

August 20, 2013

Submitted electronically to
reg.comments@pbgc.gov

Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Re: Missing Participants in Individual Account Plans: Request for Information

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. The Pension Rights Center commends the Pension Benefit Guaranty Corporation for seeking public input on establishing a missing participant program for terminating defined contribution plans. This program, when implemented, will complement the already successful PBGC missing participant program for single employer defined benefit plans.

BACKGROUND

Employers terminating retirement plans must distribute all benefits to participants and beneficiaries before termination is complete. However, it is not uncommon for a plan administrator to be unable to locate one or more plan participants or beneficiaries who are entitled to benefits. Since the plan cannot properly be terminated until the benefits owed are distributed, the question becomes what to do with the benefits owed to participants and beneficiaries who cannot be found.

The PBGC's missing participant program for terminating single employer defined benefit plans has been successful in connecting participants and beneficiaries with their benefits. Under the PBGC standard termination program employers must purchase an annuity from a private insurer for missing participants and beneficiaries and give the individual's personal and annuity information to the PBGC. Alternatively, the individual's benefit amount can be transferred to the PBGC. Both methods must be preceded by a diligent search for the "missing" person. The PBGC posts the names of missing participants on the PBGC website.

The Pension Protection Act of 2006 authorized an expansion of the PBGC missing participant program to include terminated defined contribution plans, such as 401(k) plans, multiemployer defined benefit plans and small professional service plans. This Request for Information seeks comments on establishing a missing participant program for terminating defined contribution plans.

DISCUSSION

A missing participant program managed by the PBGC will be helpful both to employers terminating individual account plans and to their former participants and beneficiaries who may need to search for their “missing” retirement benefits years after their plans are terminated.

Many employees with retirement accounts in an employer’s defined contribution plan choose to leave their money in those accounts when they change jobs or stop working. Former employees who are separated from their employers can easily become “missing” participants. There are many ways former participants and beneficiaries become separated from their retirement plans. The most obvious is when the participant fails to notify the plan of a change in address. Similarly, when personal identifiers change due to divorce or marriage the plan may not be notified. Sometimes an employer has moved, merged with another company or changed names so that a participant cannot locate the plan to provide notice. Also, addresses can be incorrectly entered into a computer resulting in notices sent that do not reach the intended party. Participants and beneficiaries may not be aware of a missing benefit until they receive a “Notice of Potential Private Pension Benefits from Social Security”¹ long after a plan has been terminated.

Central database

The Pension Protection Act of 2006 gives the PBGC authority to require terminating defined contribution plans to submit information on missing participants and their benefits to the PBGC.² **We urge the PBGC to exercise this authority by *requiring* employers terminating defined contribution plans to provide information to the PBGC on missing participants and their benefits for inclusion in a central database maintained by the PBGC.** A central database listing the names of missing participants and the location of their benefits would provide an invaluable one-stop source for participants, beneficiaries and their advocates seeking to find missing benefits, and would not be burdensome for employers. A voluntary, rather than mandatory, system would be far less efficient. A voluntary database would merely be one source among many that participants searching for their benefits would have to pursue, without any guarantee of success.

The required information for the database should be detailed enough to enable a former “missing” participant or beneficiary to later locate and claim his or her benefits. For accounts not transferred to the PBGC, the information could include the name of the participant or beneficiary, the name of the employer, the amount of money in the account, and contact information for the institution receiving the benefits.

¹ This notice is sent to individuals when they apply for Social Security benefits. Beneficiaries of deceased participants receive the notice upon applying for a survivor benefit from Social Security. The notice is based on information filed with the IRS by employers. The notice states that a private pension plan benefit may be available from the employer.

² See Sec. 410 of the Pension Protection Act. <http://www.gpo.gov/fdsys/pkg/PLAW-109publ280/pdf/PLAW-109publ280.pdf>

Diligent Search

A “diligent search” must precede any distribution of missing participant accounts from terminating defined contribution plans. The PBGC has established guidelines for a diligent search for missing participants from terminating defined benefit plans.³ The Department of Labor issued somewhat different guidance for a diligent search in Field Assistance Bulletin 2004-02, “Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans.”⁴

We urge the PBGC to work with the Department of Labor in establishing standards for a diligent search. Similar guidance for a diligent search will ensure that employers will not choose one method of distribution over another based solely on differences in the standards for searches.

We recommend that the PBGC define a diligent search by listing the steps to be followed, beginning with the simplest and least costly. Notice by first class mail should be a required first step. Electronic notification is not sufficient since e-mail addresses change frequently. Also, electronic messages can be deleted by other family members or buried in large volumes of spam. Certified mail is also not adequate since a certified letter can be returned while a participant is on vacation or visiting relatives, and certified mail notices are so small that they can easily be lost in a bundle of mail.

Employers may have internal sources for locating a participant. Employers often have contact information for beneficiaries or other family members. Some employers may have other plans, such as health plans, that can be checked for participant or beneficiary addresses. Employers can use Internet search tools to locate a participant. Social Security offers a letter forwarding service for a nominal fee of \$35.⁵ It is our view that use of a commercial locator service should be a last step. Fees for a commercial search should not be charged against individual account balances.

Guidelines for Individual Accounts Transferred to the PBGC

We recommend that the PBGC consider the following guidelines in designing the missing participant program for terminating individual account plans.

* To the greatest extent possible, participant and beneficiary accounts transferred to the PBGC should not be reduced by fees and charges, neither to search for missing participants nor to manage accounts once distributions are received.

*Participant account balances should be managed to preserve principal.

³ See 29 CFR Sec. 4050.4.

⁴ <http://www.dol.gov/ebsa/regs/fab2004-2.html>

⁵ Social Security generally forwards a letter to the last employer of record unless the person is receiving benefits from Social Security and Social Security has the person’s address.
<http://www.socialsecurity.gov/foia/ltrfwding.html>

*PBGC fees, if any, should be graded so that small employers with limited resources are not discouraged from transferring missing participant accounts to the PBGC.

*All accounts, regardless of their size, should be transferable to the PBGC. Small benefit amounts have value, especially for persons with limited incomes.

We also recommend that the PBGC coordinate with the Labor Department in designing the missing participant program. The Labor Department has the authority to interpret the fiduciary obligations of employers in terminating defined contribution plans. Employers terminating defined contribution plans who do not choose to transfer the accounts of missing participants to the PBGC must follow Labor Department fiduciary guidance on search methods and distribution options for terminated defined contribution plans.⁶ The Labor Department will likely wish to revisit this guidance to accommodate an expanded PBGC missing participant program. For example, the tax consequences, if any, of account transfers and distributions should be similar under DOL and PBGC rules.⁷

Additional Resources

The Pension Rights Center has previously recommended that the PBGC establish a Lost Pension Plan Registry that would provide information needed by participants to locate a former employer's plan when the employer has changed name, location or corporate structure.⁸ Information for a Lost Pension Plan Registry is already provided by employers on IRS Form 8955-SSA. A Lost Pension Plan Registry could be established with minimal effort and at low cost. Unlike the Missing Participants Program, the proposed Registry would not list individuals. Participants seeking benefits would use the registry to search for their former employers. Such a registry would reduce the overall number of missing participants, and thus, the costs of the PBGC missing participant program.

Conclusion

By connecting participants with their earned benefits, the PBGC's missing participant program will be very helpful to the sponsors of terminating defined contribution plans. It will also provide missing participants and their beneficiaries an invaluable one-stop location to search for their benefits.

⁶ See EBSA Field Assistance Bulletin 2004-02. <http://www.dol.gov/ebsa/regs/fab2004-2.html>.

⁷ The PBGC received guidance from the IRS that transfers from terminating defined benefit plans to the PBGC missing participant program will not be taxed until the participant claims the account. <http://www.pbgc.gov/prac/terminations/missing-participants.html>

⁸ Pension Rights Center statement before the ERISA Advisory Council on Locating Missing and Lost Participants. http://www.pensionrights.org/sites/default/files/docs/130604_jsmith_statement_to_erisa_council_lost_pension_plan_registry.pdf and Pension Rights Center fact sheet on establishing a Lost Plan Registry. http://www.pensionrights.org/sites/default/files/docs/proposal_for_lost_pension_plan_registry.pdf

We appreciate the opportunity to comment on this initiative that will help so many participants and beneficiaries locate their earned benefits.

Sincerely,

A handwritten signature in black ink that reads "Jane T. Smith". The signature is written in a cursive style with a large, looped initial "J".

Jane T. Smith
Policy Analyst