but, according to materials provided by NAUPA, most have adopted language similar to the model law.

⁵⁶ GAO did not independently review states' unclaimed property laws.

⁵⁷ Response tallies are for states which indicated that a certain strategy was always or sometimes used.

⁵⁸ According to an unclaimed property expert, several states have recently taken action to leverage address records maintained by state and local government agencies—such as those that administer taxes—to improve their ability to locate owners and return property.

Our own search of a database of U.S. newspapers identified relevant articles published in 2017 that corroborate some states' use of news media to educate the public and alert potential owners to the existence of unclaimed property. Nineteen of 22 states responding to our survey reported that they always or sometimes publicize the unclaimed property office on television, which may include newscasts, and also through a state's own educational videos posted to the internet.⁵⁹ Through our own internet search, we found that more than half of all states have produced educational video content to inform the public about unclaimed property and the opportunity to search for and claim property. See our related video.



Watch a related video describing the issue of unclaimed retirement savings transferred to states that shows two examples of state outreach efforts at <https://www.gao.gov/products/GAO-19-88>

IRS and DOL Have Issued Some Guidance About Transferring Retirement Savings to States, but Have Not Clarified Certain Stakeholder Responsibilities or Ensured

⁵⁹ One of the 22 states did not provide any response to the survey question regarding the use of television.

Claimed Savings Can Be Returned to Retirement Accounts

The Internal Revenue Service (IRS) and the Department of Labor (DOL) have issued some guidance related to the transfer of unclaimed retirement savings to the states, but have not addressed certain issues. For example, IRS guidance provides information about the tax withholding requirements applicable to the transfer of IRA savings, and DOL issued regulations that outline certain circumstances under which savings in qualified plans can be transferred to states. However, IRS and DOL have not taken action on key issues that could have implications for the collection of federal tax revenue, as well as individuals' retirement security, respectively. Specifically, IRS has not (1) clarified the tax requirements that apply to transfers of 401(k) savings to states or (2) ensured that individuals from terminated plans can return savings they claim from a state to a retirement account. DOL has not specified whether uncashed distribution checks from active plans may be transferred to states.

IRS Has Not Clarified if Transfers of Certain Unclaimed Retirement Savings are Taxable Distributions and What, If Any, Tax Reporting and Withholding Requirements Apply

IRS has issued regulations and other guidance pertinent to transfers of unclaimed retirement savings to states from IRAs, but has not clarified if transfers of unclaimed retirement savings from employer-based plans such as 401(k) plans are distributions and what, if any, reporting and withholding requirements apply. This in turn could have implications for

the collection of federal income taxes that may be due.⁶⁰ IRS regulations specify federal tax reporting and withholding requirements that apply to distributions from 401(k) plans and IRAs,⁶¹ and IRS recently issued guidance that clarifies tax reporting and withholding requirements that specifically apply to the transfer of unclaimed IRA savings to the states.⁶² (See table 4 for more information about IRS tax withholding requirements and see the sidebar for details on the logistics for withholding taxes from distributions.)

⁶⁰ Department of Labor Field Assistance Bulletin (FAB) 2014-01 and its predecessor, FAB 2004-02, discuss fiduciary duties with respect to missing participants in terminated defined contribution plans, including transfers of retirement savings to state unclaimed property funds. IRS officials said that they and the Department of the Treasury provided input to the Department of Labor on both FABs with respect to tax issues. For example, DOL FAB 2014-01 states that fiduciaries should be aware that transferring a participant's benefits to either a bank account or state unclaimed property fund will subject the deposited amounts to "income taxation, mandatory income tax withholding and a possible additional tax for premature distributions." Although such tax information was included in both the 2004 and 2014 FABs (in the context of terminated DC plans), IRS has not published its own separate guidance stating such tax information with respect to transfers of DC plan assets to state unclaimed property funds. Current federal law allows individuals with account based plans, like 401(k)s, to have the income taxes on their contributions and any market gains on their accounts deferred *until* the funds are distributed. Withholding helps the federal government collect taxes and prevents some individual taxpayers from owing large amounts when they file their tax returns. For more information on federal tax withholding, see GAO, *Federal Tax Withholding: Treasury and IRS Should Document the Roles and Responsibilities for Updating Annual Withholding Tables*, [GAO-18-548](#) (Washington, D.C.: July 2018). Tax reporting also helps to ensure that the federal government collects taxes that are due, as it has been shown to improve the accuracy of income reporting by taxpayers and allows IRS to use automated processes to address noncompliance. See GAO, *Tax Gap: IRS Needs Specific Goals and Strategies for Improving Compliance*, [GAO-18-39](#) (Washington, D.C.: Oct. 2017).

⁶¹ 26 C.F.R. §§ 31.3405(c)-1 Q-1, Q-15, & Q-16 and 35.3405-1T a-12, a-13, & e-1.

⁶² Internal Revenue Service, *Rev. Rul. 2018-17 Withholding and Reporting With Respect to Payments From IRAs to State Unclaimed Property Funds*. IRS officials said that this guidance does not apply to transfers from employer-based plans.

Logistics for withholding taxes from distributions

Under Internal Revenue Service (IRS) regulations, plan administrators are generally responsible for reporting distributions from plans to the IRS and withholding federal income taxes from the amounts distributed. Distributions of retirement savings are reported to IRS on Form 1099-R and a 10 percent tax rate is generally applied to non-periodic distributions from plans. For example, to calculate the amount of federal income tax to withhold and remit to IRS for a one-time distribution of 401(k) funds, the amount of the distribution is generally multiplied by 10 percent. Form 1099-R shows the amount of funds distributed from a retirement account and the amount of taxes withheld from the distribution. In addition to submitting form 1099-R to IRS, plans are required to send it to participants.

Source: GAO analysis of federal law and regulations, relevant IRS guidance, and Form 1099-R. | GAO-19-88

Table 4: Federal Tax Withholding Requirements on Distributions from Retirement Accounts

Source of distribution	Tax Withholding Rate
401(k) plan non-periodic distributions	Generally 10%
Eligible rollover distributions	20%
401(k) plan periodic distributions	Varies, based on the withholding amount individuals select when completing IRS Form W-4P ^a
Traditional IRA non-periodic distributions	Generally 10%
Traditional IRA periodic distributions	Varies, based on the withholding amount individuals select when completing IRS Form W-4P
Roth IRA ^b	Generally 0%

Source: GAO review of relevant IRS guidance. | GAO-19-88

Note: Periodic distributions are those made in installments at regular intervals (such as annually, quarterly, or monthly) over a period of more than 1 year. In some instances, individuals have the option to choose no withholding. Distributions from 401(k) plans that are transferred to a traditional IRA or another eligible retirement plan are generally not subject to tax withholding.

^a Form W-4P, Withholding Certificate for Pension or Annuity Payments, is a form that individuals provide to payers of pensions and annuities to specify the amount of federal income tax to withhold from payments. Form W-4P generally may be used to elect out of withholding on periodic and nonperiodic payments under sections 3405(a) and (b). Also, with respect to periodic payments, if an individual fails to furnish a Form W-4P, a default withholding rate applies under section 3405(a)(4) (for 2018, a rate that assumes the individual is married, with three allowances).

^b Roth IRAs allow eligible individuals to make nondeductible contributions to retirement accounts but generally receive tax-free distributions.

According to May 2018 IRS guidance, certain transfers of unclaimed IRA savings to the states are distributions for tax reporting and withholding purposes, and IRA trustees should apply a 10 percent tax withholding rate to transfers and report them to IRS on Form 1099-R—as they would for other types of non-periodic IRA distributions.⁶³ IRS also issued regulations specifying that in certain instances transfers of retirement plan savings to states do not violate the nonforfeitability requirements, which pertain to employees' rights to keep their employer contributions in their

⁶³ Under the guidance, an IRA trustee will not be treated as failing to comply with these withholding and reporting requirements for transfers made before the earlier of 1) January 1, 2019 or 2) the date it becomes reasonably practicable for the trustee to comply with the requirements. Notice 2018-90, issued November 20, 2018, extends the January 1, 2019 date to January 1, 2020.

retirement accounts.⁶⁴ However, IRS has not clarified if transfers of unclaimed savings from employer-based plans such as 401(k) plans are taxable distributions and what, if any, tax reporting and withholding requirements apply to those transfers.⁶⁵ IRS officials said they have not issued guidance specific to transfers from 401(k)-type plans because the agency is still prioritizing the areas where guidance is needed in light of other priorities.⁶⁶ IRS's mission is to help U.S. taxpayers understand and meet their tax responsibilities and to enforce the law with integrity and fairness.⁶⁷ Officials indicated that they are considering guidance in this area, but did not provide any details on what the guidance might cover or when it might be issued.

Our 401(k) plan service provider survey indicated that, in the absence of specific guidance, some providers are handling transfers of unclaimed retirement savings from plans, including the tax reporting and withholding activities associated with the transfers, in various ways.⁶⁸ Five out of seven service providers reported that they transferred unclaimed savings

⁶⁴ See 26 C.F.R. § 1.411(a)-4(b)(6). IRS officials told us they plan to update these regulations, but did not specify the changes they are making. Plans are permitted to establish vesting policies that require employees to work for a minimum length of time before their employer's contributions become fully nonforfeitable, meaning employees have an unconditional and legally enforceable right to keep their employer contributions if they separate from their job. See 26 U.S.C. § 411(a).

⁶⁵ See the previous sections of the report for details on the circumstances under which unclaimed savings from plans are transferred to the states, such as when plans terminate, and the amount of savings plans transferred to the states in 2016.

⁶⁶ The Department of Treasury's (Treasury) 2017-2018 Priority Guidance Plan released on August 17, 2018, which outlines guidance priorities for Treasury and IRS, mentions "Guidance on missing participants" and cites the recently issued guidance on IRA transfers, but provides no further details on any other types of guidance in this area. Individuals whose retirement savings are transferred to the states because they fail to claim them prior to the expiration of the relevant dormancy period are sometimes referred to as "missing."

⁶⁷ Federal agencies are responsible for establishing and maintaining internal controls to achieve their mission-related and other objectives. Internal control principle 15.03 highlights the need for agencies to communicate quality information externally so that external parties can help them achieve their objectives. Therefore, the issuance of guidance or other information to ensure that external parties, such as 401(k) service providers, are clear on their tax reporting and withholding responsibilities can improve IRS's ability to achieve its mission and is consistent with this internal control principle. For more information on internal control standards, see GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

⁶⁸ We surveyed 32 401(k) plan service providers that are members of the SPARK Institute, an association that represents DC plan service providers.

from 401(k) plans to the states in 2016. Of these five service providers, two indicated that they “never or rarely” reported these transfers to IRS using Form 1099-R or withheld federal income taxes from transferred savings, while two others indicated that they “always or almost always” reported transfers and withheld federal income taxes. The remaining provider indicated that it reported transfers and withheld taxes “about 50 percent of the time.”⁶⁹

Most of the 401(k) plan service providers in our survey also indicated that current federal guidance on the tax reporting and withholding requirements related to the transfer of unclaimed savings from 401(k) plans to the states is not clear and many also indicated that additional guidance is needed. Specifically, most of the providers that rated the clarity of federal guidance on tax reporting and withholding (5 out of 7) said that guidance is “not clear at all”; two indicated that guidance in these areas is “very clear.” Four out of seven 401(k) plan service providers responding to our survey indicated that additional federal tax guidance is needed. For example, one service provider who reported that it “never or rarely” reported to the IRS or withheld taxes from 401(k) savings transferred to the states in 2016 explained that it made assumptions regarding the appropriate tax reporting and withholding requirements and would like clear guidance.

Another service provider who reported that it “always or almost always” reported to IRS and withheld taxes indicated that it would like guidance that clarifies whether it should ask IRS for refunds of taxes withheld from unclaimed savings from 401(k) plans before transferring them to the states. This service provider explained that when plans terminate, it issues distribution checks to all participants for their entire account balance and withholds federal income taxes from these checks. This same service provider pointed out that if these savings are transferred to states as unclaimed property because the checks are not cashed, there is uncertainty as to whether a taxable event occurred since individuals do not actually receive their savings.

Stakeholder groups that we interviewed corroborated the views of the plan service providers that responded to our survey and identified the need for additional guidance on tax reporting and withholding

⁶⁹ For the purposes of this report, we did not assess plan compliance with the Internal Revenue Code.

requirements for 401(k) savings transferred to states. SPARK Institute officials explained that, because IRS has not issued relevant guidance, it is not clear whether a Form 1099-R should be issued and federal income taxes withheld, and that practices vary. SPARK officials indicated that some providers issue a Form 1099-R and that taxes are typically withheld, but pointed out that federal guidance could rectify disagreement within the industry. Similarly, officials from the Investment Company Institute (ICI)⁷⁰ told us that additional federal guidance is needed to clarify whether the transfer of unclaimed 401(k) savings to the states is a taxable event and to identify the relevant tax reporting requirements. ICI also highlighted the need for additional guidance in a letter it submitted to Treasury and IRS officials, which outlined items it believes should be included in Treasury's Priority Guidance Plan.⁷¹

The lack of guidance on whether transfers of unclaimed retirement savings from 401(k) plans to states are taxable distributions that are subject to tax reporting and withholding, and the varying tax reporting and withholding practices that plan providers use as a result, could have implications for the collection of federal income taxes that may be due in light of IRS's recent guidance on transfers from IRAs. If transfers of unclaimed retirement savings from 401(k) plans to the states were considered distributions, just as IRS guidance treats transfers of unclaimed IRA savings to the states as distributions, 401(k) plan service providers would be responsible for issuing a 1099-R and remitting tax withholding on tax-deferred amounts to IRS when transferring savings. However, if this withholding doesn't occur, IRS may be less likely to collect federal income taxes that may be due as a result of these tax-deferred funds being distributed from plans to the states.⁷² Figure 4

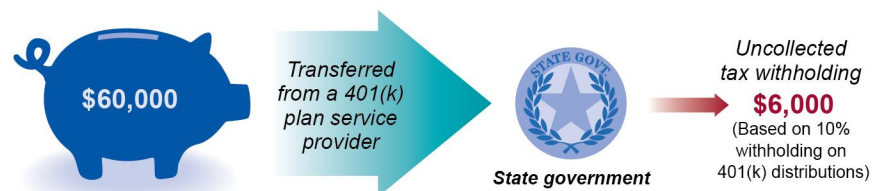
⁷⁰ ICI is an association that represents mutual fund companies. According to its website, ICI members manage total assets of \$22 trillion in the United States, serving more than 100 million U.S. shareholders. According to ICI data, in 2017, about 59 percent of the \$7.7 trillion held in DC plans was invested in mutual funds. Investment Company Institute, 2018 Investment Company Fact Book (Washington, D.C.: 2018).

⁷¹ Investment Company Institute, *Priority Guidance Plan Recommendations on Retirement Security Issues* (May 16, 2016).

⁷² As previously noted, current federal law allows individuals with account based plans, like 401(k)s, to have the income taxes on their contributions and any market gains on their accounts deferred *until* the funds are distributed. Withholding helps the federal government collect taxes and prevents some individual taxpayers from owing large amounts when they file their tax returns. For more information on federal tax withholding, see GAO, *Federal Tax Withholding: Treasury and IRS Should Document the Roles and Responsibilities for Updating Annual Withholding Tables*, [GAO-18-548](#) (Washington, D.C.: July 2018).

illustrates the amount of federal income tax withholding IRS may not collect, assuming this transaction is a taxable event, based on the amount of 401(k) savings transferred to the states in 2016 by a survey respondent who reported that it “never or rarely” withheld taxes from transferred savings.⁷³

Figure 4: Hypothetical Illustration of the Amount of Federal Income Tax Withholding Potentially Not Collected by IRS When \$60,000 in Unclaimed 401(k) Savings Transferred to the States is Not Subject to Tax Withholding



Source: GAO analysis of 401(k) plan service provider survey data and federal regulations. | GAO-19-88

Note: For the purpose of illustrating tax withholding that could potentially not be collected, this hypothetical illustration assumes that the transfer of 401(k) savings to the states is a taxable event in light of recent IRS guidance indicating that transfers of IRA savings to the states are distributions for tax withholding purposes. This illustration also assumes that individuals do not become aware of their transferred savings and take action to pay any taxes due. If, within 60 days of receipt, an individual deposits distributed funds into another qualified account—via an indirect rollover—the distribution is not treated as income for federal income tax purposes. Tax liability for a given year is ultimately based on individuals' particular tax situations, and can be determined when they complete their tax returns. If the transfer of 401(k) savings to the states were not considered a taxable event and taxes were withheld from transferred savings nonetheless, the \$6,000 figure shown above would represent the amount by which retirement savings were reduced when they should not have been.

IRS Has Not Taken Action to Ensure That Savings from Terminated Plans Claimed From States Can Be Transferred Back into Retirement Accounts to Benefit from Favorable Tax Treatment

IRS has not taken steps to ensure that individuals from terminated plans can transfer savings claimed from states back into a retirement account. Our 401(k) plan service provider survey data showed that transfers of retirement savings to the states from 401(k) plans typically included

⁷³ We did not assess taxpayer compliance with the Internal Revenue Code. Individuals are ultimately responsible for paying any taxes that are due. Therefore, if individuals were to become aware of their transferred savings and take action to pay any taxes that are due, IRS would not fail to collect taxes.

savings from terminated plans.⁷⁴ Furthermore, our state survey data show that retirement savings from employer-based plans represent about two-thirds of savings claimed from the states that responded to our survey. When individuals whose plans are terminated claim their savings from the states, they must decide what to do with these savings. One option could be to roll over the savings into a qualified retirement account so the savings continue to be considered tax-deferred; however, IRS's current procedures do not allow this option for savings distributed from a plan unless it occurs within 60 days of when the funds were received.⁷⁵ Under IRS's "self-certification" procedures, individuals may prepare and submit a letter to a plan administrator or IRA trustee—by using a model IRS letter or their own similar letter—to roll over savings into a retirement account after the 60-day rollover deadline, provided they missed the deadline for certain reasons and meet other conditions.⁷⁶ The pre-approved reasons for missing the 60-day deadline include financial institution error, post office error, and the death of a family member, among other reasons, but do not include claiming retirement savings transferred to a state. IRS officials said they have not considered adding this reason to the list of pre-approved reasons because the agency has never received a request to waive the 60-day deadline based solely on the fact that savings were transferred to a state. Since retirement savings become unclaimed as a result of employers being unable to locate individuals and individuals forgetting about their savings, it is not surprising that IRS has not received such a request.

⁷⁴ Of \$2.25 million transferred to states in 2016, \$2.19 million included savings from terminated plans, according to our 401(k) plan service provider survey data.

⁷⁵ Under the Internal Revenue Code, if an individual's retirement savings are distributed from a qualified plan or IRA and transferred to an eligible account within 60 days of receipt, they are excluded from the individual's income for federal income tax purposes.

⁷⁶ Rev. Proc. 2016-47, 2016-2 C.B. 346. IRS officials said that the pre-approved reasons are based on requests the agency has approved on numerous occasions through the private letter ruling process, which allows individuals to apply to IRS for a waiver of the 60-day rollover requirement. IRS officials decide on whether to approve these requests based on an evaluation of the facts and circumstances, and ultimately provide individuals with a letter outlining the agency's decision. However, under the self-certification procedures, individuals do not have to wait to receive a private letter ruling from IRS before making a rollover contribution after the 60-day deadline nor do they have to pay a fee to IRS, as they would under the private letter ruling process. According to IRS guidance, a fee of \$10,000 must accompany every request for a private letter ruling related to the 60-day rollover requirement.

Some individuals from terminated plans whose savings are distributed and later transferred to states may not be able to complete a rollover prior to the end of the 60-day rollover period. An unclaimed property expert and representatives from an industry association told us that terminating plans can transfer unclaimed savings to states prior to the end of the 3-year dormancy period typically required to designate savings as unclaimed property, according to our state survey results.⁷⁷ However, one of seven 401(k) service providers that responded to our survey indicated that it typically waits until the end of a dormancy period before transferring savings to the states after plans terminate.⁷⁸ The provider explained that since it distributes assets from terminating plans through the issuance of checks, it follows state dormancy period rules for uncashed checks and typically waits for the full dormancy period to expire before transferring unclaimed savings to the state. Therefore, since this provider distributes funds by issuing checks to individuals and then waits for the full dormancy period to expire before transferring funds to the states—which can take 3 years according to our state survey data—individuals who claim their savings from a state may be unable to complete a rollover prior to the 60-day deadline, depending on when they are considered to have received the funds. If they are considered to have received the funds during the year in which their distribution checks are issued, or otherwise well in advance of the completion of the dormancy period that would precede the transfer of funds to a state, they may be

⁷⁷ According to an industry association, even though terminating plans can transfer unclaimed savings to states prior to the end of the dormancy period, they must comply with all other state law requirements before transferring funds.

⁷⁸ The provider reported that, as of December 31, 2016, it served 939,105 participants in 401(k) plans and that 254 participants had some or all of their 401(k) savings transferred to the states in 2016. In addition, this provider indicated that it “always or almost always” reported these transfers to IRS using Form 1099-R and withheld federal income taxes from transferred savings.

Statute of limitations

Under federal law, IRS' statute of limitations generally ranges from 2 to 3 years, based on the particular circumstances. 26 U.S.C. § 6511(a). Before the expiration of the statute of limitations, individuals who complete a rollover can obtain a refund for taxes withheld before their retirement savings were distributed when they file their return for a given tax year, or they can file an amended return to obtain a refund for a tax year for which they have already filed a return. According to an unclaimed property expert and industry association representatives we interviewed, distributed savings from terminated plans can be transferred to the states prior to the expiration of the 3-year dormancy period typically applied to retirement savings. Therefore, individuals from terminated plans may be unaffected by IRS's statute of limitations.

Note: For the purpose of illustrating the potential to receive a tax refund after a rollover, transfers of retirement savings to the states are considered distributions in the discussion above since, by definition, a distribution must precede a rollover.

Source: GAO analysis of federal laws, IRS documentation, responses from a state survey and industry documentation. | GAO-19-88

unable to complete a timely rollover after claiming the funds from the state.

Some individuals from terminated plans could benefit from rolling their claimed savings back into a retirement account. Our 401(k) plan service provider survey data show that plan terminations affect participants of all ages. One service provider out of seven survey respondents reported that nearly all of the retirement savings it transferred to the states due to plan terminations was associated with participants younger than RMD age, generally age 70½.⁷⁹ Federal law seeks to protect the interests of participants in retirement plans.⁸⁰ However, without including savings claimed from states among the reasons to allow a rollover after more than 60 days, IRS may be missing an opportunity to allow individuals an avenue to retain their retirement savings in a tax-deferred vehicle after a plan termination. Our prior work has shown that even small amounts of retirement savings can grow substantially over time as a result of compound interest. For example, based on a hypothetical scenario we found that, with reasonable interest rate and other assumptions, \$2,643 in retirement savings for a younger worker can grow to \$85,857 by the time they reach retirement age due to compound interest.⁸¹ In addition, individuals who roll over their savings may be able to get a refund for any federal income taxes withheld before their savings were transferred to a state, provided they roll over their savings and seek a refund prior to the expiration of IRS's statute of limitations.⁸² (See sidebar for more information about IRS's statute of limitations and obtaining a refund for taxes withheld before savings are transferred.)

⁷⁹ This respondent reported that it transferred \$194,288 in unclaimed 401(k) savings to the states in 2016, all of which was attributed to plan terminations; \$190,941 of the amount transferred was associated with participants younger than RMD age. Our survey did not ask respondents to provide the specific ages of participants.

⁸⁰ The Employee Retirement Income Security Act of 1974 (ERISA), the primary statute governing most private sector pension plans, seeks to protect the interests of employee benefit plan participants and their beneficiaries. See 29 U.S.C. § 1001. et seq..

⁸¹ The dollar values above are nominal. We considered individuals between the ages of 18 and 20 to be younger workers. For more information, see GAO, *401(K) Plans: Effects of Eligibility and Vesting Policies on Workers' Retirement Savings*, [GAO-17-69](#) (Washington, D.C.: Oct. 21, 2016).

⁸² To complete an indirect rollover, an individual must roll the remaining 80 percent into a tax-qualified account and will have to contribute funds from other sources to replace the 20 percent withheld or the withholding will count as income subject to federal income tax.

DOL Has Not Specified Whether Active Plans May Transfer Uncashed Distribution Checks to States

DOL has issued regulations and guidance focused on the transfer of unclaimed retirement savings from terminating plans to the states, but it has not clarified issues related to active plans. Under ERISA, DOL is responsible for issuing regulations and guidance to assist plan sponsors and plan fiduciaries with managing qualified retirement plans.⁸³ Current DOL regulations and guidance include the following:

- DOL regulations permit the qualified termination administrator of an abandoned defined contribution plan⁸⁴ to transfer small amounts of retirement savings, \$1,000 or less, to a state unclaimed property fund with the assurance that doing so will not violate ERISA's fiduciary standards, provided plans comply with applicable notice provisions

⁸³ Under GAO's internal control standards, federal agencies are responsible for establishing and maintaining internal controls to achieve their mission-related and other objectives. Internal control principle 15.03 highlights the need for agencies to communicate quality information externally so that external parties can help them achieve their objectives. Therefore, the issuance of guidance or other information to ensure that external parties, such as plan sponsors and fiduciaries, are clear on their responsibilities can improve DOL's ability to fulfill its responsibilities under ERISA and is consistent with this internal control principle.

⁸⁴ According to information on DOL's website, an abandoned plan is generally a plan without a responsible plan sponsor or plan administrator and a qualified termination administrator is the asset custodian (such as a bank, insurance company, or other similar financial institution) that terminates the plan. See Employee Benefits Security Administration, United States Department of Labor, *FAQs About the Abandoned Plan Program*, available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/abandoned-plan-program.pdf>.

and the participants and beneficiaries fail to elect a form of distribution within 30 days of the furnishing of the notice.⁸⁵

- DOL guidance related to a state's unclaimed property law expresses DOL's view that ERISA preempted the state's law as it related to requiring a plan to transfer unclaimed amounts held in plan accounts to the state—meaning the plan was not required to transfer the funds to the state.⁸⁶
- DOL guidance, however, explains when such transfers of any amount from terminating plans are allowed, if other distribution options (such as a rollover to an IRA) are not available, provided plans properly search for participants prior to transferring their savings.⁸⁷

DOL, however, has not clarified whether active plans may transfer uncashed distribution checks to the states under ERISA.⁸⁸ Federal law provides some guidelines for the actions that active plans may take when account owners leave behind retirement savings, but these guidelines do not cover all scenarios that involve uncashed checks. For instance, federal law permits active plans to cash out balances of \$1,000 or less that are left behind, but it does not specify whether these funds can be

⁸⁵ See 29 C.F.R. § 2550.404a-3(d)(1)(iii) and 29 C.F.R. 2578.1. 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, or have the authority or responsibility to render, investment advice for a fee or other compensation with respect to plan money or property, or (3) have any discretionary authority or responsibility for plan administration. See 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 governing the plan, insofar as such documents are consistent with ERISA. See 29 U.S.C. § 1104(a). According to DOL, a plan's decision regarding what to do with unclaimed retirement savings—which can include transferring these savings to the states—is a decision that is subject to ERISA's fiduciary standards.

⁸⁶ See DOL Advisory Opinion 1994-41A, Dec. 7, 1994. DOL reached this conclusion based on its belief that plan compliance with state unclaimed property laws would directly affect the core plan functions by reducing, through the transfer of savings to the states, the amount of plan assets held in trust for the benefit of all participants and beneficiaries of the plan. In general, DOL advisory opinions apply the law to a specific set of facts.

⁸⁷ DOL, *Field Assistance Bulletin 2014-01* (Washington, D.C.: 2014).

⁸⁸ For the purposes of this report, when we refer to the transfer of uncashed checks to the states, we are not referring to the physical checks themselves, but rather the funds underlying the checks.

transferred to the states if account owners never claim them.⁸⁹ As noted earlier, many uncashed checks could fall within this dollar threshold, as our state survey shows that the average dollar value of savings transferred to 17 states in 2016 from “retirement plan checks” (which is comprised of uncashed checks) was \$301. DOL officials said that they have not provided specific fiduciary guidance on when uncashed checks can be transferred from active plans to state unclaimed property funds, but are considering the appropriate prioritization of such guidance within the context of a broader range of missing participant issues being raised by various stakeholder groups, such as search requirements and updating plan records, among other things.

Recent state actions suggest that states are not clear on whether uncashed checks from active plans can be transferred to the states, which could affect whether participants claim their savings. For example, California, the largest state in the United States based on population, submitted a letter to DOL that requests an advisory opinion on whether active plans may transfer uncashed checks to the states as unclaimed property without violating ERISA. According to DOL officials, between 20 and 30 other states wrote letters to DOL in support of California’s request. In its letter to DOL, California’s Controller indicated that the uncertainty over whether states can receive uncashed checks as unclaimed property is partly due to a lack of clarity regarding whether the funds underlying uncashed checks remain plan assets.⁹⁰ The letter states that neither ERISA nor its regulations explicitly address whether uncashed checks issued to DC plan participants are plan assets, and, according to the letter, if DOL does not clarify these issues, plans do not have a way to definitively terminate their fiduciary responsibilities as long as the checks remain uncashed.

In addition, according to California’s letter, if plans do not transfer uncashed checks to the states, key information such as the name of the

⁸⁹ See 26 U.S.C. § 401(a)(31)(B).

⁹⁰ According to California’s letter, the federal courts have held that ERISA preemption does not preclude the application of state unclaimed property laws to participant distributions unless those disbursements are considered “plan assets.” In other words, the California letter argues that, to the extent distributions are not plan assets, they may not be covered by the ERISA preemption clause, which would ordinarily give plans the option to forgo transferring retirement savings to the states as unclaimed property. Controller of the State of California, *Re: Request for Advisory Opinion Pursuant to ERISA Procedure 76-1* (June, 7, 2017).

participant to whom the check was issued can be lost.⁹¹ If this type of information is lost, individuals may be less likely to ever claim their savings, which would reduce the amount of money they have for retirement.⁹² In light of these issues, California's letter indicated that transferring uncashed checks to the states is a prudent option for reuniting individuals with their retirement savings. DOL officials said they plan to respond to California's request and that their response will be made public, but did not specify what would be included in their response or when they will issue it. Regarding the scope of advisory opinions, DOL officials said that they are not precedent for others—meaning they only apply to the entities that requested them.

Through our 401(k) plan service provider survey and review of documents from relevant industry associations, we also found that 401(k) plan service providers, who are responsible for deciding an appropriate action if checks are not cashed, are not certain whether uncashed checks from active plans can be transferred to the states. For instance, four of seven 401(k) plan service providers responding to our survey indicated that additional federal guidance on transferring unclaimed 401(k) savings to the states is needed, with one reporting specifically that guidance on whether the transfer of uncashed checks to the states is acceptable under ERISA is needed.⁹³ In addition, ICI highlighted the need for DOL guidance on uncashed checks, saying that DOL issued guidance for terminating plans that permits 401(k) providers to transfer uncashed checks to states, but it has not done so for active plans.⁹⁴

⁹¹ For example, according to California's letter, when some plans issue checks to participants, the underlying funds are retained in an account outside of the plan that is maintained by a service provider. The letter indicates that if checks are not cashed, the underlying funds are retained in this outside account and, in many cases, never returned to the plan. Over time, and as a result of systems conversions, the letter argues that critical data elements (such as participant names and addresses and the name of the plan that issued the checks) may become compromised or purged altogether.

⁹² As noted in the background section of this report, uncashed checks can include checks that are issued when individuals reach RMD age, which is generally age 70½.

⁹³ As of December 31, 2016, this provider managed \$250 billion in 401(k) savings for 2 million participants.

⁹⁴ Investment Company Institute, *Re: Proposed Rules on Missing Participants RIN 1212-AB13* (Nov. 21, 2016). For DOL's guidance for terminating plans, see United States Department of Labor, *Field Assistance Bulletin 2014-01* (Washington, D.C.: 2014).

According to these officials, in the absence of guidance, some plans transfer uncashed checks to the plan's forfeiture account. They said that this is not ideal because plans are required to deplete the funds in a forfeiture account, rather than allow them to accumulate, but would also have to use the funds to pay participants if they are eventually located. Transferring uncashed checks to a forfeiture account—rather than transferring them to a state—could also affect the likelihood of individuals claiming their savings. According to one large 401(k) service provider that typically transfers uncashed checks to a forfeiture account, it is not clear whether a plan sponsor, in its role as a fiduciary, has an obligation to search for individuals to whom checks are owed.⁹⁵ To the extent that plans do not search for these individuals, they may be less likely to ever claim their savings.⁹⁶ ICI recommended that DOL either clarify that the current guidance for terminating plans applies to active plans or issue parallel guidance for active plans. In addition, officials from the SPARK Institute, an association that represents 401(k) plan service providers, told us the same thing, that additional DOL guidance is needed because the agency has not clarified whether uncashed distribution checks are plan assets and therefore whether they can be transferred to the states.

Conclusions

Retirement savings may go unclaimed by account owners who are unaware of or unable to locate their savings as they change jobs, move, and age. Since unclaimed retirement savings may be transferred to states, this issue affects not only the account owners, but also the retirement industry and states. GAO has previously recommended that Congress make it easier for individuals to keep their savings in an employer's plan by requiring plans to include rollover balances when determining what balances are small enough to force out of the plan. Such an action would make fewer retirement savings accounts subject to transfer to the state. Action on the part of IRS and DOL could help ensure that federal taxes are properly applied to transfers and better protect the retirement security of the many individuals affected by these transfers every year.

⁹⁵ This service provider was among the 10 largest providers in the nation based on total DC assets, according to 2016 industry data.

⁹⁶ As noted in the first section of this report, states use a variety of strategies to locate owners of unclaimed savings.

IRS has provided guidance on the tax reporting and withholding requirements for transfers from IRAs, but it has not done so for 401(k) plans. Without IRS clarification on whether transfers should be reported to IRS as distributions and when they should be subject to federal income tax withholding, not all plan service providers can be certain about the appropriate actions to take. The action providers take not only may affect the collection of federal income tax withholding, it can directly affect individuals' retirement security. If transfers of savings to the states from tax-deferred 401(k) accounts constitute distributions and federal income tax withholding is not applied, IRS is less likely to collect federal income taxes that may be due.

Individuals from terminating plans may have their retirement savings transferred to states, but may not always be able to return their savings to a qualified retirement account after they claim them from a state. IRS can help protect account owners' retirement security by permitting them to roll over savings that they have claimed from states. However, IRS should modify its procedures that allow individuals to rollover savings after the 60-day deadline to ensure that individuals who claim their savings from a state can complete a rollover. Without the ability to roll over savings, individuals miss out on the opportunity to grow their savings tax-deferred.

Further, DOL has not specified whether uncashed 401(k) plan distribution checks can be transferred to the states as unclaimed property under ERISA. This clarification would help both states and retirement plan service providers better navigate the available options for managing these checks. Clear options could result in better outcomes for the account owners, since the options may increase the likelihood of the owners receiving their retirement savings.

Recommendations for Executive Action

We are making a total of three recommendations, including two to IRS and one to DOL.

The IRS Commissioner should work with the Department of the Treasury to consider clarifying if transfers of unclaimed savings from employer-based plans (such as 401(k) plans) to states are distributions, what, if any, tax reporting and withholding requirements apply, and when they apply. (Recommendation 1)

The IRS Commissioner should work with the Department of the Treasury to consider adding retirement savings transferred to states from terminating DC plans to the list of permitted reasons for rolling over savings after the 60-day rollover period, in a form consistent with the rules adopted on the taxation of transfers of unclaimed retirement savings. (Recommendation 2)

The Secretary of Labor should specify the circumstances, if any, under which uncashed distribution checks from active plans can be transferred to the states. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of the Treasury (Treasury), the Internal Revenue Service (IRS), and the Department of Labor (DOL). Treasury, IRS, and DOL provided technical comments, which we have incorporated where appropriate. IRS and DOL provided formal comments, which are reproduced in appendixes IV through V.

IRS agreed with our recommendations. In its formal comments, IRS stated that it will work with Treasury to consider clarifying the issues raised by our first recommendation and addressing the issues outlined in our second recommendation. We are pleased that IRS has agreed to take the actions we have recommended. As noted in our report, there is confusion in the industry regarding the applicability of tax reporting and withholding to transfers of unclaimed savings from active plans to the states. Further, some individuals who claim their savings from a state may not be able to return them to a qualified retirement account where they can continue to be invested on a tax-deferred basis.

In its formal comments, DOL neither agreed nor disagreed with our recommendation. However, DOL stated it plans to continue to evaluate whether there are circumstances in which the transfer of uncashed distribution checks from an ongoing plan to the states advances the goal of reuniting missing participants with their savings, which is consistent with our recommendation. We commend DOL for recognizing the importance of this issue and continue to believe our recommendation is valid. As we noted in our report, assets and uncashed checks from employer-based DC plans were the most common form of retirement savings transferred to states according to our survey of state unclaimed property offices.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretaries of Labor and Treasury and the Commissioner of the Internal Revenue Service. 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 VI.

Sincerely yours,

A handwritten signature in black ink, reading "Charles Jeszeck". The signature is fluid and cursive, with the first name "Charles" and last name "Jeszeck" clearly distinguishable.

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

Appendix I: Objectives, Scope, and Methodology

This report examines (1) how much retirement savings is transferred to states as unclaimed property and what happens to those savings once transferred; and (2) the steps that the Internal Revenue Service (IRS) and the Department of Labor (DOL) have taken to oversee the transfer of unclaimed retirement savings to the states and what improvements, if any, are needed.

To determine how much retirement savings is transferred to the states as unclaimed property, we focused our analysis on the transfer of savings from 401(k) plans and individual retirement accounts (IRAs)¹ and conducted three surveys as well as obtained data from four large IRA providers.

- First, we surveyed the unclaimed property offices in all 50 states as well as the District of Columbia (our state survey) to obtain the number and dollar value of unclaimed savings from retirement accounts both transferred to states and claimed by owners in 2016, the most recent year for which complete data were available at the time of our review. We received survey responses from 22 states, representing 57 percent of the nation's total population. Of those 22 states, 17 provided transfer data. These 17 states represent 46 percent of the total population. Responses from states we surveyed are not generalizable across all states.
- Second, to supplement the data we obtained from responses to our state survey and to corroborate those findings, we surveyed members of two private industry associations—the Investment Company Institute (ICI) and the SPARK Institute—to collect data on the number of individuals who had some or all of their retirement savings transferred to the states in 2016 from IRAs and 401(k) plans, and the

¹ Several experts we interviewed said they do not believe that defined benefit pension plans typically transfer unclaimed retirement benefits to states. An official from the National Association of State Retirement Administrators told us that, based on his experience, public state and local government retirement plans do not transfer unclaimed benefits to other states' unclaimed property offices. An unclaimed property expert that we interviewed also told us that such transfers do not occur.

dollar value of those transfers.² Throughout the report, we refer to these surveys as our IRA transfer agent survey and 401(k) plan service provider survey, respectively.

- We selected ICI and SPARK primarily based on the large amount of assets their members manage and their knowledge of the retirement industry. Based on our discussions with ICI and SPARK officials, we conducted the surveys anonymously, meaning we did not require survey respondents to provide their name or contact information. To further ensure anonymity, ICI and SPARK distributed our survey to their members and respondents submitted their surveys via a portal, which prevented us from seeing the identity of the survey respondent. To collect IRA transfer data, we provided a web-based survey to 129 transfer agent members of ICI.³ In total, we received responses from 21 companies that collectively managed \$299 billion in IRA assets in 2016, which is about 4 percent of the total IRA market, based on 2016 industry data.⁴ Responses from these 21 companies are not generalizable across all transfer agent companies. To collect data specific to 401(k) plan transfers, we provided a web-based survey to all 32 of SPARK's member companies that serve 401(k) plans. We received responses from 7 companies that collectively managed more than \$580 billion in 401(k) assets in 2016 (one survey respondent did not report the amount of assets managed), which is more than 13 percent of total 401(k) assets nationwide, based on DOL data.⁵ Responses from these 401(k) plan service providers are not generalizable across all 401(k) plan service providers.

² ICI is an association that represents mutual fund companies. According to ICI officials, the amount of IRA assets managed by their mutual fund company members accounts for most of the assets under management in the IRA industry. The SPARK Institute is an association that represents DC plan service providers. SPARK members include 401(k) record keepers as well as representatives from mutual fund companies and investment brokerage firms, and serve approximately 85 million participants in 401(k) and other DC plans.

³ The IRA transfer agent survey was also sent to some mutual fund companies, but ICI officials told us that these companies' transfer agents would respond on their behalf. Therefore, for reporting purposes, we are referring to the 129 survey recipients as transfer agents.

⁴ Cerulli Associates, *The Cerulli Report: U.S. Evolution of the Retirement Investor 2016: Regulation and Investor Addressability*.

⁵ DOL, *Private Pension Plan Bulletin: Abstract of 2015 Form 5500 Annual Reports (data extracted on 7/7/17)* February 2018. These were the most recent DOL data available at the time of our review.

- To obtain further insight into the amount of retirement savings transferred to the states, we collected nongeneralizable 2016 IRA transfer data from four companies that are large IRA providers, based on the amount of IRA assets managed.⁶ In recent years, these companies collectively managed over \$1.4 trillion in IRA assets,⁷ which is about 18 percent of total IRA assets, based on 2016 industry data.⁸ Specifically, we collected data on the number of IRA accounts transferred to the states in 2016 and the dollar value of those transfers. Since these companies are also large defined contribution (DC) plan service providers, based on the amount of assets they manage and the number of plan participants they serve, we also collected data from them on the number of 401(k) plan participants who had some or all of their retirement savings transferred to the states in 2016 and the total dollar value of those transfers.

To determine what happens to unclaimed retirement savings after they are transferred to the states, we collected relevant data through our state survey, reviewed online state media outreach efforts, and interviewed industry and state officials. Through our state survey, we collected information on the steps states take to preserve the value of unclaimed retirement savings in their custody (e.g. applying interest) as well as the steps they take to locate the owners of retirement savings, such as posting information online and in newspapers as well as conducting outreach at public events. We interviewed officials from the National Association of Unclaimed Property Administrators (NAUPA),⁹ officials from a large state, and unclaimed property experts to gain further insight on how unclaimed retirement savings are handled after states receive them, such as how quickly they liquidate securities in instances where retirement savings are transferred in the form of securities rather than cash. To corroborate state survey responses related to the steps taken to locate owners, we searched a database of U.S. newspapers and used an internet search engine to identify related articles published in 2017 and analyzed them to determine whether they represented examples of

⁶ We requested data from a fifth company, but they declined our request.

⁷ One company actually provided 2017 data on the amount of IRA assets managed, another provided 2015 data, while the remaining two companies provided 2016 data.

⁸ Cerulli Associates, The Cerulli Report: U.S. Evolution of the Retirement Investor 2016: Regulation and Investor Addressability.

⁹ NAUPA's hundreds of members are unclaimed property officers from D.C. and all 50 states.

outreach activities related to unclaimed property. We also verified the existence and general content of each state's unclaimed property office website. We did not do a comprehensive review of state laws. Therefore, our statements about state unclaimed property laws are based on our review of available literature and information from unclaimed property experts.

To determine the steps that IRS and DOL have taken to oversee the transfer of unclaimed retirement savings to the states and identify potential areas for improvement, we reviewed relevant federal laws and regulations and documentation from IRS and DOL, including guidance pertinent to the transfer of unclaimed retirement savings to the states. In addition, we included questions in our state, ICI, and SPARK surveys that asked for perspectives on issues pertinent to IRS and DOL oversight. Specifically, we included questions in our state survey that asked states to indicate whether additional federal guidance on tax reporting and withholding for unclaimed retirement savings would be useful. In addition, we included questions in our ICI and SPARK surveys that asked respondents to (1) evaluate the clarity of federal guidance regarding whether transfers of retirement savings to the states should be reported to the IRS as distributions and subject to tax withholding, and (2) identify areas where additional federal guidance is needed. To supplement our review of agency documentation and survey data, we interviewed officials from IRS and DOL to gain further insight on the steps they have taken to oversee transfers of retirement savings to the states. We also interviewed private sector officials from three retirement industry associations –ICI, the Securities Industry and Financial Markets Association (SIFMA),¹⁰ and SPARK –as well as state officials to obtain industry and state perspectives on IRS and DOL oversight of the process for transferring unclaimed retirement savings to the states.

Survey Analysis and Limitations

State survey. To minimize errors and assure the validity of our questions, we conducted pretests with four states' unclaimed property officers as well as with the two largest providers of unclaimed property tracking software, which is used by more than 40 states. We made adjustments to

¹⁰ SIFMA is an association that represents broker-dealers, banks, and asset managers. According to SIFMA's website, the association's members manage more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans.

the survey questions based on feedback from these pretests. To assess the quality of the survey data, we included questions in the survey that asked state officials to identify the source of their data, assess the accuracy of holder's use of property codes (which are used to identify the specific type of property—in this case, retirement savings—that holders transfer to a state) as well as the completeness of the data on the number and value of properties transferred, and to explain any other data concerns.

To analyze the state survey responses, we conducted standard calculations and reviewed written responses. We excluded data from our calculations, as needed, based on data limitations that we observed. For example, one state provided the value of all retirement savings transferred to the state irrespective of the year in which it was transferred, so we excluded their data from our quantitative analysis since we focused on fiscal year 2016. We did not conduct an independent review of the quality of the data states provided. Nonetheless, we determined that the data are of sufficient quality for our purposes, which are to aggregate state transfer data and provide a sense for the volume of such transfers.

The state survey data are not generalizable and must be considered in light of a few data limitations:

- Our state survey was voluntary, so we did not receive survey responses from every state. Therefore, the aggregate data we report is not the national total for the amount of unclaimed retirement savings transferred to states.
- Holders (e.g. retirement plans and IRAs) may not use accurate property-type codes when transferring unclaimed retirement savings to the states and the states' knowledge of what types of property they have is limited to the codes holders use. Because of the lack of controls in place, some property is likely miscoded and neither the states responding to our survey nor we were able to determine the prevalence of these errors or if they are likely to overstate or understate the amount of savings reported with specific codes. Additionally, holders may apply property-type codes differently because, as NAUPA officials told us, there is no single, common explanation for how each code should be used.
- For certain property-type codes, states cannot identify the type of retirement plan from which savings were transferred. For example, if a property has a "pension check" property-type code, the state does not know if the property was from a defined benefit or a DC plan. The

states' data do not specifically identify DC plans and uncashed distribution checks from these plans as the sources of the unclaimed property they received from employer retirement plans, but based on our interviews with state officials as well as unclaimed property experts we determined that these are the most likely and common sources.

IRA Transfer Agent and 401(k) Plan Service Provider Surveys. In line with the approach taken for our state survey, we conducted pretests for both surveys to minimize errors arising from differences in how questions might be interpreted and to reduce variability in responses that should be qualitatively the same. For the IRA transfer agent survey, we conducted pretests with two different types of transfer agents: one affiliated with a large mutual fund company and another that is affiliated with a mutual fund company, but outsources certain functions to a third party, unaffiliated transfer agent. For the 401(k) plan service provider survey, we conducted pretests with a 401(k) plan record keeper that primarily serves larger plans and another that primarily serves smaller plans. Our pre-test approach allowed us to obtain varying perspectives on both surveys. GAO staff with expertise in survey design also reviewed both surveys for content and consistency. Based on feedback from these pretests, we revised the surveys to improve question clarity and content.

To analyze the survey data, we used standard descriptive statistics. Because this was not a sample survey, there were no sampling errors. To minimize other types of errors, commonly referred to as non-sampling errors, and to enhance data quality, we employed recognized survey design practices in the development of the survey and in the collection, processing, and analysis of the survey data. For instance, as previously mentioned, we pretested the survey with individuals internal and external to GAO to enhance the clarity of our questions, which minimizes the likelihood of errors arising from differences in how questions might be interpreted and helps to reduce the variability in responses that should be qualitatively the same. To help reduce nonresponse, another source of non-sampling error, we asked ICI and SPARK officials to send reminder emails to their members on multiple occasions to further encourage them to complete the surveys. In reviewing the survey data, we performed automated checks to identify inappropriate answers. We further reviewed the data for ambiguous responses and followed up with respondents to clarify their responses when necessary. To assess the quality of the data captured in both surveys, we included questions in the surveys that asked respondents to identify the data sources they consulted and any data limitations. On the basis of our application of recognized survey design

practices and follow-up procedures and subject to the limitations outlined below, we determined that the survey data were of sufficient quality for our purposes.

Key data limitations for the IRA transfer agent and 401(k) plan service provider surveys include our lack of direct access to the target population, the potential for respondents to submit multiple responses, and the lack of generalizable responses.

- First, it is possible that individuals outside of our target population completed the surveys because survey respondents in our target population could have forwarded the survey link to others. However, to help address this possibility, we built checks into the surveys to confirm who received them. For example, both surveys included questions that asked respondents to confirm their roles (i.e., IRA transfer agent, 401(k) plan record keeper).
- Second, because we conducted the surveys anonymously, we could not verify that respondents did not submit more than one survey response. However, to mitigate this concern, ICI and SPARK officials specifically asked their members to submit only one response.
- Third, the transfer agents and plan service providers that completed the surveys are voluntary members of ICI and SPARK, respectively. Therefore, they may differ from companies that are not members of these organizations in terms of their knowledge of or concern about the issues addressed in the surveys, which has implications on their survey responses. As a result, the data and views reported in the surveys are not generalizable.

Appendix II: Table Comparing Sources of Data on Unclaimed Retirement Savings Transferred to States in 2016

Table 5: Sources of Data on Unclaimed Retirement Savings Transferred to States in 2016

Data source	Coverage	Number of transfers of retirement savings ^a in 2016	Dollar value of transfers of retirement savings in 2016 (rounded)
GAO survey of 50 states and D.C.	22 states responded, with populations that make up 57% of the U.S. population. 17 provided data on retirement savings transferred.	53,725 properties	\$35 million ^b
GAO survey of 401(k) plan service providers	7 companies responded; these companies provide services for more than ^c 13% of total 401(k) assets nationwide. 5 provided data on transfers to states. 2 reported they do not make such transfers.	16,221 individuals	\$2 million
GAO survey of IRA transfer agents, mutual fund companies, and related providers	21 transfer agents, covering 4% of total IRA assets nationwide.	1,057 individuals	\$13 million
Data shared by additional Individual Retirement Account (IRA) providers ^d	4 IRA providers that manage 20% of total IRA assets nationwide.	1,606 accounts	\$17 million ^e

Source: GAO analysis of survey and industry data, including 2016 population data from the U.S. Census and 2015 data on market size from Cerulli. | GAO-19-88

^a These transfer data reflect retirement savings related properties transferred, individuals who had some or all of their savings transferred, and accounts transferred. The exact measure used varied depending on the entity that shared the data. The retirement savings of one individual could be transferred to the states in more than one transfer because different assets are sent separately. For example, the savings in a single IRA could be split up by investment funds and transferred to the state as multiple, separate properties which belong to one owner. State data may understate the actual total number of properties transferred in 2016 because the data exclude properties sent in aggregate—some states permit holders to send small properties as a group, without identifying the underlying individual account owners. The data across all of our surveys cannot be added together

**Appendix II: Table Comparing Sources of Data
on Unclaimed Retirement Savings Transferred
to States in 2016**

because there could be double counting between the accounts transferred by IRA providers, for example, and the properties received by states.

^b The dollar value of transfers is the minimum value because savings transferred in shares of a mutual fund may not have an associated value recorded at the time of transfer. For example, the dollar value of mutual fund shares transferred to several states responding to our survey is not reflected in this number.

^c Of seven survey respondents, just six provided data on their assets under management, meaning that this percentage of the total market under management by survey respondents underreports the actual percentage.

^d These providers shared IRA transfer data outside of our survey of IRA providers.

^e The dollar value of transfers is imprecise because two companies provided estimates and one provided 2015 data.

Appendix III: Actions States Take to Maintain the Value of Unclaimed Property and to Locate and Protect Owners

Table 6: Actions States Take to Maintain the Value of Unclaimed Property and to Locate and Protect Owners, Based on 22 State Responses to a GAO Survey

n/a Category	State Survey Response	
	Always or sometimes	Never
State actions to maintain value of unclaimed property: Apply state-paid interest on the value of unclaimed property (not including interest earned by the asset)	7	14
State actions to maintain value of unclaimed property: Delay liquidation of property	16	6
State actions to maintain value of unclaimed property: Immediate liquidation of property	10	12
State actions to locate owners of unclaimed property: Staff identify and attempt to contact owners	17	2
State actions to locate owners of unclaimed property: Direct mailing to individuals with unclaimed property	19	3
State actions to locate owners of unclaimed property: Check the Social Security Administration's Death Master File and search for beneficiaries	6	13
State actions to locate owners of unclaimed property: Hire a third party to search the Death Master File and search for beneficiaries	5	17
State actions to locate owners of unclaimed property: Post unclaimed property information on www.MissingMoney.com	19	3
State actions to locate owners of unclaimed property: Post unclaimed property information on your state's own searchable website	21	1
State actions to locate owners of unclaimed property: Use Lexis Nexis to search for property owners	20	2
State actions to locate owners of unclaimed property: Publicize the unclaimed property office via television	19	2

**Appendix III: Actions States Take to Maintain
the Value of Unclaimed Property and to Locate
and Protect Owners**

n/a Category	State Survey Response	
	Always or sometimes	Never
State actions to locate owners of unclaimed property: Publicize the unclaimed property office at public events (e.g. state fairs)	20	2
State actions to locate owners of unclaimed property: Advertise the unclaimed property office in the newspaper	17	3
State actions to locate owners of unclaimed property: Advertise specific properties in the newspaper	10	11
State actions to protect owners of unclaimed property: Limit finder-fees	17	5
State actions to protect owners of unclaimed property: Require that investigators, asset locators and/or heir-finders are licensed in your state	11	11
State actions to protect owners of unclaimed property: Limit heir-finder or related services before property is transferred to the state	7	15
State actions to protect owners of unclaimed property: Limit heir-finder or related services after property is transferred to the state	19	3

Source: GAO survey data from 22 states. | GAO-19-88

Note: State responses of "Don't Know" are not included above. Some states did not respond to each item, so answers do not always total 22.

Appendix IV: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

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

December 14, 2018

Charles A. Jeszeck
Director, Education, Workforce, and Income Security Issues
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 of the Government Accountability Office entitled "**Retirement Accounts: Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States**" (GAO-19-88, Job Code 101190). As noted in your report, states receive millions in unclaimed retirement savings each year from a variety of sources, including employer-sponsored plans and IRAs, and in a variety of forms, such as cash and securities. The IRS shares enforcement responsibility for the Employee Retirement Income Security Act of 1974 with the Department of Labor, and we look forward to future collaboration with the Department of Labor as we address these retirement issues.

The IRS and the Department of the Treasury previously provided input to the Department of Labor on their Field Assistance Bulletins (FABs) 2004-02 and 2014-01 regarding "Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans." Those FABs included discussion regarding payments from terminated defined contribution plans to state unclaimed property funds. More recently, the IRS issued Rev. Rul. 2018-17 and Rev. Rul. 2018-90, which address tax withholding and reporting obligations in the case of traditional IRAs that are paid to state unclaimed property funds. Also, Treasury's 2018-2019 Priority Guidance Plan contains a "Retirement Benefits" project entitled "Guidance on Missing Participants."

The draft report makes two recommendations to the IRS. With respect to the first recommendation, the IRS will work with the Department of the Treasury to consider clarifying if transfers of unclaimed retirement savings from employer-based plans (such as 401(k) plans) to states are distributions, what, if any, tax reporting and withholding requirements apply, and when they apply. With respect to the second recommendation, the IRS will work with the Department of the Treasury to consider adding retirement savings transferred to states from terminating defined contribution plans to the list of permitted reasons for rolling over savings after the 60-day rollover period in a form consistent with the rules adopted on the taxation of transfers of unclaimed retirement savings.

2

We appreciate the valuable feedback you have provided. If you have questions, please contact me, or a member of your staff may contact Catherine L. Jones, Acting Director, Employee Plans at 202-317-8700.

Sincerely,



Kirsten B. Wielobob,
Deputy Commissioner for
Services and Enforcement

Appendix V: Comments from the Department of Labor

**Appendix V: Comments from the Department
of Labor**

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210



DEC 03 2018

Charles A. Jeszeck
Director, Education, Workforce and Income Security
Government Accountability Office
Washington D.C. 20548

Dear Mr. Jeszeck:

Thank you for the opportunity to review the Government Accountability Office's draft report entitled "Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States." The draft report contained one recommendation for the Department of Labor. Specifically, you recommend that the Secretary of Labor specify the circumstances, if any, under which uncashed distribution checks from active retirement plans can be transferred to state unclaimed property funds.

Under the Employee Retirement Income Security Act (ERISA), plan fiduciaries have a duty to pay workers their promised retirement benefits when due. Plan fiduciaries have a related duty to maintain accurate records, including plan participant contact information, and must search for missing plan participants. The goal of the Employee Benefits Security Administration's (EBSA) enforcement activities and guidance initiatives in this area is to help plans locate and pay retirement benefits to missing participants and beneficiaries. In our view, eliminating, or at least very substantially reducing, the number of uncashed distribution checks is the best solution.

EBSA has received letters from state treasurers and controllers concerning their unclaimed property funds and my staff has personally met with representatives of several states. We have also met with representatives of plans, employers, financial services groups, and consumer groups. Additionally, legislative proposals have been introduced in Congress. As you might expect, different stakeholders have different perspectives on the issues involved.

There may be ways that state unclaimed property funds can help us do more in this area. We plan to continue to evaluate whether there are circumstances in which transfer of uncashed distribution checks from an ongoing plan to a state unclaimed property fund advances the goal of reuniting missing participants with their retirement savings. The fact that not all state unclaimed property laws are the same presents challenges for identifying a uniform, nationwide approach. Guidance in this area also may require notice and comment rulemaking, and will need to be coordinated with the Department of the Treasury/Internal Revenue Service on inter-related tax compliance issues.

Thank you again for sharing your draft report and recommendation. Please be assured that we are focused on solutions that serve the best interests of America's workers.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Rutledge", written over the word "Sincerely,".

Preston Rutledge
Assistant Secretary

Appendix VI: 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), Sherwin Chapman (Analyst-in-Charge), and Angie Jacobs made key contributions to this report. Also contributing to this report were James Bennett, Edward Bodine, Colson Campbell, Michael Clements, Nina Daoud, Keyasia Downs, Holly Dye, Aaron Harmon, Kirsten Lauber, Sheila R. McCoy, Michael Naretta, Carl Ramirez, Marylynn Sergent, Adam Wendel, and Christopher Zbrozek.

Appendix VII: Accessible Data

Data Tables

Accessible Data for Stakeholders Described How Retirement Savings Are Transferred to and Claimed from States

1. Retirement savings inactive for 3 to 5 years after distribution required sent to state unclaimed property office
2. Check issued from employer-based plan that is not cashed sent to state unclaimed property office
3. State unclaimed property office sends savings to owner.
4. Owner can generally claim savings at no cost

Accessible Data for Figure 1: According to Stakeholders, Required Minimum Distribution Rules Sometimes Lead to the Transfer of Unclaimed Retirement Savings to a State

If an individual does not take mandatory distributions at Age 70½^a

- According to experts, state unclaimed property laws may deem retirement savings abandoned and subject to transfer to the state

Source: GAO analysis of information from state unclaimed property experts and federal law. | GAO-19-88

Accessible Data for Figure 2: States Receive Retirement Savings in Cash, Securities, and Mutual Fund Shares but Owners May Not Necessarily Be Able to Claim Savings in the Same Form

1. Unclaimed retirement savings from employer-based plans or Individual Retirement Accounts
 - a. Cash, securities, and mutual fund shares sent to state unclaimed property office
2. State unclaimed property office sends owner

-
- a. Cash or unsold securities and mutual fund shares
 - b. Cash value of securities and mutual fund shares sold
3. Owner can typically claim savings at any time^a

Source: GAO analysis of state survey data and information from unclaimed property experts. | GAO-19-88

Accessible Data for Figure 3: Example of a State Protecting the Value of Property by Regulating Finders' Fees

Figure highlights to excerpts from one state's unclaimed property forms.

- On page 1 of 2: All services provided by the state Comptroller's Office are free. [State name] law provides that you do not have to pay a fee to anyone for assisting you in recovering any property within 24 months of the date it was turned over to this office. Contracts which provide for a such claims are unenforceable.
- On page 2 of 2: The state of [state name] does not charge a fee for returning your property to you. Signing an agreement to have someone assist you in recovering unclaimed property may entail the payment of substantial fees. Effective July 1 1991, such an agreement is unenforceable in [state name] if it covers property which has been in the state's custody for less than two years.

Source: A state unclaimed property claims form, obtained by GAO from the state's website. | GAO-19-88

Accessible Data for Figure 4: Hypothetical Illustration of the Amount of Federal Income Tax Withholding Potentially Not Collected by IRS When \$60,000 in Unclaimed 401(k) Savings Transferred to the States is Not Subject to Tax Withholding

1. \$60,000 Transferred from a 401(k) plan service provider to state government
2. State government withholds \$6,000 (Based on 10% Uncollected tax withholding on 401(k) distributions)

Source: GAO analysis of 401(k) plan service provider survey data and federal regulations. | GAO-19-88

Agency Comment Letters

Accessible Text for Appendix IV Comments from the Internal Revenue Service

Page 1

December 14, 2018

Charles A. Jeszeck

Director, Education, Workforce, and Income Security Issues United States Government Accountability Office

441 G Street, NW

Washington, DC 20548

Dear Mr. Jeszeck:

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The IRS and the Department of the Treasury previously provided input to the Department of Labor on their Field Assistance Bulletins (FABs) 2004-02 and 2014-01 regarding "Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans." Those FABs included discussion regarding payments from terminated defined contribution plans to state unclaimed property funds. More recently, the IRS issued Rev. Rul. 2018-17 and Rev. Rul. 2018-90, which address tax withholding and reporting obligations in the case of traditional IRAs that are paid to state unclaimed property funds. Also, Treasury's 2018-2019 Priority Guidance Plan

contains a "Retirement Benefits" project entitled "Guidance on Missing Participants."

The draft report makes two recommendations to the IRS. With respect to the first recommendation, the IRS will work with the Department of the Treasury to consider clarifying if transfers of unclaimed retirement savings from employer-based plans (such as 401(k) plans) to states are distributions, what, if any, tax reporting and withholding requirements apply, and when they apply. With respect to the second recommendation, the IRS will work with the Department of the Treasury to consider adding retirement savings transferred to states from terminating defined contribution plans to the list of permitted reasons for rolling over savings after the 60-day rollover period in a form consistent with the rules adopted on the taxation of transfers of unclaimed retirement savings.

Page 2

We appreciate the valuable feedback you have provided. If you have questions, please contact me, or a member of your staff may contact Catherine L. Jones, Acting Director, Employee Plans at 202-317-8700.

Sincerely,

Kirsten B. Wielobob,

Deputy Commissioner for Services and Enforcement

Accessible Text for Appendix V Comments from the Department of Labor

DEC 03 2018

Charles A. Jeszeck

Director, Education, Workforce and Income Security

Government Accountability Office

Washington D.C. 20548

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Under the Employee Retirement Income Security Act (ERISA), plan fiduciaries have a duty to pay workers their promised retirement benefits when due. Plan fiduciaries have a related duty to maintain accurate records, including plan participant contact information, and must search for missing plan participants. The goal of the Employee Benefits Security Administration's (EBSA) enforcement activities and guidance initiatives in this area is to help plans locate and pay retirement benefits to missing participants and beneficiaries. In our view, eliminating, or at least very substantially reducing, the number of uncashed distribution checks is the best solution.

EBSA has received letters from state treasurers and controllers concerning their unclaimed property funds and my staff has personally met with representatives of several states. We have also met with representatives of plans, employers, financial services groups, and consumer groups. Additionally, legislative proposals have been introduced in Congress. As you might expect, different stakeholders have different perspectives on the issues involved.

There may be ways that state unclaimed property funds can help us do more in this area. We plan to continue to evaluate whether there are circumstances in which transfer of uncashed distribution checks from an ongoing plan to a state unclaimed property fund advances the goal of reuniting missing participants with their retirement savings. The fact that not all state unclaimed property laws are the same presents challenges for identifying a uniform, nationwide approach. Guidance in this area also may require notice and comment rulemaking, and will need to be coordinated with the Department of the Treasury/Internal Revenue Service on inter-related tax compliance issues.

Thank you again for sharing your draft report and recommendation. Please be assured that we are focused on solutions that serve the best interests of America's workers.

Sincerely,

Preston Rutledge

Assistant Secretary

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