

**MEMO# 27481**

August 21, 2013

## **ICI Comment Letter on PBGC RFI Regarding Missing Participants in Individual Account Plans**

[27481]

August 21, 2013

TO: PENSION MEMBERS No. 39-13  
OPERATIONS COMMITTEE No. 38-13  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 23-13  
TRANSFER AGENT ADVISORY COMMITTEE No. 62-13  
RE:

ICI COMMENT LETTER ON PBGC RFI REGARDING MISSING PARTICIPANTS IN INDIVIDUAL  
ACCOUNT PLANS

The Institute submitted the attached comment letter responding to the Pension Benefit Guaranty Corporation's (PBGC) request for information [\[1\]](#) (RFI) seeking information to assist PBGC in making decisions regarding the implementation of a program for missing participants of individual account plans. [\[2\]](#) 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.

In addition to providing responses to the questions posed in the RFI, our letter describes the distribution restrictions in the Department of Labor's (DOL) current abandoned plan program and the obstacles such restrictions present for missing participants and service providers. With respect to missing participants, our letter discusses the issues involving state unclaimed property laws that make it difficult for a missing participant to obtain his or her account balance after the plan is terminated. With respect to service provider obstacles, our letter discusses concerns about potential ongoing liability after the abandoned plan is terminated and the assets are distributed. The letter also discusses the issues associated with the DOL abandoned plan program requirement that a qualified termination administrator (QTA) may only transfer account balances of missing participants to an interest-bearing federally insured bank or savings association account, or to a state unclaimed property fund if the amount to be distributed is less than \$1000 and the account balance is less than the minimum amount required to be invested in an individual

retirement plan product offered by the QTA to the public at the time of the distribution.

The letter states that a PBGC program that solely provides services to locate participants in terminating individual account plans will not serve to alleviate these obstacles, and recommends that PBGC implement a program with the following features:

- The letter recommends that the program provide that a QTA terminating a plan under the DOL abandoned plan program may, after the conduct of a diligent search, transfer account balances of missing participants to PBGC, without regard to the account balance or whether the balance is less than the minimum amount required to be invested in an individual retirement plan product offered by the QTA to the public at the time of the distribution.
- The letter recommends that the PBGC program model its definition of a “reasonable and diligent search” in a manner that corresponds to the applicable provisions of FAB 2004-02 and provide the administrator of a terminating defined contribution plan with the flexibility to use internet search tools or commercial locator services, taking into consideration the size of the participant’s account balance in relation to the cost of the services when deciding whether the use of such services is appropriate.
- The letter recommends that PBGC coordinate with DOL so that the PBGC program is included within the abandoned plan program fiduciary safe harbor provisions. Further, the letter recommends that after a transfer to PBGC, the QTA will have no subsequent liability with regard to the missing participant’s account.
- The letter recommends that the program specify that it is applicable to 401(k) plans, ERISA-covered 403(b) plans, money purchase pension plans, and profit sharing plans

The letter also notes that the challenges associated with locating missing participants are not limited to terminated plans and encourages PBGC to ensure that any program it establishes covers missing participants in active plans as well.

Howard Bard  
Associate Counsel

#### [Attachment](#)

#### **endnotes**

[1] The RFI is available here:

<http://www.gpo.gov/fdsys/pkg/FR-2013-06-21/pdf/2013-14834.pdf>.

[2] For a description of the RFI, see [Memorandum](#) to Pension Members No. 28-13 [27338] dated June 27, 2013; [Memorandum](#) to 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.

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