

MEMO# 30262

September 23, 2016

PBGC Issues Proposed Regulations to Extend Its Missing Participant Program to Terminated Defined Contribution Plans

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TO: PENSION MEMBERS No. 31-16
OPERATIONS COMMITTEE No. 23-16
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 35-16
TRANSFER AGENT ADVISORY COMMITTEE No. 47-16 RE: PBGC ISSUES PROPOSED
REGULATIONS TO EXTEND ITS MISSING PARTICIPANT PROGRAM TO TERMINATED DEFINED
CONTRIBUTION PLANS

On September 20, 2016, the Pension Benefit Guaranty Corporation ("PBGC") issued proposed regulations ("Proposal") to modify its existing program for missing participants.[\[1\]](#) PBGC's current missing participant program (the "Program") holds retirement benefits for missing participants of terminated single-employer defined benefit plans and helps participants find and receive benefits held for them. The Proposal would make the Program available to most terminated defined contribution plans.[\[2\]](#) PBGC also proposes to create a new unified pension search database. Comments on the Proposal are due by November 21, 2016.

Background

As you may recall, the Pension Protection Act of 2006 amended ERISA section 4050 to allow terminating defined contribution plans to transfer assets of missing participants to PBGC, effective upon PBGC's prescription of rules for such a program. On June 21, 2013, PBGC issued a request for information ("RFI") soliciting information to assist it in making decisions regarding the implementation of a program for missing participants of individual account plans.[\[3\]](#) In response to the RFI, the Institute provided a comment letter ("ICI Letter") indicating its general support, but urging that the Program function as more than simply a locator service, as contemplated by the RFI.[\[4\]](#) More specifically, we asked that PBGC coordinate its guidance with DOL and allow a qualified termination administrator who is terminating a plan under the DOL abandoned plan program to transfer account balances of missing participants to PBGC, without regard to the size of the account. We also asked that

that PBGC extend the Program to be available for missing participants in active plans. While PBGC declined to allow active plans to participate in the Program, it generally responded favorably to the other suggestions in the ICI Letter.

Overview of Proposal

Under the Proposal, the Program would be available to and voluntary^[5] for most terminated individual account defined contribution plans. Eligible plans may participate in the Program by electing to be a "transferring plan", which would actually transfer benefit amounts to PBGC, or a "notifying plan", which would send PBGC information about the benefits of missing distributees. A plan that elects to be a transferring plan would be required to transfer to PBGC benefits of all missing participants and beneficiaries who are entitled to a benefit. PBGC made this decision to avoid the possibility of "cherry-picking" which benefits are transferred (e.g., transferring only small accounts to PBGC).^[6] A notifying plan is permitted to provide information on less than all of its missing distributees.

As requested in the ICI Letter, the Proposal specifies that the Program would be available for abandoned plans that otherwise meet the requirements of the Program and that it will not impose any minimum amounts. This will allow a qualified termination administrator who is terminating a plan under the DOL abandoned plan program to transfer account balances of missing participants to PBGC,^[7] without regard to the size of the account. However, PBGC declined to extend the Program to allow active plans to transfer benefits or provide information for missing participants, as requested in ICI's Letter.

The Institute also suggested that the Program should specify that it is applicable to a broad array of defined contribution plans, including 401(k) plans, ERISA-covered 403(b) plans, money purchase pension plans, and profit sharing plans. PBGC's definition of eligible plan covers most types defined contribution plans, as we requested.^[8] PBGC proposes to make the Proposal applicable to defined contribution plans whose date of plan termination is after 2017. Therefore, the Program would not be available for plans that terminated prior to 2018.

Diligent Search Requirement

The Program would require both transferring plans and notifying plans to conduct a diligent search for the missing distributees before filing with PGBC. The diligent search requirements would reflect guidance already established by EBSA and followed by terminated defined contribution plans.^[9] The ICI Letter suggested that PBGC model its search requirements in this manner.

Filing

The PBGC filings that would be required for defined contribution plans that elect to participate would generally mirror the requirements for defined benefit plans with missing participants. The deadline for filing would be 90 days after all distributions (other than the missing participants' benefits under the Program) are completed. PBGC has issued a draft form and instructions for this filing requirement.^[10]

Fees

Under the Program, PBGC would charge fees for participation that are intended to cover PBGC's cost of running the Program. PBGC proposes to charge a one-time \$35 fee for each individual whose benefits are transferred to PBGC. PBGC would not charge a fee for

transferred amounts of \$250 or less or for notifying plans who only send information to PBGC. In the preamble to the Proposal, PBGC notes that it will not inquire whether fees have been deducted from the account for administrative expenses before the benefit is transferred to PBGC and that the proper allocation of expenses is beyond the scope of the proposal.^[11]

Search Database

One of the goals of the Proposal is to make it more likely that that missing persons will receive their benefits. Therefore, PBGC proposes to create a new comprehensive search database. The public would be able to easily search the database to determine whether PBGC has information about benefits being held for them. The database would be created in a way that will protect individuals' privacy.^[12]

Payment of Benefits

Distributions made to individuals who claim benefits from defined contribution plans under the Program would reflect the current qualified joint and survivor rules. A participant whose benefit at the time of transfer does not exceed \$5,000^[13] would receive a lump sum payment. A participant whose benefit exceeds the de minimis amount would receive an annuity, a joint a 50 percent survivor annuity if the participant is married, unless the participant has spousal consent and elects to receive a lump sum or another form of benefit. Where the participant has died and the spouse claims the benefit, the benefit would be paid as a straight life annuity, unless the spouse elects a lump sum. When the participant has died and there is not a surviving spouse, the beneficiary would receive a lump sum.

The Proposal does not address payout rules for participants who become missing after they are already in pay status or for situations involving missing beneficiaries. However, PBGC requests comments on whether guidance on these points is needed.^[14]

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endnotes

^[1] The proposed regulations, published at 81 Fed. Reg. 64700 (September 20, 2016), are available here: <https://www.gpo.gov/fdsys/pkg/FR-2016-09-20/pdf/2016-22278.pdf>. PBGC's press release is available here: <http://pbgc.gov/news/press/releases/pr16-13.html>. PBGC's FAQs on Proposed Expanded Missing Participants Program is available here: <http://www.pbgc.gov/prac/terminations/missing-participants/proposed-expanded-missing-participant-pgm.html>.

^[2] The change would also extend the program to terminated multiemployer plans covered by Title IV of ERISA and make the program available to terminated professional service plans with 25 or fewer participants. PBGC also made a number of changes to the program as it relates to defined benefit plans.

^[3] The RFI, published at 78 Fed. Reg. 37598 (June 21, 2013), is available here: <https://www.gpo.gov/fdsys/pkg/FR-2013-06-21/pdf/2013-14834.pdf>. See [Memorandum](#) to Pension Committee No. 15-13, Pension Operations Advisory Committee No. 14-13,

Operations Committee No. 27-13, Bank Trust and Retirement Committee No. 16-13, Transfer Agent Advisory Committee No. 49-13 [27337], dated June 27, 2013.

[4] See [Memorandum](#) to Pension Members No. 39-13, Operations Committee No. 38-13, Bank Trust and Retirement Committee No. 23-13, Transfer Agent Advisory Committee No. 62-13 [27481], dated August 21, 2013.

[5] In the preamble to the Proposal, PBGC does discuss imposing mandatory reporting requirements on terminated defined contribution plans in the future. See 81 Fed. Reg. 64703.

[6] PBGC invites comments on this point. 81 Fed. Reg. 64703.

[7] DOL's abandoned plan program can be found at 29 CFR 2578.1 DOL's program provides a mechanism for service providers to voluntarily take over and terminate plans believed to be abandoned by the plan sponsor.

[8] Section 4050.201(a) of the proposed regulation describes eligible plans. Church plans and governmental plans are among the plans excluded. 403(b) custodial accounts are specifically included, as are individual accounts that are part of defined benefit plans (e.g., employee contributions held in an individual account under a defined benefit plan).

[9] DOL Field Assistance Bulletin 2014-01, available here: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>, is the current DOL guidance on fiduciary duties and missing participants in terminated defined contribution plans. For a description of this guidance, see [Memorandum](#) to Pension Members No. 34-14, Operations Committee No. 13-14, Bank Trust and Retirement Committee No. 36-14, Transfer Agent Advisory Committee No. 53-14 [28318], dated August 18, 2014. For DOL's safe harbor for distributions from terminated individual account plans, see 29 CFR 2520.104b-1(b)(1). It is noted in the preamble that DOL intends to review these regulations as well as its regulations regarding abandoned plans, to coordinate its rules with the PBGC Program. See 81 Fed. Reg. 64701. The ICI Letter specifically requested this coordination, to ensure that a Qualified Termination Administrator under would not have subsequent liability under DOL's rules regarding the missing participant's account.

[10] The draft Form MP-200 and Related Schedules are available here: <http://www.pbgc.gov/documents/MP-forms-for-DC-Plans-July-29-draft.pdf>. The draft instructions are available here <http://www.pbgc.gov/documents/MP-instructions-for-DC-plans-Aug-1-draft.pdf>.

[11] 81 Fed. Reg. 64706.

[12] 81 Fed. Reg. 64702.

[13] The Proposal refers to Internal Revenue Code section 411(a)(11).

[14] 81 Fed. Reg. 64707.

abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.