

**STATEMENT OF THE PENSION RIGHTS CENTER
ON LOCATING MISSING AND LOST PARTICIPANTS
BEFORE THE ERISA ADVISORY COUNCIL**

JUNE 4, 2013

Good afternoon. I am Jane Smith, Policy Analyst for the Pension Rights Center. The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees and their families. Thank you for inviting us to testify about the very important problem of connecting participants with the retirement benefits they have earned.

We applaud the Council for studying the issues that arise when a plan must search for a participant or beneficiary who is no longer at the latest address the plan has on file. Connecting participants and beneficiaries with their retirement plan benefits can be very challenging. However, there is another side to this problem. Participants and beneficiaries can lose track of former employers and must then search for their “lost” plans in order to claim their benefits. Our comments will primarily address this side of the issue.

Participants Searching for “Lost” Plans

Plans can become “lost” to former employees and beneficiaries when the employer changes location or the company name, merges with another company, spins off a division of the company or just goes out of business. It is not uncommon for former employees to have difficulty locating an old employer. One of the most challenging problems facing participants and their advocates, including the Labor Department’s Employee Benefits Security Administration’s Office of Participant Assistance and the Administration on Aging’s Pension Counseling and Information Program, is helping individuals track down their “lost” pension plans. You have already heard testimony describing the extent of the “lost” plan problem.

Why do participants and beneficiaries search for a plan? Many people do not think about their pensions or other retirement benefits until they reach retirement age. It doesn’t occur to them to try to track down their plan until that time. In addition, individuals receive notices of potential private retirement benefits when they apply for Social Security.¹ In some cases, future retirees may have forgotten about benefits earned years ago. In others, spouses of deceased employees may not have been aware of the existence of a retirement benefit before receiving the notice.

The Pension Rights Center is proposing the establishment of a Lost Pension Plan Registry that will provide the information participants need to locate their plans when their former employer has changed names, location, or corporate structure through merger or acquisition.² The proposed registry would be an online searchable listing of these employers posted on the Pension

¹ The “Notice of Private Pension Benefit Information” is sent to individuals when they apply for Social Security benefits. The information in the notice is based on IRS Form 8955-SSA.

² http://www.pensionrights.org/sites/default/files/docs/proposal_for_lost_pension_plan_registry_fact_sheet.pdf

Benefit Guaranty Corporation's (PBGC) website. Participants and beneficiaries would be able to find the new name, location, and contact information of a former employer by searching the registry. The registry would apply for future changes but plan sponsors would be encouraged to also provide any earlier changes to the PBGC.

A Lost Plan Registry could be established with minimal effort and at a very low cost. The information needed to establish such a registry is already available to the IRS on Form 8955-SSA.³ This form, the "Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits," must be filed with the IRS each year that an employee separates from service with a deferred vested benefit.⁴ For purposes of a Lost Plan Registry, Form 8955-SSA includes a "Notification of Change in Status" section that must be completed by the plan administrator.⁵ Item 4 of Form 8955-SSA asks if the name or Employer Identification Number (EIN) of the plan administrator has changed and if so, what was the former name or identifying number. Item 5 asks for the same information regarding the plan sponsor. These two questions could form the basis of the Registry.

The Lost Plan Registry could complement the Internet Missing Participants Program List now on the PBGC's website. Individuals searching for their plan benefits would be able to use a central, easily accessible website for the search. Also, a Lost Plan Registry should benefit plan administrators and sponsors who now have to hire firms to find "missing" participants to meet the requirement that they start paying benefits at age 70-½.

A requirement that the PBGC establish a Lost Plan Registry could easily be added to ERISA Section 4051, which establishes the Missing Participant Program.⁶ The Form 8955-SSA information for the registry could be transferred electronically by the IRS to the PBGC. A bill introduced into the House of Representatives on May 22, 2013, H.R. 2117, "Retirement Plan Simplification and Enhancement Act of 2013" includes in Section 306 the language necessary to establish a Lost Plan Registry with the PBGC.⁷

Other countries have successfully established lost plan registries. We have submitted for the record a paper on "Lost Pension Plan Registries in the U.K. and Australia" prepared for the Pension Rights Center by John A. Turner, director of the Pension Policy Center. The paper describes how registries for lost plans and lost participants work in other countries.⁸

The Pension Rights Center encourages the Council to recommend to that the Labor Department support legislation to establish a Lost Plan Registry.

³ Form 8955-SSA can be found at <http://www.irs.gov/uac/Form-8955-SSA,-Annual-Registration-Statement-Identifying-Separated-Participants-With-Deferred-Vested-Benefits>

⁴ 26 U.S.C. Section 6057.

⁵ 26 U.S.C. Section 6057(b).

⁶ 29 U.S.C. Section 4051

⁷ http://www.pensionrights.org/sites/default/files/docs/section_306_of_hr_2117.pdf

⁸ http://www.pensionrights.org/sites/default/files/docs/pdf/lost_pension_plan_registries_in_uk_and_australia.pdf

I would also like to comment briefly on the employer’s obligation to find missing participants, which is the primary focus of today’s hearing.

The expansion of the Pension Benefit Guaranty Corporation’s missing participant program to include terminating defined contribution plans, multiemployer defined benefit plans, and small professional service employers should help employers searching for missing participants and beneficiaries.⁹ The expansion of the program will become effective when regulations are issued. However, terminating employers seeking missing participants will not be required to use the PBGC program. Use of the expanded PBGC missing participant program will be voluntary. An employer can only list a missing participant with the PBGC after a “diligent” search and the assets associated with that participant have been transferred to the PBGC.

The PBGC and the Department of Labor could coordinate in developing clearer guidance on the criteria for a “due diligence” search. Currently, the PBGC requires use of a locator service for a diligent search. The participant cannot be charged for the search.¹⁰ The Department of Labor issued guidance in Field Assistance Bulletin 2004-02 on searching for participants of terminated defined contribution plans.¹¹ We recommend that these guidelines be revisited when the expansion of the PBGC missing participant program is finalized.

Contact between a plan and former employees

Employers holding retirement benefits need to stay in contact with the former employees who are entitled to those benefits. At the same time, employees need to maintain their own records and stay in touch with their former employers. Employers can help.

Individual benefit statements furnished to employees should contain reminders to maintain records and to notify the plan administrator of any changes in relevant personal information. Currently the Department of Labor is developing guidance on the individual benefit statement. We suggest that the Council recommend to the Department of Labor that new guidance include a reminder to maintain records and stay in touch with the plan. Additionally, we suggest that benefit statements be furnished to former employees and beneficiaries with the same frequency as active employees.

There is an additional method of communication available to employers – the deferred vested benefit statement. This statement is required to be furnished to participants who have separated from service or terminated employment with a deferred vested benefit.¹² The statement must list the name of the plan, name and address of the plan administrator, and the nature, amount, and form of the deferred vested benefit to which the participant is entitled. The deferred vested

⁹ The Pension Protection Act of 2006 included the expansion of the PBGC’s missing participant program. <http://www.pbgc.gov/res/factsheets/page/missing-participant-program.html>

¹⁰ See <http://www.pbgc.gov/prac/terminations/missing-participants.html>

¹¹ See <http://www.dol.gov/ebsa/regs/fab2004-2.html>

¹² 26 U.S.C. 6057(e) and ERISA Section 105(c).

statement could provide another opportunity for plan sponsors to remind participants that they must keep the statement for future use and that they should stay in touch with their former employer.

The Pension Rights Center appreciates this opportunity to present our views on the vital issue of connecting participants to their retirement benefits. I would be pleased to answer any questions you may have.