

Dear Unclaimed Property Stakeholder,

In 2016, the state legislature made two important changes related to the reporting of unclaimed property that will apply to fiduciary/retirement account and to life insurance proceeds.

After receiving feedback from various stakeholders, Treasury has published the following Policy Guidance to assist persons in possession of unclaimed property in complying with new reporting directives recently added to Pennsylvania's Unclaimed Property Law.

Thank you,

Bureau of Abandoned and Unclaimed Property

# **POLICY GUIDANCE**

## **Reporting Standards for Fiduciary Accounts General Unclaimed Property Notice Requirement**

Act of July 13, 2016 (P.L. 664, No. 85); 72 P.S. §§ 1301.8 & 1301.10a

## **Reporting of Life Insurance Proceeds**

Act of November 3, 2016 (P.L. 1043, No. 132); 40 Pa.C.S. § 3703(c)(2)

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### **Introduction.**

Pennsylvania Treasury, Bureau of Abandoned and Unclaimed Property, issues this Policy Guidance statement to assist persons in possession of property subject to the provisions of the Disposition of Abandoned and Unclaimed Property Law<sup>1</sup> in complying with the reporting requirements of the Law. The Pennsylvania General Assembly recently amended the Unclaimed Property Law to clearly define the circumstances in which property held by a fiduciary may be deemed abandoned and unclaimed, thereby subject to the custodial care of the Commonwealth. In so doing, the legislature identified specific elements that constitute an account owner's indication of interest in the property and when the fiduciary loses contact with the property owner, both of which are relevant as to determining the obligation of the holder to report the property into the custodial care of the Commonwealth.

In addition, the Unclaimed Property Law was also amended to include a new section of general application that outlines the requirements for holder-notice that are to be provided to owners prior to reporting the property as abandoned and unclaimed.

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<sup>1</sup> Act of December 9, 1982 (P.L. 1057, No. 248) *as amended*; 72 P.S. § 1301.1 *et seq.*

The core function of the Unclaimed Property Law is to protect the property interests of owners of abandoned property and to provide a mechanism for the safe keeping and return of the property to its lawful owner. Consistent with its consumer protection purpose, it is Treasury's objective to apply the provisions of the Law in a manner that encourages and facilitates compliance while preserving the property interests of owners. In so doing, Treasury notes its authority to exercise its discretion to refuse the acceptance of certain types of unclaimed property.<sup>2</sup>

In addition to the amendments to the Unclaimed Property Law, the legislature also enacted changes to the Insurance Code, adding a new chapter related to Unclaimed Life Insurance Benefits.<sup>3</sup> The new amendment directs that the proceeds of the policy are to be reported as unclaimed property three (3) years following knowledge of the death of the insured, when the beneficiaries of a deceased insured cannot be found.

Questions pertaining to these recent statutory changes may be directed to Brian Munley, Treasury's Director for the Bureau of Unclaimed Property at [bmunley@patreasury.gov](mailto:bmunley@patreasury.gov).

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<sup>2</sup> 72 P.S. § 1301.17

<sup>3</sup> Act of November 3, 2016 (P.L. 1043, No. 132); 40 P.S. § 3703(c)(2).

**Effective Date.** (72 P.S. § 1301.8 & 1301.10)

The amendments to the Unclaimed Property Law are effective September 12, 2016.<sup>4</sup> Treasury will apply the new provisions prospectively.<sup>5</sup> Accordingly:

(1) Section 1301.8 (Property Held by Agents-in-Fact and Fiduciaries) is effective on September 12, 2016. New criteria for determining “indicated an interest in the property” and “lost contact” is applicable on a forward-looking basis. As a consequence, property not previously reported and subject to the pre-amendment provisions of Section 1301, such as non-ERISA fiduciary retirement accounts, is not reportable to Treasury before April 15, 2020. Property that was due on or before April 15, 2016 but was not reported when due remains subject to the prior version of Section 1301.8.

(2) Section 1301.10A (Notice Given by Holders) is effective September 12, 2016 and applies to all property to be reported to Treasury on April 15, 2017.

**Fiduciary Accounts** (72 P.S. § 1301.8)

Section 1301.8 remains applicable to accounts held by “fiduciaries.” The term “fiduciary” retains the same meaning as used in the prior version of the Section.<sup>6</sup> The new term, “agent-in-fact,” was included to apply the provisions of the Section to accounts held by persons acting pursuant to a power-of-attorney agreement.<sup>7</sup> By way of example, fiduciary accounts may include property held by financial institutions in trust,

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<sup>4</sup> Section 15, Act 85 of 2016.

<sup>5</sup> *See*, 1 Pa.C.S. § 1926 (No statute shall be construed to be retroactive unless clearly and manifestly so intended by the General Assembly.)

<sup>6</sup> *See, e.g.*, 7 P.S. § 6351 (Uniform Fiduciaries Act).

<sup>7</sup> 20 Pa.C.S. § 5601

or savings, deposit, investment or other accounts of a financial agency or institution,<sup>8</sup> or its agent, held by the account owner for the benefit of another.<sup>9</sup> Pursuant to the new amendments, fiduciary accounts are now subject to a double threshold that must be met before an account is deemed to be “abandoned and unclaimed.” Accordingly, before an account is considered “unclaimed” and therefore reportable to the Commonwealth, the

- (1) holder has “lost contact” with the owner of the account; and<sup>10</sup>
- (2) owner has expressed no indication of interest or activity for a period of three
- (3) years.

Only when both of these elements (lost contact and three years of no indication of interest) are met will an account be deemed “unclaimed” and reportable to Treasury’s Bureau of Unclaimed Property.

The recent legislative changes to the reporting of fiduciary accounts are not intended to reverse prior treatment of ERISA covered accounts or to challenge prior federal treatment. However, it remains Treasury’s policy to ensure that any accounts not reported on this basis are in fact subject to ERISA oversight.

#### A. Lost Contact.

Section 1301.8(b)(1)-(2) and (c) set forth the standard for determining the date on which the holder of a fiduciary account has “lost contact” with its owner, beginning the three (3) year period required prior to it being considered abandoned and thereby reportable as unclaimed property. Section 1301.8 treats owners who select to receive

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<sup>8</sup> 31 U.S.C.S. § 5312(a)(1), (2); *See also* 72 P.S. § 1301.1

<sup>9</sup> *See, e.g.*, 7 P.S. § 402 (Fiduciary and Other Representative Powers)

<sup>10</sup> 72 P.S. § 1301.8(a)

first class mail notices differently from those owners who choose to receive account related communications electronically.<sup>11</sup>

For owners who have indicated a preference for first class mail, the holder is required to send two consecutive communications to the owner by first class mail. 72 P.S. § 1301.8(b)(1) and (2). If the second communication is sent later than thirty (30) days after the first communication was returned as “undeliverable,” the holder is deemed to have “lost contact” with the owner on the date on which the first notice is returned as “undeliverable.” 72 P.S. § 1301.8(b)(2).

If the owner receives account related communications via electronic communication, the holder is required to attempt to contact the owner by email, two (2) years following the owner’s last indication of interest in the account. If there is no response to the email within thirty (30) days, or if the email is not successfully delivered (i.e. “bounces back”), the holder is required to contact the owner by first class mail. If the first class mail is returned as “undeliverable,” the holder shall be deemed to have “lost contact” with the owner at the date of the owner’s last indication of interest in the property. 72 P.S. § 1301.8(c). For customers who have chosen to receive account information by email, holders are required to attempt to contact the owner via email. However, Treasury would like to emphasize that this is the *minimum* standard, and that nothing prevents the holder from also sending first-class mail, at any time, as a best practice.

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<sup>11</sup> “Account related” refers to communications that concern a particular owner’s account, including, for example, tax statements provided by the holder to an account owner. Account related communications do not include those consisting only of generic marketing and promotional materials.

For example, if Company A is administering a fiduciary account for Mr. Smith (who has elected not to receive communications by mail), Company A is required to attempt to contact Mr. Smith if he fails to demonstrate any interest in the account for two years. If Mr. Smith does not receive communications by mail, Company A is required to attempt to contact him by email. If Company A is unsuccessful in establishing contact with Mr. Smith by email (either it bounces back or there is no response), then Company A is directed to contact Mr. Smith by first class mail. If that mail is returned as “undeliverable,” then Company A is deemed to have “lost contact” with Mr. Smith and the three year period of account inactivity begins on the date of last indication of interest – approximately two (2) years ago.

In either case, the converse is also true. The holder is not deemed to have lost contact with the owner if first-class mail is not returned as “undeliverable.” The property is therefore not reportable to Treasury. Under all circumstances, the holder is encouraged to reestablish contact with the lost owner and effectuate an owner’s indication of interest in order to re-set the three (3) year inactivity period in the account, thereby preventing the reporting of the property into the custodial care of the Commonwealth. It is the intention of Treasury to apply Section 1301.8 in a manner that facilitates and encourages holders to maintain contact with account owners.

B. No interest in account.

The inclusion of the “no indication of interest” standard in Section 1301.8 was intended to reduce circumstances in which property of a known owner is remitted into the custodial care of the Commonwealth. It is recognized that many account owners pursue a buy-and-hold investment strategy, resulting in minimal account activity.

Accordingly, Section 1301.8 was amended to more broadly define the type of owner actions that constitute an “interest” in an account, thereby preventing the account from being reported as unclaimed property. The new due diligence requirements are consistent with federal laws, regulations, and best practices that require financial service providers to “know your customer,” including maintaining an accurate and current customer name, physical address and social security number.<sup>12</sup> The presumption of abandonment for fiduciary and retirement accounts is now two-fold, being three (3) years after the holder has lost contact with the owner unless, within that three (3) year period, the owner has indicated an interest in the property.<sup>13</sup> The changes made in Section 1301.8 set forth the criteria used to determine when an owner has indicated or expressed an “interest” in their account, thereby resetting the three (3) year period that must occur prior to the account being deemed “abandoned and unclaimed.” Only when there has been no indication of interest for three years after the holder has lost contact with the owner, will the property be presumed abandoned and subject to notice and reporting requirements.

Section 1301.8(a)(1) states that the three year dormancy period for determining abandonment is no longer calculated from the date the account becomes payable, but will now be calculated from the time the holder “lost contact” with the owner.

Sections 1301.8(a)(1) and (2) identify a number of ways in which owners “indicate interest” in their account and thereby avoid reporting the property as abandoned or

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<sup>12</sup> USA Patriot Act, Act of 2001 (P.L. 107-56, 115 Stat 272); *See also* 31 CFR § 1020.220(a)(2)(i) “Customer Identification Program: minimum requirements”

<sup>13</sup> 72 P.S. § 1301.8(a)(1), (2)



unclaimed. For accounts held by an agent-in-fact or fiduciary for the benefit of another, the owner may indicate interest in the account by any of the following:

- increasing or decreasing the principal,
- accepting payments of the principal or income,
- initiating a transfer to or from the account,
- logging onto the account's online site,
- emailing the holder,
- telephoning and speaking with a holder,
- corresponding with the holder, or
- expressing any similar interest in a different financial account or property overseen and held by the same holder, such as a checking account, savings account, credit account or similar financial account of the owner.

Any expression of "interest" by an owner in an account will toll and reset the three (3) year period, thereby preventing the account from being deemed "abandoned and unclaimed." Only if there is no owner activity or indication of interest during an entire, uninterrupted three (3) year period, after the holder has "lost contact," are the reporting provisions of the statute to be implicated.

### C. Minor Accounts.

The recent amendments do not change Treasury's policy of refusing minority accounts until three (3) years after the minor beneficiary has reached the age of maturity (21 years). Minor accounts will be subject to the new due diligence standards upon the age of maturity of the beneficiary and will first be reportable three years following.

D. Taxable Retirement Accounts.

Section 1301.8 applies to all non-ERISA fiduciary retirement accounts, including traditional IRAs, simplified employee pension plans (SEPs) and savings incentive match plan for employees (SIMPLE IRA plans) established by individuals or self-employed individuals. Generally, if an individual is under the age of 59.5, a distribution from a traditional IRA is subject to a 10-percent additional tax on taxable early distributions.<sup>14</sup> The 10-percent additional tax applies to the part of the distribution that would be included in the account owner's gross income, in addition to any regular income tax on that amount and would be reported on the owner's federal income tax return as an additional tax owed on a retirement plan.

The provisions of Section 1301.8 directing the transfer of abandoned and unclaimed retirement accounts into the custody of the Commonwealth are not anticipated to implicate early distribution related taxes. Upon the transfer of an IRA or certain retirement assets pursuant to Section 1301.8, the Commonwealth will act solely as custodian of those assets until such time as the owner or beneficiary is located and reclaims the abandoned and unclaimed property. Because neither the owner nor the beneficiary will have constructive possession or control of the account, the transfer to the Commonwealth's custody should not be taxable, reportable or potentially penalize a premature distribution to the account owner, but instead should be treated as a non-reportable transfer of retirement assets. By effectuating its custodial care over these assets, Treasury would be mitigating the possible reduction of account balances by eliminating account maintenance fees that financial institutions would impose over the

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<sup>14</sup> IRC § 72(t)(2)(A)(i).

duration those assets would have otherwise been held by the trustee financial institution.

However, in an abundance of caution, Treasury is currently undertaking an extensive review of the various tax implications, if any, as a result of the revisions to Section 1301.8(a)(2), to ensure that IRA and other retirement account owners will not be negatively impacted from a tax perspective upon any escheatment of retirement assets to the Commonwealth. Treasury's paramount responsibility is safeguarding the abandoned assets of owners, whether through escheatment or otherwise. Accordingly, Treasury will take the necessary steps to protect owners, holders and consumers of any escheated retirement assets from unwarranted negative tax implications and unnecessary account maintenance fees. **Therefore, until such time as Treasury issues a new policy guidance on this matter, Treasury will neither demand nor accept any retirement account that is presumed abandoned and unclaimed, except as follows:**

- (1) An individual retirement account (including a retirement plan for self-employed individuals) of which the beneficiary cannot be located for a period of three (3) years following the death of the owner and that is not subject to a mandatory distribution requirement; or,**
- (2) An individual retirement account (including a retirement plan for self-employed individuals) of which the owner has attained seventy and one-half years of age and is not subject to a mandatory distribution requirement.**

**Notice Requirements** (72 P.S. § 1301.10-A)

New Section 1301.10-A applies to all property that has met the threshold to be presumed abandoned and unclaimed. In an effort to prevent the reporting of property that is not truly abandoned or unclaimed, the holder is required to send a final notice to the owner, not more than one hundred and twenty (120) days nor less than sixty (60) days, prior to the date the property is to be reported to Treasury. The date from which the notice period is measured is April 15<sup>th</sup> of the year in which the property is due to be reported to Treasury, unless the holder requests and is granted an extension.

This notice is to be sent by the holder if the holder has an address for the owner that records do not show to be inaccurate, and the property is valued at fifty dollars (\$50) or more. Any notice to the owner shall include a description of the property and information necessary to contact the holder in order to prevent the property from being reported to Treasury. In addition to the required notice, any holder may give additional notice at any time between the date of the last owner activity and the date the property is to be transferred to Treasury.<sup>15</sup>

The written or electronic communication to the owner should contain information sufficient to provide notice that there has been a lack of activity on his or her account and that the holder is trying to re-establish contact with the owner to prevent the account being reported to the Commonwealth as unclaimed property.<sup>16</sup>

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<sup>15</sup> 72 P.S. § 1301.10-A(c)

<sup>16</sup> See 72 P.S. 1301.10-A(b)(1)-(4) (stating that notice should include such information as a description of the property, a description of the ownership, the value of the property, and any information necessary for the owner to contact the holder).

**Reporting Unclaimed Life Insurance Proceeds.** (40 P.S. § 3703(c)(2))

The General Assembly included a new chapter in the Insurance Code related to unclaimed life insurance proceeds. The central directive of the new chapter is the requirement that Pennsylvania licensed insurance companies conduct, on a semiannual basis, a comparison of its insureds' in-force life insurance policies against the death master file maintained by the Social Security Administration. 40 P.S. § 3703. Upon knowledge of death (as a result of receipt of either a death certificate or validated death master file match) the insurance company is to contact and pay the policy proceeds to any designated beneficiaries. 40 P.S. § 3703(c)(1). If the designated beneficiaries cannot be located, the insurance company is directed to report the policy proceeds into the custodial care of the Commonwealth three (3) years following the insurance company's knowledge of death of the insured. 40 P.S. § 3703(c)(2). The amendment makes clear that the insurance company's three (3) year reporting requirement supersedes any conflicting language in the Unclaimed Property Law.<sup>17</sup>

**Effective Date** (40 P.S. § 3703(c)(2))

The unclaimed property reporting changes related to life insurance proceeds do not take effective until November 2017.<sup>18</sup> Act 132's "knowledge of death" standard, that triggers the start of the three year period, does not apply until 2017. Therefore, life insurance proceeds that have not been paid to beneficiaries would be deemed

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<sup>17</sup> See, e.g., 72 P.S. § 1301.4(a)1; ("... after the moneys have or shall become due and payable under the provisions of such contract or annuity or policy of insurance.").

<sup>18</sup> Act 132 of November 3, 2016; Section 2 ("This Act shall take effect in 360 days.")

“abandoned and unclaimed” three years following the Insurer’s knowledge of the death of the insured<sup>19</sup> – 2020 at the earliest – and therefore not due to be reported into the custodial care of the Commonwealth prior to April, 2021.<sup>20</sup>

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<sup>19</sup> 72 P.S. § 1301.4(a)(1)

<sup>20</sup> §1301.11(d) (“The report shall be filed on or before April 15 of the year following the year in which the property first became subject to custody and control of the Commonwealth under this article.”)