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Letter Regarding PBGC Request for Information on Missing Participants in Individual Account Plans, Federal Register, Vol. 78, No. 120, June 21, 2013

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August 19, 2013

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

Re: PBGC Request for Information on Missing Participants in Individual Account Plans
Federal Register, Vol. 78, No. 120, June 21, 2013

Dear Sir or Madam:

We are writing on behalf of the Pension Action Center (PAC) in regards to your request for comments on the implementation of a new program to deal with benefits of missing participants in terminating individual account plans.

The PAC is a non-profit organization located in the Gerontology Institute of the John W. McCormack School of Policy and Global Studies at the University of Massachusetts Boston. We provide free legal services to pension plan participants, as well as other individuals who may be entitled to pension benefits, throughout New England and the state of Illinois. The staff of the PAC has had many years of experience working with clients who are unable to locate their pension benefits due to plan terminations and other reasons.

Though the PBGC has raised numerous issues regarding the implementation of this new program, we have decided to focus our attention on several questions that fall within our area of expertise. Specifically, we would like to address the following issues:

1. the value, in terms of convenience and reliability, of having a single database of missing participants' benefits in terminated individual account plans compared to the burden on plans to provide the data and the burden on the PBGC to maintain the database;
2. the need for a comprehensive database, made possible by mandatory reporting of plan data;
3. the categories of information that should be included in the database, and;
4. the "diligent search" requirements that should apply for terminating individual account plans.

The value of a comprehensive database of missing participants' benefits in terminated individual account plans far outweighs the burden to plans of reporting data and the PBGC of maintaining the database.

The PBGC program for terminating defined benefit plans has proven to be effective at matching missing participants with their pension benefits. Although we do not know the cost of the

program, we have seen the value of connecting individuals to their retirement money and having a central, easily accessible data base for terminated defined benefit plans is useful. Our project uses it when looking for benefits for clients and we recommend it to individuals as well. It is our understanding that it has successfully connected many individuals with the benefits they earned.

At this time there is no comparable data base that participants can use to locate lost defined contribution plans. The process of trying to track down money from both defined benefit and defined contribution plans can be difficult and in some cases impossible. A central place to look would enhance the chance of finding retirement money. Also, as defined contribution plans become the dominant plan offered by employers, more workers will be looking for money that was not rolled over or cashed out.

The primary complaint that we have about the PBGC defined benefit unclaimed benefit data base is that it only covers terminated plans. A comprehensive data base including all unclaimed benefits, whether the plan is a defined benefit plan or a defined contribution plan and whether the plan is terminated or active, would be the most useful for participants and plans alike. We appreciate that the PBGC is not considering such an ambitious expansion of its data base at this time but we feel that such a data base should be the long-term goal.

Reporting of plan data of terminating defined contribution plans should be required in order to create the most *comprehensive* database of missing participants' benefits.

There are two components to the PBGC's proposed program. The first is the acceptance of the money from accounts of terminated individual account plans where the plan has failed in locating the participant entitled to the account. In those cases we assume that PBGC will require all of the plan data required to pay the participant and that this data will be put into the data base.

The decision of an administrator to place the account of a lost participant with the PBGC is voluntary.¹ However, we would urge that if an administrator decides not to give the PBGC the money in the account of the lost participant to hold, it should still be required to file information on lost participants with the PBGC. This information should be adequate to enable the participant to claim the account. The PBGC already requires this for defined benefit plans and therefore it could be easily implemented in the context of individual account plans.² The law requires that the plan administrator of a terminating DC plan "...To the extent provided in regulations ... **shall**, (emphasis added) upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits (A) to the corporation, or (B) to an entity other than the corporation...."³ Thus, information on the

¹ 29 U.S.C. § 1350(d)(1) (Stating "The plan administrator of a plan described in paragraph (4) *may* elect to transfer a missing participant's benefits to the corporation upon termination of the plan." (emphasis added)).

² See Schedule MP, available at <http://www.pbgc.gov/Documents/schedule-mp.pdf>.

³ 29 U.S.C. § 1350(d)(2).

missing participant's account is being gathered for terminated plan accounts which will no longer be held by the plan sponsor. We would recommend that plans that have terminated but continue to keep the account also report the information on the missing participant and that this information be added to the data base as well.

In addition, all defined contribution plans, not just those that are terminating, should be given the option to voluntarily submit missing participant information to the PBGC. Allowing plans to submit missing participant information prior to terminating will provide another means of locating missing participants by listing them on the PBGC data base. It may also encourage plans to be more proactive in seeking out participants. The sooner a plan recognizes that it has missing participants and begins the process of pairing those participants with their accounts, the larger the likelihood that the participants will be successfully matched with their accounts. Although this might add a small administrative burden for the PBGC, the burden would easily be outweighed by the benefit of finding missing participants more quickly.

We anticipate that the costs associated with requiring plans to report plan data would be low because ERISA already requires plans to compile and report plan data in their yearly Form 5500s.⁴ Requiring terminating individual account plans with missing participants to report this same information, perhaps in a somewhat different form, would create only a small administrative burden but would add a great deal to the consistency, quality, convenience, and reliability of the information included in the PBGC's comprehensive database.

Plans should be required to report information already contained in Form 5500s, in a format similar to the Schedule MP in the defined benefit context, so as to provide missing participants with necessary information while reducing reporting costs to the plan.

The PBGC requires terminating defined benefit plans with missing participants to complete a Schedule MP.⁵ This form provides the PBGC with information about the plan in general and about any missing participants that could not be paid out by the plan prior to termination.⁶ This document helps to match missing participants with their accounts by ensuring that there is a record indicating where the benefit can be found.⁷ This same form, or one similar to it, should also be required for terminating individual account plans with missing participants.

The Form 5500, which plans are required to prepare each year, contains a large amount of data that could easily be used to create a database of terminating individual account plans.⁸ With minimal effort a plan could file a Schedule MP using information gathered almost exclusively

⁴ See Internal Revenue Service Form 5500, available at <http://www.dol.gov/EBSA/5500MAIN.HTML>.

⁵ Schedule MP, available at <http://www.pbpc.gov/Documents/schedule-mp.pdf>.

⁶ *Id.*

⁷ *Id.*

⁸ See Form 5500, available at <http://www.dol.gov/EBSA/5500MAIN.HTML>.

from the Form 5500. The categories of information required by the Form 5500 which would also be included on the Schedule MP are as follows: the plan name; the plan sponsor's name, phone number, and address; the employer's EIN; the plan administrator's name, telephone number, and address, and; the administrator's EIN.⁹

The only additional information that would have to be produced by plans would be the information regarding individual missing participants for whom irrevocable commitments were purchased or whose accounts were taken over by the PBGC.¹⁰ Currently, this information includes the participant's full name, last known address, social security number, and birthdate, as well as the beneficiary's full name, Social Security number, and birth date.¹¹ If irrevocable commitments were purchased on behalf of any missing participants, then information regarding those commitments would also be required.¹² Having all of this information in one database would allow participants looking for a lost pension to search based on a variety of different metrics. Ultimately, this would result in a greater number of participants successfully locating terminated individual account plans and seeking their benefits through the PBGC.

Assuming this database would eventually be expanded to include all individual account plans, not just terminating individual account plans, the framework would already exist to easily integrate the new data. Having an expansive database in place would allow missing participants to independently seek out their benefits before a plan termination, thus avoiding the costly and time consuming process of undertaking a diligent search to find missing participants prior to plan termination.

The "diligent search" requirements laid out in 29 C.F.R. § 4050.4 and Field Assistance Bulletin 2004-02 should be adopted in relation to terminating individual account plans.

There is an important difference between the benefits of missing participants in terminating individual account plans and those in defined benefit plans. Whereas defined benefit plan assets are generally quite large, it is not uncommon for an individual account plan to be fairly small. A diligent search for missing participants is a required step before a terminating individual account plan can be taken over by the PBGC. We feel that the requirements of the diligent search should be based in part on the money at stake.

As laid out in Field Assistance Bulletin 2004-02, there are certain search methods that "involve such nominal expense and such potential for effectiveness that a plan fiduciary must always use them, regardless of size of the participant's account balance."¹³ These methods are: using

⁹ *Id.*

¹⁰ Schedule MP, available at <http://www.pbgc.gov/Documents/schedule-mp.pdf>.

¹¹ *Id.*

¹² *Id.*

¹³ EBSA Field Assistance Bulletin No. 2004-02 (Sept. 30, 2004).

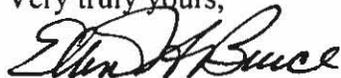
certified mail; checking related plan records (e.g. searching a group health insurance plan to ascertain whether it lists a more current address for the missing participant); checking with designated beneficiaries, and; using the SSA Letter-Forwarding Service where possible.¹⁴ For accounts with relatively small account balances, a plan that uses these methods should be deemed to have performed a diligent search.

For accounts worth more than a threshold dollar value (to be determined by the PBGC), plans should also be required to use a commercial locator service to find missing participants, as per 29 C.F.R. § 4050.4(b)(3).¹⁵ The necessity of matching missing participants entitled to large account balances with their accounts justifies the higher cost of using a commercial locator service.

In either instance, the search should also comport with 29 C.F.R. § 4050.4(b)(1). This section requires a search to begin “not more than 6 months before notices of intent to terminate are issued” and to be carried out in a way such that “if the individual is found, distribution to the individual can be reasonably expected to be made on or before the deemed distribution date.”¹⁶ Additionally, regardless of account value the costs of performing a diligent search should be undertaken without charge to the participant’s account.¹⁷ This is particularly important in regards to terminating individual account plans of small value, as the cost of performing a diligent search would be far more detrimental to the participant than to the plan.

Finally, we would like to mention that plans sponsored by employers with fewer than 100 employees are the plans that our clients have the most difficulty locating. In a study of our cases handled between 1998 and 2001, cases with small employers accounted for 6% of our cases but 10% of our lost pension cases.¹⁸ Smaller employers also have fewer resources to locate “lost employees.” Thus, the PBGC data base of lost participants DC plans becomes all the more important in connecting retirees to their benefits.

Very truly yours,



Ellen A. Bruce, JD
Director, Pension Action Center



Brian Reilly
Legal Intern

¹⁴ *Id.*

¹⁵ 29 C.F.R. §4050.4(b)(3).

¹⁶ 29 C.F.R. § 4050.4(b)(1).

¹⁷ Compare 29 C.F.R. §4050.4(b)(3) (prohibiting plans from charging diligent search fees to participant accounts) with Field Assistance Bulletin No. 2004-02 (allowing reasonable diligent search costs to be charged to participant accounts).

¹⁸ Bruce, E.A., J. Turner, D. Lee (2005), Lost Pensions: An Empirical Investigation. *Benefits Quarterly*, Vol. 21. No.1 p.45.