



**INSURANCE AND  
INVESTMENT MANAGEMENT**

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**About Navigant**

Navigant Consulting, Inc. (NYSE: NCI) is a specialized, global professional services firm that helps clients take control of their future. Navigant's professionals apply deep industry knowledge, substantive technical expertise, and an enterprising approach to help clients build, manage and/or protect their business interests. With a focus on markets and clients facing transformational change and significant regulatory or legal pressures, the Firm primarily serves clients in the healthcare, energy and financial services industries. Across a range of advisory, consulting, outsourcing, and technology/analytics services, Navigant's practitioners bring sharp insight that pinpoints opportunities and delivers powerful results. More information about Navigant can be found at [Navigant.com](http://Navigant.com).

# THE NEW REGULATORY FOCUS ON UNCLAIMED PROPERTY: ADDITIONAL CHALLENGES FOR THE INVESTMENT INDUSTRY

## THE GOOD 'OLE DAYS

Unclaimed property laws are nothing new. For decades all 50 states and the District of Columbia have had unclaimed property statutes that allow the state to take possession of (escheat) personal property that is unclaimed by the owner for a specified period of time, generally three to five years after the property becomes due and payable to the owner. The purpose of unclaimed property statutes historically has been the reunification of lost property with its true owner, and of course the states get to use the unclaimed property in their general funds until such time as the property is claimed, if ever. NAUPA reports that the states are holding more than \$41 billion in unclaimed property<sup>1</sup>.

In the past, financial institutions managed compliance with the varying unclaimed property statutes using undeliverable mail returned [returned by the post office (RPO)] as the standard trigger to identify potentially unclaimed property and start the clock for the various state escheatment time periods. At that point, firms attempt to locate a "better" address to reconnect with the "lost" customer. Some firms use outside vendors to assist with these searches. However, the unclaimed property compliance landscape is becoming more complex and increasingly burdensome for financial institutions. Most of this is due to the regulatory changes, including SEC Rule 17Ad-17, updated dormancy periods, expansion of abandonment triggers, third-party audits and advancements in technology and data analytics. All of this change will impact how states, auditors and other regulators view compliance and will force financial institutions to take a fresh and rigorous look at their unclaimed property compliance programs in order to mitigate risk and achieve compliance.

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1. National Association of Unclaimed Property Administrators ("NAUPA"), <https://www.unclaimed.org/what/>

## CHANGING LANDSCAPE

In recent years, the SEC and many states have adopted new rules or changed regulations to make it easier and faster for the states to obtain financial assets. This includes shortened time periods for the escheatment of assets, and the liquidation of non-cash assets to cash once the assets are escheated to the state. These changes increase institutions' potential exposure to compliance, financial, and reputational risk. However, the risk can be mitigated by a thorough review of unclaimed property policies and procedures, including ongoing monitoring and updating of procedures. The states' risk of being sued by the asset owner is also increased with these faster escheatment processes, so the states are attempting to mitigate that risk by having the financial institutions indemnify them against such actions and certify the actions they have taken to locate and contact the asset owner.

Many financial institutions rely on vendors (e.g., custodians, transfer agents, or other third parties) to carry out their unclaimed property processes. But even with iron-clad service agreements, an investor whose assets were prematurely turned over to a state and sold will likely blame the asset management firm, and not the service provider. Let's take a closer look at some of these changes and their impacts.

### SEC RULE 17AD-17

As a result of the implementation of the Dodd-Frank Act, the SEC modified Rule 17Ad-17 ("The Rule") to now apply more broadly to the securities brokerage industry. Although the Rule does not relate to escheatment, it does require brokers-dealers, as well as the broader financial industry, to conduct up to two database searches to locate missing account/security holders. An initial search must take place between 3 and 12 months after an account is identified as unclaimed. If the account/security holder is not located, a second search must be conducted between 6 and 12 months after the first search. This Rule increases the focus on the initial determination of lost asset owners.

Dodd-Frank also established new compliance requirements for uncashed checks that have been incorporated into The Rule. If a check remains uncashed for 6 months, account/security holders are considered an "unresponsive payee" and written notification regarding the uncashed check must be provided to the account/security holder no later than 7 months after the check was originally sent. Many states have now embraced the uncashed check standard in addition to the RPO standard for triggering the escheatment process.

### DECREASED DORMANCY PERIODS

Over the past several years, a majority of states have decreased seven-year dormancy periods to three years. In addition, a holder (of client assets) must assess the dormancy of property by reference to state-specific statutory dormancy standards and prescribed triggers that start the dormancy clock. Depending upon applicable rules and laws, dormancy may be dependent upon something that has happened with respect to the property (e.g., an RPO event), or something that has not happened (e.g., no owner contact nor activity). This has increased the volume of accounts/securities that are identified as dormant and subject to escheatment, and in some cases, premature escheatment. This issue may seem minor compared to some of the other landscape changes that cause more immediate operational constraints, but with further consideration the shortening of dormancy periods and increased premature escheatment creates additional risk for financial services institutions. Take, for example, an investor who opens an account in a mutual fund with a view towards a buy and hold strategy and has all distributions reinvested. Three years of no communication coming to the fund complex from the investor may not be very unusual, but in some states, the investment could be considered abandoned, escheated to the state and then the investment liquidated to generate cash, thereby jeopardizing the opportunity for market appreciation after the fund shares are sold, and even creating unwanted and unplanned tax events.

## EXPANSION OF ABANDONED PROPERTY TRIGGERS

Historically, if a mailing was returned as undeliverable after a certain number of attempts, securities were identified as abandoned and a dormancy period began, after which the property could be escheated. However, many states have changed their requirements to a “no contact” or “owner generated activity” (“OGA”) standard. This change greatly increases the volume of accounts triggered as abandoned and poses new challenges to identifying and reporting abandoned accounts across business silos (e.g., asset management, insurance, banking, brokerage, credit cards).

## THIRD-PARTY AUDITS

Over the past several years, states have more aggressively pursued unclaimed assets from insurance companies, broker-dealers, investment managers and their mutual funds by hiring third party contingency fee-based auditors. The scope of these audits is often broad and deep, encompassing multiple businesses and legal entities. Holders are often faced with penalties and high interest rates that are sometimes based on loose estimation assumptions. Auditors are requiring holders to use tools like the Social Security Administration’s Death Master File (“DMF”) and AccuZip; tools not commonly used or previously contemplated by financial services institutions. An assessment of the myriad of complex and sometimes contradictory regulations will help to document your compliance, identify the tools that can help manage the process, and ensure that you are ready for an audit.

### WHAT THIS MEANS TO YOU

- Increased scope in the identification of Unclaimed Property triggers that can lead to greater liability for non-escheated assets.
- Companies need the ability to systematically track and report on all Unclaimed Property triggers.
- An increased need to be able to view customers across multiple businesses, as auditors are tracking OGA across companies’ entire enterprise.
- A renewed interest to ensure proper Unclaimed Property documentation and processes are in place across the enterprise and those processes are compliant.
- Consider implementing technology solutions to manage and track regulations, triggers, and compliance.
- Increased risk of exposure through lawsuits due to pre-mature escheatment.

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## CONCLUSION

The result of all of these changes is a highly complex and ever-changing unclaimed property landscape for financial institutions. It means multiple work streams across distinct businesses and disparate administrative platforms to manage on an ongoing basis. Most of all, it means an end to the “status quo” and a departure from the good ‘ole days.

The changing nature of the approach that the states are taking, particularly the use of success-based compensation of third-party audit firms, has increased the stakes for non-compliance. Penalty and interest assessments incurred by holders due to the application of earlier abandonment dates and the use of estimates have greatly raised the importance of ensuring compliance. Firms need to:

- Inventory their exposure to unclaimed property and escheatment by confirming the jurisdictions and requirements of each jurisdiction.
- Ensure that their compliance and operational policies and procedures are aligned with the business being conducted.
- Maintain an oversight program that identifies changes in regulations, changes in jurisdictions, and monitors compliance.
- Establish a methodology to look at unclaimed property across the enterprise if there are multiple pockets of services potentially provided to the same clients.
- Review all relevant data and administrative platforms for accuracy, completeness, and limitations to ensure the ability to meet regulatory requirements. Inventory, assess and store source data in such a way that it can be easily analyzed and used.
- If not already in place, implement technology to manage the compliance processes efficiently.



## HOW NAVIGANT CAN HELP

Navigant is a global leader in providing operations, regulatory, technology, and unclaimed property consulting services, and can help you plan, assess, manage, and ensure ongoing compliance with the ever-changing unclaimed property regulatory landscape.

Navigant works with clients through the full life cycle of unclaimed property needs including death matching, compliance health checks, data analytics and reporting programs, and remediation. With a comprehensive suite of solutions, Navigant weaves in-depth unclaimed property and financial industry expertise together to provide informed, objective and actionable guidance and solutions to our clients. Navigant helps clients meet current challenges and strategic goals while avoiding the pitfalls of future challenges.