NAUPA
Unclaimed Property Authority

State Unclaimed Property Programs and Uncashed Checks from ERISA Plans

Supplemental Information Requested by the ERISA Advisory Council

National Association of Unclaimed Property Administrators (NAUPA)

August 28, 2019

State Unclaimed Property Programs: A Recap

State governments already have the best solution to the problem of uncashed checks from ERISA plans

State Unclaimed Property programs are:

- Operating in all 50 states, Puerto Rico, and the District of Columbia
- Efficient, proactive, and user-friendly for the public, including "missing" participants from ERISA plans
- Ready, willing, and able to reunite owners with their uncashed checks – **this is what we do professionally every working day**

Remember Winston Churchill

State Unclaimed Property Programs are the worst solution for uncashed checks from ERISA plans, except for all the alternatives under consideration…

"…democracy is the worst form of Government except for all those other forms that have been tried from time to time.…"

Winston S Churchill, 11 November 1947

Return Rate Data

Additional Data Requested by ERISA Advisory Council

Multi-State Unclaimed Property Data

Presented at June meeting

Data from a mix of 14 states using the same database vendor

70 percent return rate for in state property with SSN

Council requested stratified data and data on number of properties in addition to amounts

12-Month Multi-State Unclaimed Property Data			
	Remitted	Claimed	%Claimed
All Liquid Property	$1,832.9	$899.4	**49%**
Property with Names	$1,547.6	$831.3	**54%**
In State Property with SSN	$746.0	$525.6	**70%**

Millions of dollars

June 1, 2018 – May 31, 2019

Multi-State Data – Stratified (Value)

12-Month Multi-State Unclaimed Property Data			
Value of Property	**Remitted**	**Claimed**	**% C/R**
< $100	$57.20	$23.70	41%
>$100/<$1000	$132.80	$72.60	55%
>$1000/<$5000	$160.00	$95.60	60%
> $5000	$439.00	$355.90	81%

Millions of dollars

June 1, 2018 – May 31, 2019

Same data set presented in June stratified by amount

Correlation between property size and percent claimed

Multi-State Data – Stratified (Properties)

Same data set presented in June, but looking at number of properties stratified by amount

Again, correlation between property size and percent claimed

Further analysis indicates that >50% of properties <$100 are <$10 (while representing <10% of value)

12-Month Multi-State Unclaimed Property Data			
Value of Property	Remitted	Claimed	% C/R
< $100	3942.40	779.7	20%
>$100/<$1000	458.8	241.8	53%
>$1000/<$5000	72.8	39.40	54%
> $5000	21.1	15.4	73%

Thousands of Properties

June 1, 2018 – May 31, 2019

Tax Matching Data – Rhode Island

This is YOUR MONEY Rhode Island

RI UNCLAIMED PROPERTY
Treasurer Seth Magaziner

Providence Journal

State treasury sending $10 million in 'missing money' to R.I. residents

By Patrick Anderson
Journal Staff Writer
Posted Nov 20, 2017 at 1:29 PM
Updated Nov 20, 2017 at 1:50 PM

PROVIDENCE, R.I. -- The Rhode Island Treasury is sending out around $10 million in checks to more than 35,000 people by the end of the year under a new program that automatically matches unclaimed property with its rightful owner, General Treasurer Seth Magaziner announced Monday.

Rhode Island is not in 14 state data set

Compares unclaimed property to state tax records and automatically issues a payment to the owner when there is a verified match

Returned 60% of properties with value <$100 in same period

(triple the 20% rate for the 14 state data set)

Comparable Property-Type Data

- The Council requested data on claims for property where holders had done *extensive due diligence* prior to reporting the property to the states as unclaimed (as an analogy to ERISA plan checks)
- **Securities are a good analogy**
- Robust search efforts are mandated pursuant to SEC Rule 17Ad-17

SEC Rule 17Ad-17 Search Results

- Computershare is the nation's largest stock transfer agent
- SEC filings from Computershare indicate 230,283 lost securityholder searches with 176,212 updated addresses in 2018
- >75% of searches produce updated addresses
- Note that issuers and transfer agents only report properties to states when 17Ad-17 searches are unsuccessful

State Results with Securities

- Data from a mix of 25 states from June 1, 2018 – May 31, 2019
- 343,423 securities-related properties reported
  (after SEC mandated searches were unsuccessful)
- 171,747 securities-related properties claimed
- 50% return rate by states
- 0% by private sector

50% vs 0%

Interest

Rationale(s) for (Not) Paying Interest

Interest Paid to Owners

- The various ULC uniform acts on unclaimed property have never required payment of interest on all property
- All states credit owners with dividends received while in state custody
- Only a small number of states pay interest on all property types on property in state custody (notably MA, NJ by statute and OH by court order)
- Some states pay interest on property that was interest-bearing when reported to the state (1995 and 2016 uniform acts)
- Query whether plans and recordkeepers pay interest on uncashed checks?

Standard Oil Co. v. New Jersey (1951)

"As a broad principle of jurisprudence rather than as a result of the evolution of legal rules, it is clear that a state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach, belonging to unknown persons. Such property thus escapes seizure by would-be possessors and is used for the general good rather than for the chance enrichment of particular individuals or organizations."

Standard Oil Company
(Incorporated)

Hooks v. Kennedy (Louisiana 2007)

"When the state receives custody, it is also required to assume, in apparent perpetuity, the responsibility of safekeeping the property for any owners who may wish to re-claim their abandoned property. In return for this advantageous long-term reclaiming service, the state is afforded the benefit of retaining, after any deductions required by law, the interest earned from post-abandonment actions of the state…"

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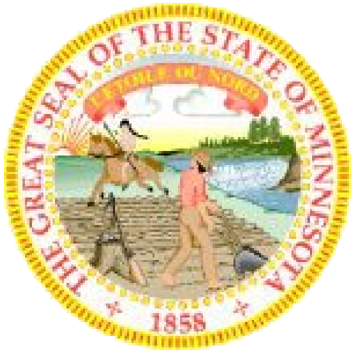
Hooks v. Kennedy (Louisiana 2007)

"The statutory duty to accept custody and hold abandoned property in safekeeping cannot logically or fairly be stretched to create a higher fiduciary duty to pay interest not earned by any action of an owner who abandoned not only his property and investment opportunities, but also the responsibility to maintain and care for the property."

Hall v. State (Minnesota 2018)

"As other states have recognized in somewhat similar circumstances, to require that the State pay interest to these owners of unclaimed property would reward their inattention and provide an inappropriate windfall."

(discussing paying interest to owners of property that was not earning interest prior to becoming presumed abandoned)



Rationale for Not Paying Interest

- States do NOT charge fees for safekeeping of property for years
- Use of unclaimed funds prior to their return pays for the unclaimed property program
- Public policy supports use of funds for public purposes instead of providing a "windfall" for a chance holder
- Paying interest on property that was not earning interest prior to abandonment amounts to an inappropriate windfall that would reward inattention

Rationale FOR Paying Interest

- State pays interest because the Takings Clause of the US (or State) Constitution requires compensation for the time value of money (less reasonable custodial fees)

Indemnification

State Indemnification or Protection of Plans

State Indemnification Provisions

- Most states have an indemnification provision from one of the ULC's uniform acts
- Some states do not have an express indemnification provisions (because of constitutional issues)
- Indemnification is to protect holders from liability for reporting and delivering unclaimed property to the state (not prior acts of the holder)
- Indemnification is rarely sought by holders

US Dept of Labor Safe Harbor

- NAUPA agrees with other stakeholders that US Dept of Labor should provide:
  - Clarity concerning permissibility of a plan reporting uncashed distributions to state unclaimed property programs
  - A “safe harbor” for the utilization of state unclaimed property programs
- With a federal safe harbor, states would be able to provide the same indemnification to plans that are provided to other holders who report in good faith

Clean-Up Considerations

Addressing a Backlog of Unreported Retirement Plan Distributions

“Clean-Up” Challenges

It is one thing to transfer uncashed retirement plan distributions to states.

It is quite another to potentially transfer an accumulated four decades worth of checks.

- Should “diligent search” be redefined for older/smaller checks?
- How should likely record quality issues, and report compilation challenges be addressed?
- Who decides what to do, where there is no plan sponsor?
- Who pays for this for this undertaking?

Diligent Search

Should the duties of a plan be different where:

- An outstanding check was issued more than 10 years ago?
- The check is for an immaterial amount, e.g. < \$100?
- The payee is no longer a participant?
- The cost/benefit of conducting “diligent search” is likely low?
- Some combination of the above factors exists?

Would it be more practical for the states to perform this function in these situations?

Some State Assumptions About Older Uncashed Plan Checks

Among the uncashed check records/funds maintained by record keepers and check issuers (collectively "servicers") are checks relating to:

- Terminated plans
- Unlocatable (orphan) plans; and
- Unidentifiable plans, particularly with respect to checks drawn on omnibus accounts

Where there is no plan to make a determination as to the disposition of uncashed check funds, who makes that determination?

Further State Assumptions About Older Uncashed Plan Checks

Because of the physical law of entropy is particularly true with respect to unclaimed property, state experience suggests that servicers will face challenges relating to older records.

- Participant name and address information may be maintained separately from outstanding check reconciliations. Records may be maintained on antiquated legacy systems, or in hard copy format.
- Records received from predecessor servicers, relating to mergers, and over conversion could pose other problems.

The time, effort and expense to resolve record deficiencies in a clean-up of old, outstanding checks is potentially significant.

Could the States be part of the solution?

States have direct, hands-on experience in processing data from older records, and compiling reports.

- Data processing capacity, including programming, analysis, and data reconstruction capabilities.
- Resource for resolving issues arising in the course of records review.
- Willingness to share cost and other resource burdens associated with a substantial clean-up project.

National Searchable Database

NAUPA v. missingmoney.org

NAUPA v. missingmoney.org

What is NAUPA?

- Member driven association comprising of all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Quebec, British Columbia, Alberta and Kenya

What is missingmoney.org?

- The NAUPA endorsed national online searchable database that facilitates the ability of a claimant to search for properties held in all NAUPA member states.

Searching For Property

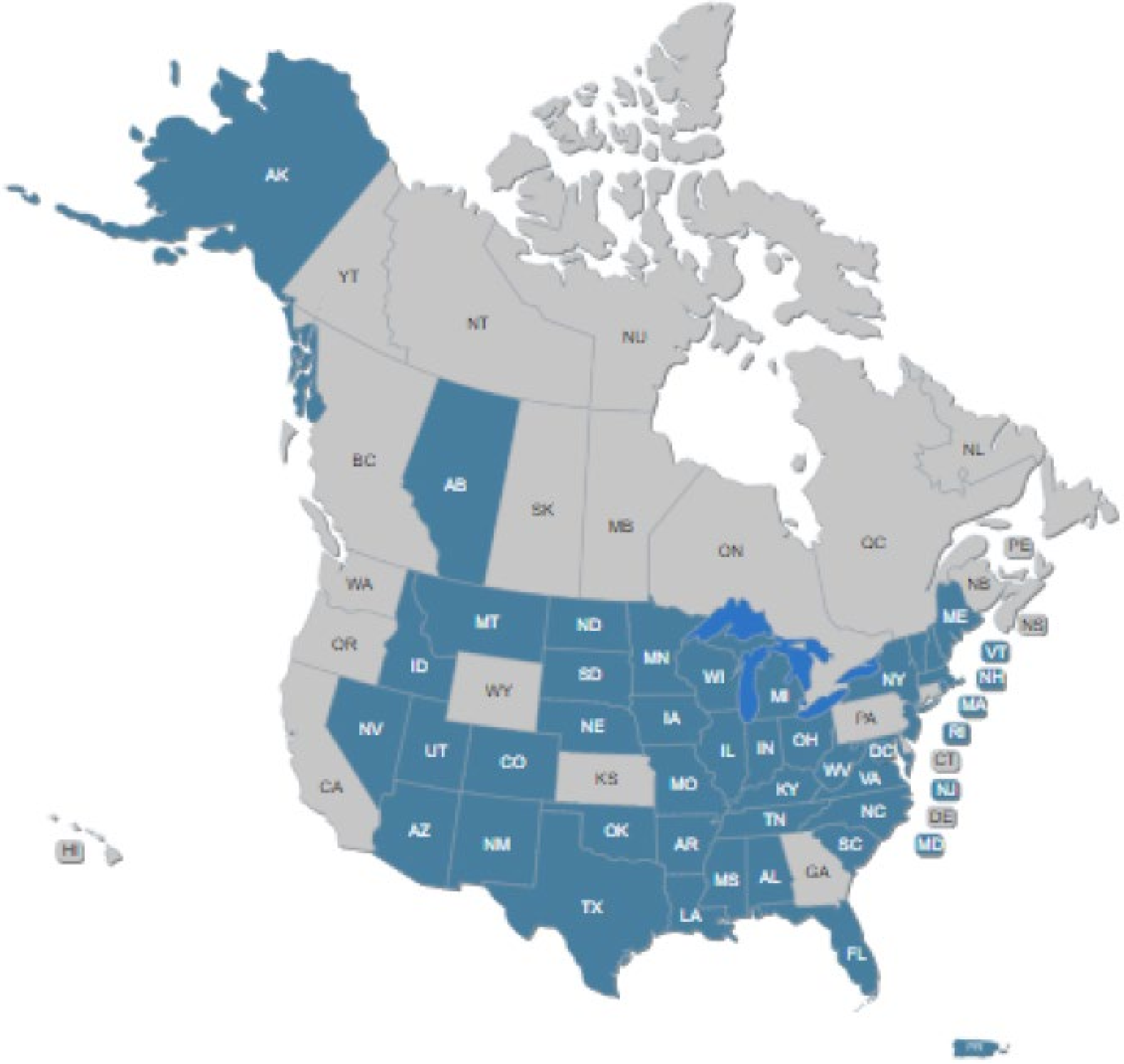
- Visitors to missingmoney.org have the ability to search all 52 member states for missing property either through the data provided by the states or through a direct link to a member state's independent page
- 42 member states provide individual owner data directly to missingmoney.org
  - If searching in one of these member states, the search result will show directly on the missingmoney.org website
    - Some states allow for the creation of a claim directly on missingmoney.org
    - Some states prefer for the claim to be created through their own government website
- 10 member states do not provide their individual owner data directly to missingmoney.org but instead prefer to have a link that directs a claimant to their own searchable government website

Finding Your Property

Missingmoney.org provides an interactive map that allows a claimant to find program contact information (phone, mail, and email) and once clicked on will bring you directly to the member's government website.

The interactive map also shows which member states provide data directly to missingmoney.org (blue) and which member states you can search directly on their own government site (gray).

This page is the third most visited on missingmoney.org



Early & Off Cycle Reporting

UNDER THE LAWS OF MOST STATES, THE UNCLAIMED PROPERTY PROGRAM ADMINISTRATOR CAN ELECT TO RECEIVE PROPERTY THAT HAS NOT YET REACHED THE STATUTORY PERIOD OF DORMANCY, AS WELL AS AGREE TO MODIFY THE DATE ON WHICH A REPORT IS FILED.

Reporting Cycles

The vast majority of states report using one of the following two reporting cycles.

- Properties that reach dormancy between July 1st & June 30th annually
  - have a reporting deadline of November 1st

- Properties that reach dormancy between January 1st & December 31st annually
  - have a reporting deadline varied by state between March 1st & May 1st

Dormancy Period for Uncashed Checks

Statutory dormancy periods for uncashed fiduciary checks range between two and seven years with the majority of states using either a three or five year dormancy period.

- 21 states use a 3 year dormancy period
- 20 states use a 5 year dormancy period

How would a holder secure authorization to report outside of a state’s statutory abandonment period and reporting date?

THE CORE CONCERN THAT STATES POSSESS WITH RESPECT TO PREMATURE REPORTING IS WHETHER THE HOLDER HAS UNDERTAKEN REASONABLE STEPS IN AN EFFORT TO LOCATE THE OWNER OF PROPERTY.

Approval on an Administrative Basis

- Even where the unclaimed property law does not provide express authority to accept property prior to the expiration of the statutory abandonment period or to allow for the submission of a report other than on the stated filing date and most laws do so provide, states make such accommodations on an administrative basis.
- NAUPA is unaware of any state that has determined it lacks the ability make such accommodations.

Frequency of Reports

- For most states, there are two reporting cycles, each six months apart. Considering the multiple reporting cycles, the “windows” of time a report can be filed, and the fact that many holders report (both with and without permission) off cycle, states routinely receive reports of unclaimed property on every business day.

An Effort to Provide Uniformity

- NAUPA understands that the Council's inquiry is not concerned with the length of the abandonment period, but rather relates to the fact that some states utilize an alternative abandonment period.
- NAUPA understands that in an effort to "streamline" unclaimed property reporting to states, plans would prefer to use a common abandonment period for all states, as well as a common report year and due date.

An Effort to Provide Uniformity continued

- The need to obtain permission for early and off cycle reporting from multiple, *individual* states would appear resolvable through the establishment of a protocol whereby any plan which met certain criteria could report uncashed plan distributions outside of a state's abandonment period and standard report cycle, without a requirement of obtaining express state consent.

Department of Labor Guidance

- NAUPA believes that this could be accomplished through the Department of Labor's adoption of administrative rules specifying the conditions under which a state could take custody of uncashed distribution checks.
- A state unclaimed property program would receive uncashed plan distribution checks under defined reporting parameters, which would be established by the Department of Labor, through consultations with NAUPA, retirement plans, and their service providers.

Streamlined Reporting Process

- NAUPA believes that the states' on-line reporting utilities, the adoption of a common reporting format, and other technological efficiencies have significantly simplified the filing process.
- In all probability the employers with missing participants in multiple states are already filing reports of unclaimed property with numerous state unclaimed property programs through other corporate operations.
- Following completion of owner outreach efforts and a determination that the underlying funds should be transferred to state custody, an uncashed plan distribution check has the same characteristics as and would be treated identical to any other reportable, outstanding check, aside from the assignment of a different property type code.

Revisiting Recommendations

NAUPA Recommendations for the ERISA Advisory Council

Concerning Uncashed Checks from ERISA Plans

Minimum State Program Standards

RECOMMENDATION

1. Ability for public to inquire by mail, telephone, and online
2. Free public website to conduct unclaimed property searches
3. Online submission of owner claims
4. Processing / payment of claims without charge
5. Claims allowed in perpetuity
6. Data protection, including encryption and anti-fraud measures
7. Maintaining records in perpetuity
8. Relieving transferring entity from liability
9. Reimbursement to transferring entity that pays a reappearing owner
10. Following all IRS reporting requirements

Recommendations

1. The United States Department of Labor should clarify that a state unclaimed property program may assume custody of uncashed plan checks from both active and terminated plans.
2. The United States Department of Labor should evaluate all existing options that a plan has for the disposition of uncashed checks and determine if these options are as effective as state unclaimed property programs in reuniting missing participants with their retirement savings.
3. The United States Department of Labor should facilitate the engagement of state unclaimed property program representatives in discussions with United States Department of the Treasury, Internal Revenue Service in developing protocols for the tax reporting of unclaimed accounts.

Recommendations (continued)

4. The United States Department of Labor should issue administrative rules for the reporting of uncashed plan checks to state unclaimed property programs. Such rules should consider the recommendations of the ERISA Advisory Council and should involve input from state unclaimed property programs or their representatives in their drafting.

5. The ERISA Advisory Council should consider whether existing U.S. Department of Labor protocols for locating missing participants in terminating plans are practical for the "clean-up" of a significant volume of uncashed plan checks dating back to 1974, and instead contemplate a more streamlined approach undertaken in conjunction with state unclaimed property programs.

6. The ERISA Advisory Council should continue its evaluation of state unclaimed property programs and identify minimum standards for state custody of uncashed plan checks, to be recommended to the United States Department of Labor.

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Recommendations (concluded)

7. The recommendations of the ERISA Advisory Council concerning uncashed plan checks should not only address checks under the responsibility and control of a plan, but additionally checks not associated with any active or identified plan and in the control of service providers.

8. The ERISA Advisory Council should expand its review of state unclaimed property programs to consider what role the states can play in reuniting missing participants with other types of retirement savings, including undistributed account balances.

9. Any reporting of uncashed plan checks should be to the state of last known address of the missing participant, in observance of federal common law and existing unclaimed property reporting protocols that increase the likelihood that the participants will be found and paid.

RECOMMENDATION

Questions?