

The Pension Benefit Guaranty Corporation (PBGC) issued a [final rule](#) on December 22, 2017 to expand its Missing Participants Program for terminated single-employer pension plans to additional types of plans.

The expansion was authorized by Congress in the Pension Protection Act of 2006 (PPA). The expanded program includes participants and beneficiaries in terminating defined contribution plans, such as 401(k)s, PBGC-insured multiemployer plans, and small professional service pension plans not insured by the PBGC. The new rule applies to 401(k)-type plans and small professional service plans that terminate on or after January 1, 2018. The program will be available to PBGC-insured multiemployer plans that terminate after 2018.

The Missing Participants Program for terminated single-employer pension plans has helped countless participants locate their benefits by providing a searchable database of participants who could not be located by their former employers at the time of plan termination. Employers terminating plans are required to pay out all benefits owed to participants and beneficiaries. Participants who cannot be found are listed on the PBGC online database which includes the information necessary for participants to locate their benefits. The success of the single-employer Missing Participants Program prompted Congress to authorize expansion of the program.

Initially the list of missing participants may not include many from the new types of plans since the list adds names going forward and will not include participants missing from plans that terminated before the effective dates.

In the Missing Participants Program employer participation varies by plan type.

- PBGC insured plans –

Employer participation is **required** for PBGC-insured plans, namely single-employer and multiemployer pension plans.

- Non-PBGC-insured plans –

Employer participation is **voluntary** for non-PBGC-insured plans, such as 401(k)-type plans and small professional service pension plans.¹

The program presents two ways for employers with terminating defined contribution plans, such as 401(k)s, and small professional plans to participate.²

- An employer may **transfer** the accounts of missing participants to the PBGC for future payment. The names of these missing participants will be included automatically in the PBGC's searchable online data base. An employer transferring accounts must transfer the accounts of all the missing participants in the plan, not just a selected few.
- Alternatively, an employer may **notify** PBGC of the names and account information for missing participants whose accounts were transferred to IRA providers, federally insured

bank accounts or state unclaimed property funds according to Labor Department rules.³ The names of these participants will be posted on the missing participant data base with information about the location of their retirement accounts. Unlike employers who transfer accounts to the PBGC, employers who notify the PBGC of missing participants are not required to report all the plan's missing participants. Although reporting to the PBGC the names of missing participants whose accounts are not transferred to the PBGC is voluntary, the PBGC will reconsider at some future time whether reporting should be made a requirement.⁴

Before listing a participant as missing a **diligent search** is required when the plan does not know the location of the participant with reasonable certainty. If a plan knows the location of a participant but the participant fails to cash a distribution check or does not respond to a notice of a distribution, then a diligent search is not required and the participant can be listed as missing.

The final rule specifies criteria for a diligent search that differ by plan type.

- Employers terminating defined benefit pension plans, either single-employer, multiemployer or small professional service plans must use a commercial locator service when other search methods are unsuccessful unless the benefit amount is \$50 or less. For small benefit amounts of \$50 or less employers may use a records search method. A records search method includes, to the extent feasible and reasonable, searching plan and sponsor records, searching health and other welfare plan records, contacting each beneficiary, and using a free internet search tool.
- Employers terminating defined contribution plans, such as 401(k)s, must follow the search steps in Labor Department guidance before listing participants as missing. This applies to employers transferring accounts to the PBGC and to employers who are reporting missing participants to be listed on the PBGC website. The required Labor Department search steps include sending a certified letter to the last known address, checking related plan and employer records, contacting designated beneficiaries, and using free electronic search tools.⁵

Other highlights of the proposed rule include:

- The online database for missing participants will include missing participants from all plans, both defined benefit and 401(k)-type plans.
- The PBGC program will accept small account balances.
- There is a fee of \$35 per missing participant for benefit amounts transferred to the PBGC with an exception for small amounts under \$250. No fee will be charged to employers who just report the names and account locations of missing participants.
- The default pay-out option for accounts, other than small accounts of \$5,000 or less, will be an annuity, and for married participants, a joint and survivor annuity. A lump sum distribution may be elected instead of an annuity in 401(k)-type plans. Elective lump

sums will be available for defined benefit pension plans where they were permitted by plan rules. Small accounts of \$5000 or less will be paid out as lump-sums.

- Lump-sum distributions to 401(k)-type plan participants will include interest calculated at the Federal mid-term rate.

A [brief description](#) of the expanded Missing Participants Program.

PBGC [press release](#) on expanding the Missing Participants Program

Read the Pension Rights Center's [comments on the proposed rule](#).

Read the Pension Rights Center's [comments on the PBGC's Request for Information](#).

¹Small professional service plans are pension plans with 25 or fewer participants, such as plans of medical and dental practices.

²The Missing Participant Program for defined contribution plans includes 403(b) plans.

³See Employee Benefits Security Administration, [Field Assistance Bulletin 2014-01](#).

⁴The PPA gave PBGC the option to require the reporting of missing participant names and account locations when accounts are not transferred to the PBGC.

⁵See Employee Benefits Security Administration, [Field Assistance Bulletin, 2014-01](#).