

## PBGC Proposes to Change, Expand Its Missing Participant Program for Terminated Plans

Proposed regulations would open PBGC's existing missing participant program in 2018 to terminated defined contribution plans, PBGC-insured multiemployer plans, and certain small professional service defined benefit plans. PBGC also proposed changes to its existing program aimed at aligning search requirements with DOL guidance and simplifying the rules for determining transfer amounts. The guidance would give sponsors considering plan terminations in the coming years new options for dealing with missing participants — but does not address the missing participant problem in the case of distributions from ongoing plans.

### Background

A sponsor terminating its pension plan must distribute all plan benefits owed to participants and beneficiaries. To address the issue of providing for participants and beneficiaries whom the plan administrator is unable to locate (known as missing, or lost, participants), the Retirement Protection Act of 1994 created [PBGC's missing participant program](#) for terminated PBGC-insured, single-employer defined benefit (DB) plans. Under this program, after unsuccessfully trying to find a participant or beneficiary through a diligent search, a plan sponsor can either buy an annuity in the individual's name and send PBGC information about it or send equivalent funds to PBGC for distribution when the participant is found. PBGC then searches for the missing individual — and, when it finds the individual, either pays the benefit owed or provides the information needed to claim the annuity. The public can search PBGC's [Internet Missing Participant List](#), which incorporates names, last-known addresses, company names, and pension plan termination dates.

The Pension Protection Act of 2006 authorized PBGC to expand the existing program to handle the benefits of missing participants and beneficiaries under defined contribution (DC) plans, PBGC-insured multiemployer plans, and small professional service DB plans that the PBGC insurance program does not cover. Currently, terminated DC plans can distribute missing participant benefits into an individual retirement account, a federally insured bank account, or escheat to state unclaimed property funds.



## PBGC Seeks to Revamp Program

On September 20, 2016, PBGC [proposed regulations](#) revising the existing missing participant program and adding three new missing participant programs for (1) DC plans, (2) PBGC-insured multiemployer DB plans, and (3) professional service employer DB plans that are not PBGC-insured. PBGC released a [summary and list of FAQs](#) and a [press release](#) to accompany its proposal. The proposed rule is intended to provide these plans with a new option for dealing with missing participants and beneficiaries on plan termination and make it more likely that the missing persons will receive their benefits.

The program would be mandatory for PBGC-insured DB plans (including multiemployer plans), but would be voluntary for DC plans and DB plans that PBGC does not insure. Though required to participate in the program, PBGC-insured plans would have the choice of transferring the benefit to the PBGC or purchasing an annuity contract and reporting relevant information to the agency. PBGC anticipates that the program would be available in 2018 for plans that terminate in 2017. Comments on the proposal are due by November 21, 2016.

### Changes to Existing Program

The proposed regulation would:

- **Impose fees for participation.** PBGC proposed a one-time \$35 fee per missing participant/beneficiary with a benefit of \$250 or more, payable when the plan pays the benefit transfer amount to PBGC. Plans would not need to pay any maintenance or distribution fees in connection with the program.
- **Enhance requirements for diligent searches to align with DOL guidance for DC plans.** As required under 2014 DOL guidance for DC plans (see our [September 3, 2014 For Your Information](#)), plans would have to search not only plan records but employer records — including those of an employer’s other plans (such as health plans), and conduct a no-fee Internet search. The search would have to be made within six months of closing out the plan, however, which isn’t a requirement under the DOL guidance. Additionally, PBGC’s proposal would define “commercial locator service,” which is part of the existing search method requirements but currently undefined. However, it would make the requirement to use a commercial locator service subject to waiver under certain circumstances.
- **Simplify the rules for determining the amount to transfer to PBGC.** Under the proposal, there are fewer benefit categories and fewer sets of actuarial assumptions. The proposal also features an online spreadsheet where plans can enter data to perform required calculations.
- **Require plans to account separately for missed payments.** Under current rules, the amount transferred to PBGC by a plan, the “designated benefit,” includes both the present value of future benefits as well as missed payments of pay-status benefits. It isn’t clear under the current rule, however, how plans should value missed payments or how PBGC can identify which portion of the amount transferred they represent. The proposal would require plans to value missed payments by accumulating interest at a specified rate, and to identify separately the “plan make-up amount” upon submission to PBGC.

#### Not Really Missing

According to PBGC, some plan administrators thought they could not use the missing participants program for the benefits of participants and beneficiaries whose contact information is known but who fail to complete the paperwork to claim lump sum distributions at or below the \$5,000 *de minimis* threshold. Under the proposal, PBGC would welcome transfers of benefits for these “not really missing” participants and beneficiaries.

- **Preserve early retirement and lump sum features, if available under the plan.** However, PBGC will apply uniform benefit determination principles for all missing participants that ignore individual plan provisions, including, among others, lump sum distributions of *de minimis* amounts and annuities commencing at age 55.

**Comment.** While this approach may seem simplified, it appears to create more work for plan sponsors. PBGC would no longer compute annuity benefits for a participant as the actuarial equivalent of the benefit transfer amount, but rather would provide annuity benefits based on what the plan would have provided. Plans would have to report the straight life annuity payable to the participant from age 55 to age 70 and at the participant's required beginning date.

- **Treat as “missing” a non-responsive participant/beneficiary with a *de minimis* benefit (currently, less than \$5,000) who is subject to a mandatory cashout under the plan.** Plans would be able to bring into the PBGC program participants and beneficiaries whose whereabouts are known but who fail to return their election forms.

### Bringing Defined Contribution Plans into the Fold

As an alternative to establishing an IRA at a financial institution for each missing participant or beneficiary, the proposal would allow administrators of terminated DC plans to transfer benefits to PBGC. Alternatively, the administrator could send PBGC information about the location of missing participants' accounts (such as contact information for an IRA provider). As under the existing program, PBGC would then try to locate the reported missing participants and beneficiaries. Those whom the PBGC cannot locate would be added to a new, unified pension search database. Notably, a transferring plan would be required to turn over benefits for all missing distributees; it could not cherry-pick which benefits it would transfer.

The proposal would cover common types of terminated DC plans — Section 401(k) plans, profit sharing plans, money purchase plans, target benefit plans, employee stock ownership plans, stock bonus plans, and Section 403(b)(7) plans. It would not cover governmental or church plans.

Because application of benefit valuation rules would not be necessary, administration of the DC program would be relatively straightforward. The benefit transfer amount sent to PBGC would simply be the amount available for distribution to the missing participant/beneficiary.

**Comment.** PBGC recognizes that the transfer amount might reflect deduction of administrative expenses in connection with plan termination, but says it will not inquire about these expenses.

### Elimination of right to appeal?

The proposal would eliminate an individual's right to appeal to PBGC as to whether the correct amount had been paid to the PBGC; the individual would need to look to the plan for recourse or, because the plan no longer exists, seek recourse from the plan sponsor.

### Concern with “Lost” Retirement Savings

This summer, Sen. Elizabeth Warren (D-MA) and Sen. Steven Danies (R-MT) introduced the Retirement Savings Registry Act of 2016, which would create a national online “lost and found” for retirement savings accounts. The legislation would require mandatory reporting of distributions and transfers, increase the *de minimis* cashout amount from \$5,000 to \$6,000, and permit accounts of less than \$1,000 (for which there is no participant election) to be transferred to the Director of the Retirement Savings Lost and Found and invested in US Treasury securities, or to an IRA. For more information on this bill, please see our [July 5, 2016 Legislate](#). A companion bill has been introduced in the House.

## New Option for Multiemployer and Small Professional Service Defined Benefit Plans

The proposed rule would give multiemployer plans and small professional service plans (with 25 or fewer participants) a new way to deal with the benefits of missing participants and beneficiaries. However, PBGC expects limited use of the program by these types of plans.

## DOL Guidance on Deck?

According to the preamble, DOL has advised PBGC that it intends to review its missing participants guidance to coordinate with PBGC's final rule on the topic. In particular, as part of its review, DOL said it plans to consider transfers to PBGC (in lieu of rollovers to IRAs) under these circumstances.

## In Closing

The inclusion of DC plans in PBGC's missing participants program may meaningfully increase opportunities for participants and beneficiaries to find lost retirement benefits — but this expansion would only be available to terminating plans. Many sponsors of ongoing plans also encounter the problem of missing participants, and may want to consider scheduling a routine review of “bad addresses” where plan mailings have been returned as undeliverable. Up-to-date records and participant contact information can save a lot of future headaches when a distribution is due for payment.

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