

**Lynden Lyman on
Unclaimed Property and the Federal Government**

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Most of the time, when people think about the sources of unclaimed property, they tend to consider banks, insurance companies, and issuers of securities. Certainly, these entities are the reporters of the bulk of the abandoned assets received by the states. However, there is another major holder of unclaimed property that rarely comes to mind: the United States Government.

That Uncle Sam holds lots of unclaimed funds should come as no surprise. After all, if the federal government were a private business, its \$3-trillion-dollar-plus financial operations would significantly dwarf those of the world's largest financial services firms. Although a public entity, the federal government performs most of the kinds of services that yield unclaimed assets: it holds the property of others, it operates insurance programs, and it disburses funds. The federal government also has millions of employees and utilizes tens of thousands of contractors. Indeed, the United States Government, in theory, should be the ultimate holder of unclaimed property.

This is not to say, however, that the United States of America is the ultimate *reporter* of unclaimed property, and indeed, with the exception of a few of its agencies in a few very limited circumstances, it barely even qualifies as a reporting organization. It's not as if it hasn't been asked by the states to comply with their unclaimed property laws. In fact, the states have been regularly making the request for nearly a century. However, the federal government has a well-defined and very strongly held position concerning state unclaimed property laws. These laws simply aren't relevant.

The federal judiciary has tended to agree. The courts have consistently ruled in favor of the United States Government on the issue of state unclaimed property (non)compliance. One line of cases has addressed federally-based benefit programs, and the conclusion is that where the federal government, through acts of "munificence" creates a benefit, then any unclaimed benefits should revert back to their source. Another line of cases has simply determined that the imposition of state unclaimed property laws would have a tendency to interfere with the fiscal operations of the federal government which, as either a matter of sovereignty or supremacy, simply won't be tolerated.

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Congress, for its part, has largely steered clear of the battle, and it certainly hasn't done anything to divert unclaimed federal monies to the custody of the states. To the contrary, when the State of New York appeared to be making some progress in getting a federal trial court to at least consider the legitimacy of the position that unclaimed federal income tax refunds should be transferred to the states, the Congress stepped in and enacted legislation that effectively cut-off the claims of the states. Thus it is fair to say that the claims of the states to idle money in Washington have been resisted or ignored.

The federal government's views on unclaimed property might be less troubling if there were proactive programs to locate the owners and return their assets. However, just as there is no "federal unclaimed property law," there is no federal office of unclaimed property. The approach to unclaimed property is decentralized, with most agencies doing little or nothing to reunite owners with lost property, in large part because they have no budget authority (appropriations) to do so. The Internal Revenue Service has taken some steps (subsequent to the extinguishment of potential state claims) to find both taxpayers who never claimed tax refunds or failed to cash refund checks. The IRS has relied largely on news outlets to feature the IRS press releases on the issue of unclaimed refunds, which in a typical year might involve as many as 2 million individuals and upwards of \$2 billion. Most of the news reports fail to mention that if taxpayers fail to act in a timely manner, the refund, which is subject to a statute of limitations, "becomes property of the U.S. Treasury."

Several public corporations (which operate under different authority than agencies of the federal government) have undertaken some very positive steps to help missing owners locate unclaimed funds. The Federal Deposit Insurance Corporation (FDIC), which assumes control of dormant accounts in failed banks, maintains a searchable website (www2.fdic.gov/funds/index.asp) of the accounts that the FDIC has not absorbed into the insurance fund (as with the IRS, there is a time limit as to how long an owner has to reclaim their property). The Pension Benefit Guarantee Corporation (PBGC) similarly maintains a searchable database (<https://search.pbgc.gov/mp/>) containing unclaimed pension benefits owed to more than 32,000 participants in terminated defined benefit plans. Because these public corporations were expressly created for the purpose of protecting the assets of depositors and, respectively, pensioners, the creation of these lost owner databases is entirely consistent with their mandates. Unfortunately, the general public is largely unaware of these websites. As in the case of the IRS, the FDIC and PBGC appear to rely principally on the largess of the media to make mention of these lost property resources, as there is otherwise little in the way of efforts to publicize their existence.

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As far as the Government of the United States goes, the FDIC and the PBGC are exceptions to the rule; most federal agencies don't facilitate efforts to research and reclaim abandoned property. Perhaps the most disturbing federal unclaimed property matter is that of matured, unredeemed savings bonds (which no longer earn interest). The nature of this liability, and the absurd level to which it has grown, demands a solution. Fortunately, as will be explained in next month's *Expert Commentary*, the federal government is talking with the states as to how, jointly, a solution might be developed.

About the Author. Lynden Lyman is the managing director of the [ACS Unclaimed Property Clearinghouse](#) in Boston, serving as chief executive of the Clearinghouse since 1999. Lynden is a licensed attorney with 20 years experience in unclaimed property law, administration and auditing. Formerly, as an assistant attorney general with the state of Iowa, Lynden participated in state initiated audits of banks, insurance companies, utilities, and publicly traded companies. From 1986 to 1993, he was associate special counsel/consultant for the Clearinghouse. In this capacity, he coordinated and participated in the examination of records, preparation of reports, and the reporting and collection of property from more than 12,000 different companies. Additionally, Lynden worked with more than 30 states in the drafting and adoption of unclaimed property statutes and regulations. From 1993 to 1998, during which time the Clearinghouse operated as a unit of State Street Bank, Lynden held various management positions, culminating in senior vice president and division executive. As contributing editor of the five-volume legal treatise [Unclaimed Property Law and Reporting Forms](#) (published by Lexis/ Matthew Bender) over the last 16 years, Lynden has reviewed and annotated every state unclaimed property law.

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