

Class Action Payment Methods: Building The Best Process

Law360, New York (March 07, 2014, 4:57 PM ET) -- In the class action settlement administration industry, the payment method chosen can have a great impact on budgets, timelines and administrative burdens. Counsel must also consider the best method to ensure class members can get the award they are due. Payment methods include checks that are sent through the mail, wire distributions or direct bank deposits.

In the U.S., most domestic payments are made by check, whereas in Europe, check usage is far lower and most distributions are made via wire or automated clearing house ("ACH"). Typically, U.S. class members feel less comfortable giving a third party their banking information in order to complete a wire distribution or ACH transfer. Even when ACH payments are utilized within the U.S., administrators will find it difficult to control the messaging that accompanies such payments. This has the potential to confuse recipients and can even lead to unclaimed funds.

Regardless, checks are a more traditional payment method in the U.S. When disbursing payments for class actions or mass tort litigations where class membership can run into the hundreds of thousands — or even millions — elected payment methods can significantly impact budget and timeframes.

In addition to checks, however, there are a number of alternative payment methods that counsel can consider. These include electronic payments, which are sent online using an e-payment provider or prepaid cards — which are physically mailed like checks — and provide some key advantages.

Check Option

Myriad costs are associated with domestic check disbursements. Check printing services, paper costs and postage rates each play a part in driving up total project costs. Further, it can be very difficult, complex and/or costly to recall unclaimed funds when funds are issued in the form of paper checks.

In any mass mailing, a portion of mail sent will be returned as undeliverable. When this happens, your claims administrator firm will research each returned item to determine an alternative delivery address. If this occurs, a new check will be processed, printed and sent — all of which creates additional costly work and adds to the overall project timeline.

Users now have the ability to deposit checks via smartphone apps, which has the potential to increase the risk of check fraud. A check can easily be deposited into a user's bank account using a smartphone app and then cashed a second time via a check-cashing service or returned in exchange for a fresh check or wire transfer, as reported by the Association of Certified Fraud Examiners and The Florida Bar News.

Electronic Payment Option

Electronic payments represent a workable middle ground between the difficulty of acquiring banking information and the time and expense of check printing, mailing and management. E-payments allow the debtor or the claims administrator to collect nothing more than an email address from claimants, which is already collected during the claims process.

Using that email address, the claims administrator then matches the claimant with the correct disbursement amount, locates his or her e-payment account — such as with PayPal Inc. — and makes a transfer. The claimant is notified via email, and then can transfer the sum into his or her bank account.

This process results in overall lower costs to the fund, and nearly immediate payment delivery. Multiple email reminders to class members to log in and collect their money have the potential to reduce unclaimed funds, and funds automatically returned to the settlement fund after 30 days can be resent as checks or otherwise resolved.

Prepaid Card Option

Prepaid cards also represent a good alternative solution to mailed check payments. Prepaid cards can last longer — they can remain unused for two to three years as opposed to checks' 180-day lifespan, which increases the rate of cashing, putting more money in the hands of class members. Further, when class members do not spend the full amount on prepaid cards, the unused portion can be escheated to the state.

And, prepaid cards have been proven to increase the rate of responsiveness. For example, state tax rebate programs and Medicare or unemployment benefits cards have been shown to increase responsiveness versus check or other disbursement formats.

What does this mean for you and for your class members?

Checks

For class members, the check option provides a trusted method to receive funds, but may be inconvenient to use.

- Traditional: Checks are the most common and expected form of payment for a settlement.
- Trusted: A check received in the mail is typically the most trusted by class members.
- Inconvenient: Some class members may not have a checking account, which means that they sometimes must go to a check-cashing establishment and pay a fee. Of those with checking accounts, they still must make a trip to the bank or ATM to deposit funds.

For administrators and counsel, checks present the same benefits as for class members — they are trusted and easy to track. Additional benefits and drawbacks include:

- Infrastructure: Many administrators and counsel have existing processes and provider relationships in place for check distributions. This has the potential to reduce the overhead needed to begin processing payments another way.
- Unclaimed funds: Because checks are sometimes inconvenient to cash or deposit, and checks are only valid for 180 days, administrative complexity can increase with this method.

Electronic Payments

For class members, the e-payment option provides security, is inexpensive and is easy to use.

- Secure and simple: The only information they need to provide is their email address.
- Same payment: Class member claimants will get the same payment that they would otherwise get had they received a paper check.
- Fee-free: Claimants will not be charged a fee to receive their award as they sometimes are with wire distributions.
- Cost-saving: For claimants without checking or other bank accounts, checks must often be cashed by retail check-cashing establishments that charge a fee. E-payments eliminate this cost.

For class action attorneys and administrators, e-payments provide several additional benefits:

- E-payments provide more flexibility in terms of text than with a direct ACH or wire payment. This delivers more control over the messaging accompanying payments.
- Unclaimed funds can be recalled to the settlement account seamlessly.
- E-payments can be utilized whether your entire class membership has a PayPal or similar account or not; if they do not have an account, they can be sent an email to sign up for one.
- Using a recognized name in e-payments in the U.S. such as PayPal engenders trust and increases response rates.

Prepaid Cards

For claimants and class members, prepaid cards offer flexibility and convenience:

- Provides convenience with 28 million locations to access funds through merchants, ATMs and bank tellers.
- Eliminates cost of utilizing check-cashing establishments for the "unbanked." Approximately eight percent of U.S. households (i.e., 10 million households with 17 million adults) don't have a bank account.
- Provides a longer access period to withdraw funds — up to three years — compared to 180 days for checks.
- Improves response time for reissues — mailed next business day.
- Less skepticism when receiving a prepaid card than a check because the card looks more credible.
- A prepaid card is safer than carrying cash — funds can be replaced if lost or stolen.
- For international claimants, stops foreign draft fees and increases claimant response rate.

For counsel and courts, pre-paid cards offer several benefits:

- Improved response rate: By increasing the accessibility of the funds to claimants and reducing the skepticism surrounding checks received through the mail, claimant response rate should be higher than with traditional check distributions.
- More funds to claimants: Increases the amount of money that reaches claimants due to a reduction in check cashing fees.

- Avoid “cashless” settlements: As an alternative to coupon settlements, cards can be restricted to a particular defendant such as a retailer (e.g., Office Max Inc.) or manufacturer (e.g., Hewlett-Packard Co.) allowing counsel and the court to avoid controversial “cashless” settlements.

Checks are still a preferred method for class action settlement distributions, but the payment landscape is changing. Offering alternative payment methods can reduce the amount of uncashed checks and ensure that class members get their award in a way that’s convenient for them.

E-payments and prepaid cards provide valid and valuable options for making distributions for class action and mass litigation settlements. Contracting with an administrator that has both experience with managing the e-payments process and close working partnerships with e-payment providers is a smart choice for cutting down on costs and ensuring deadlines are met.

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