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Submitted electronically to:

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Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
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RE: RIN 1212-AB13

Missing Participants; Proposed rules

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 Center applauds the Pension Benefit Guaranty Corporation (PBGC) for issuing proposed rules that will expand the missing participants program to include participants and beneficiaries in terminating defined contribution plans, multiemployer plans and small professional service plans. These proposed rules are most welcome and will benefit many participants and beneficiaries who currently may have no way of finding their benefits from these terminating plans. By combining the missing participant databases for all plans under the program, the PBGC will be providing a one-stop search program for missing participants in terminated plans. Our comments will focus on the proposed missing participant program for terminated defined contribution plans, such as 401(k)s.

BACKGROUND

The PBGC's missing participants program for terminating single employer defined benefit 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. Participants looking for benefits from these plans can use the online searchable database to find their benefits. The huge success of the missing participants program in connecting participants and their benefits prompted Congress to expand the program to other types of plans. The Pension Protection Act of 2006 (PPA) authorized the current expansion of the missing participant program to most defined contribution plans, such as 401(k) plans, multiemployer plans and professional service plans with 25 or fewer participants.

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. The question then becomes what to do with the benefits owed to participants who cannot be found.

Currently plan administrators of defined contribution plans may rollover the benefits of a missing participant into an Individual Retirement Account (IRA). Other choices for distribution are state abandoned property funds and interest-bearing federally insured bank accounts.¹ There is no required reporting of where the benefits went when a distribution is made for a missing participant in a defined contribution plan. When they reach retirement age, often years later, participants have no way of knowing where their benefits may be. They are on their own to contact numerous IRA providers, one or more state unclaimed property funds, or financial institutions that could be holding their benefits.

DISCUSSION AND RECOMMENDATIONS

I. We urge the PBGC to reconsider its decision not to use its authority under the Pension Protection Act to require employers who do not transfer accounts to the PBGC to report the names of missing participants and location of their accounts for inclusion in the searchable database.

Terminating single employer defined benefit plans are required to either transfer a missing participant's benefit to the PBGC or purchase an annuity for the missing participant and give the annuity information to the PBGC so that a missing participant can find the benefit. The PBGC posts the names of these missing participants in a searchable data base on the PBGC website.

While the Pension Protection Act of 2006 required the PBGC to establish a missing participant program for defined contribution plans, it did not require employers to use the program. The program has two parts. Employers may transfer the accounts of missing participants to the PBGC for later payment, or report to the PBGC the names of missing participants and location of their benefits. If an employer chooses not to transfer missing participant accounts to the PBGC, the PPA gave authority to the PBGC to require those employers to report the disposition of missing participants' benefits.

Regrettably, in the proposed rule the PBGC chose not to require employers to report the disposition of missing participants' benefits. Thus, the effectiveness of the missing participant program for defined contribution plans will depend on the degree of voluntary participation by employers. The proposed rule could unnecessarily leave an unknown number of missing participants no better off than they were before. Although the PBGC has indicated that they will be monitoring the degree of voluntary reporting by employers, this will be of no help to countless missing participants who will be unable to locate their benefits. Since employers and

¹ Department of Labor, Field Assistance Bulletin 2014-01.
<https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/fab2014-1.pdf>

plan administrators must have all of the relevant information on hand in order to transfer the funds to an IRA, abandoned property fund, or financial institution in preparation for plan termination, it would not be burdensome for them to electronically report the names of missing participants and their account location to the PBGC for inclusion in the searchable database.

II. We also urge the PBGC to incorporate specific diligent search criteria into the missing participant regulations for defined contribution plans.

The proposed regulation provides that a diligent search is required before a participant is considered “missing” and specifies that for defined contribution plans a diligent search must be conducted according to Labor Department guidance in Field Assistance Bulletin 2014-01. We recommend that the PBGC include specific search steps based on the FAB in the final regulations. This will place the diligent search standard for defined contribution plans under the authority of the PBGC, the agency administering the program. We further recommend that the Labor Department harmonize their guidance with the PBGC standard for diligent searches in order to simplify procedures for employers and plan administrators.

III. We support other features of the proposed rule.

(1) The fees to be charged for transferring accounts to the PBGC are reasonable.

The proposed charge of \$35 per missing participant for transferring account balances in excess of \$250 to the PBGC is reasonable. Low fees will encourage employers to participate in the program. Importantly, there is no fee for notifying the PBGC of a distribution for a missing participant.

(2) A plan that transfers benefits to the PBGC must transfer the benefits of all missing participants.

Although participation in the missing participant program is voluntary for defined contribution plans, we believe that requiring an employer to transfer all missing participant accounts will ease administration of the program and cause less confusion to participants.

However, we note that a plan that is simply notifying the PBGC of missing participants will not be required to list all missing participants. We question whether permitting this “cherry-picking” of notification will in any way benefit participants. Surely, employers who report some missing participants, and are required to distribute all benefits in order to terminate a plan, can report all missing participants.

(3) The program will accept small account balances and pay interest on lump sum distributions.

There is no restriction for small accounts and the transfer fee of \$35 will not apply to accounts under \$250. Interest at the federal mid-term rate will be paid on lump-sum distributions.

(4) The default pay-out option for accounts, other than de-minimis amounts, will be an annuity.²

For a married participant the annuity will be a joint and survivor annuity. Lump-sum payments may be elected instead of the annuity.

(5) Participants with de-minimis accounts cannot be “cashed-out” without making a distribution election.

Participants who do not make a distribution election will be considered missing participants.

IV. Additional recommendations.

(1) We recommend that the PBGC form for transferring a missing participant account include a question asking whether the employer has verified that the amount transferred is correct. Since the proposed regulation will not permit missing participants to appeal the amount transferred, such a question will serve to remind employers of their obligations.

(2) Additionally, we recommend that the PBGC include several questions on the Annual Reporting Form 5500 for terminating defined contribution plans. These questions could include whether there were missing participants, whether a diligent search was made for each, whether the employer used the PBGC program and how, e.g. transfers or reporting, and whether search fees were deducted from account balances.

We appreciate this opportunity to comment on the proposed rule for the missing participant program.

Sincerely,



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² Currently the de-minimis amount is \$5000 or less. See ERISA Sec. 203(3).