

Missing Participants – Best Practices for Pension Plans



U.S. Department of Labor
Employee Benefits Security Administration
January 12, 2021

Employees work hard and make sacrifices to earn and save for retirement. Sometimes, though, retirement plan participants don't apply for their pension benefits at retirement time because they don't know their pension is available or understand the consequences of failing to respond to plan communications. EBSA has undertaken a nationwide compliance initiative to help retirement plans focus on practices to maintain complete and accurate census information, communicate with participants and beneficiaries about their eligibility for benefits, and implement effective policies and procedures to locate missing participants and beneficiaries. This document outlines best practices that the fiduciaries of defined benefit and defined contribution plans, such as 401(k) plans, can follow to ensure that plan participants and beneficiaries receive promised benefits when they reach retirement age.

The first step in addressing any problem often is knowing that there is one. EBSA has learned from its experience and from plan sponsors that the following "red flags" are often warnings or indicators of a problem with missing or nonresponsive participants.

- More than a small number of missing or nonresponsive participants.
- More than a small number of terminated vested participants who have reached normal retirement age but have not started receiving their pension benefits.
- Missing, inaccurate, or incomplete contact information, census data, or both (e.g., incorrect or out-of-date mail, email, and other contact information, partial social security numbers, missing birthdates, missing spousal information, or placeholder entries).
- Absence of sound policies and procedures for handling mail returned marked "return to sender," "wrong address," "addressee unknown," or otherwise, and undeliverable email.
- Absence of sound policies and procedures for handling uncashed checks (as reflected for example, by the absence of an accounting journal or similar record of uncashed checks, a substantial number of stale uncashed distribution checks, or failure to reclaim stale uncashed check funds in distribution accounts).

A common characteristic of plans with low numbers of missing and nonresponsive participants is that staff are committed to making sure that plan records are complete and up to date and to proactively taking steps to ensure that participants and beneficiaries get the benefits they have earned in a timely fashion. Those plans use "best practices" as part of their ongoing culture of fiduciary compliance rather than just as one-time or sporadic "fixes." Some of the practices used by well-run plans to connect participants and beneficiaries with their hard-earned benefits are listed below.

Not every practice below is necessarily appropriate for every plan. The examples are not listed by priority or in any other particular order. Responsible plan fiduciaries should consider what practices will yield the best results in a cost effective manner for their plan's particular participant population. In deciding what steps are appropriate, plan fiduciaries should also consider the size of a participant's accrued benefit and account balance as well as the cost of search efforts. The specific steps taken to locate a missing participant, or to obtain instructions from a nonresponsive participant, will depend on facts and circumstances particular to a plan and participant.

Examples of Best Practices.

In the course of its investigations, EBSA observed the missing participant processes and practices of several plans ranging from the poorly run to the well-run. Based on EBSA's experience working with plans, the following practices have proven effective at minimizing and mitigating the problem of missing or nonresponsive participants.¹

1. Maintaining accurate census information for the plan's participant population.

- Contacting participants, both current and retired, and beneficiaries on a periodic basis to confirm or update their contact information. Relevant contact information could include home and business addresses, telephone numbers (including cell phone numbers), social media contact information, and next of kin/emergency contact information. Well-run plans regularly reconfirm that the information in their possession is accurate.
- Including contact information change requests in plan communications along with a reminder to advise the plan of any changes in contact information.
- Flagging undeliverable mail/email and uncashed checks for follow-up.
- Maintaining and monitoring an online platform for the plan that participants can use to update contact information for themselves and their spouses/beneficiaries, if any, and incorporating such updates into the plan's census information.
- Providing prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
- Regularly requesting updates to contact information for beneficiaries, if any.
- Regularly auditing census information and correcting data errors.
- In the case of a change in record keepers or a business merger or acquisition by the plan sponsor, addressing the transfer of appropriate plan information (including participant and beneficiary contact information) and relevant employment records (e.g. next of kin information and emergency contacts). EBSA has found that in the context of an

¹ ERISA's fiduciary obligations apply equally to defined benefit plans and defined contribution plans, and these best practice tips apply equally to both types of plans. The Department also stresses that ERISA's fiduciary obligations fully apply to missing participants whose accounts the plan purports to treat as "conditionally forfeited" under Treasury Regulation 1.411(a)-4(b)(6). Under Title I of ERISA, plan fiduciaries retain full responsibility for adhering to Title I's provisions with respect to such participants and their beneficiaries; these participants and beneficiaries remain fully entitled to all their promised benefits; and the fiduciaries have an obligation to keep accurate records and take appropriate steps to ensure that the participants and beneficiaries are paid their full benefits when due.

acquisition, merger, or divestiture, well-run plans make missing participant searches of plan, related plan (e.g., health plan) and employer records (e.g., payroll records) part of the collection and transfer of records.

2. Implementing effective communication strategies.

- Using plain language and offering non-English language assistance when and where appropriate.
- Stating upfront and prominently what the communication is about – e.g., eligibility to start payment of pension benefits, a request for updated contact information, etc.
- Encouraging contact through plan/plan sponsor websites and toll free numbers.
- Building steps into the employer and plan onboarding and enrollment processes for new employees, and exit processes for separating or retiring employees, to confirm or update contact information, confirm information needed to determine when benefits are due and to correctly calculate the amount of benefits owed, and advise employees of the importance of ensuring that the plan has accurate contact information at all times.
- Communicating information about how the plan can help eligible employees consolidate accounts from prior employer plans or rollover IRAs.
- Clearly marking envelopes and correspondence with the original plan or sponsor name for participants who separated before the plan or sponsor name changed, for example, during a corporate merger, and indicating that the communication relates to pension benefit rights.

3. Missing participant searches.

- Checking related plan and employer records for participant, beneficiary and next of kin/emergency contact information. While the plan may not possess current contact information, it is possible that the employer's payroll records or the records maintained by another of the employer's plans, such as a group health plan, may have more up-to-date information. If there are privacy concerns, the person engaged in the search can request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary.
- Checking with designated plan beneficiaries (e.g., spouse, children) and the employee's emergency contacts (in the employer's records) for updated contact information; if there are privacy concerns, asking the designated beneficiary or emergency contact to forward a letter to the missing participant or beneficiary.
- Using free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, and social media to locate individuals.
- Using a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals.
- Attempting contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address.
- Attempting contact via other available means such as email addresses, telephone and text numbers, and social media.

- If participants are nonresponsive over a period of time, using death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant's death, redirecting communications to beneficiaries.
- Reaching out to the colleagues of missing participants by, for example, contacting employees who worked in the same office (e.g., a small employer with one or two locations) or by publishing a list of "missing" participants on the company's intranet, in email notices to existing employees, or in communications with other retirees who are already receiving benefits. Similarly, for unionized employees, some have reached out to the union's local offices and through union member communications to find missing retirees.
- Registering missing participants on public and private pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits), and publicizing the registry through emails, newsletters, and other communications to existing employees, union members, and retirees.
- Searching regularly using some or all of the above steps.

4. Documenting procedures and actions

- Reducing the plan's policies and procedures to writing to ensure they are clear and result in consistent practices.
- Documenting key decisions and the steps and actions taken to implement the policies.
- For plans that use third party record keepers to maintain plan records and handle participant communications, ensuring the record keeper is performing agreed upon services, and working with the record keeper to identify and correct shortcomings in the plan's recordkeeping and communication practices, including establishing procedures for obtaining relevant information held by the employer.

The contents of this document do not have the force and effect of law, and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

COMPLIANCE ASSISTANCE RELEASE NO. 2021-01

DATE: JANUARY 12, 2021

MEMORANDUM FOR: REGIONAL DIRECTORS

THROUGH: AMY J. TURNER
DEPUTY ASSISTANT SECRETARY FOR REGIONAL OFFICE
OPERATIONS

TIMOTHY D. HAUSER
DEPUTY ASSISTANT SECRETARY FOR NATIONAL OFFICE
OPERATIONS

FROM: MABEL CAPOLONGO
DIRECTOR OF ENFORCEMENT

SUBJECT: TERMINATED VESTED PARTICIPANTS PROJECT
DEFINED BENEFIT PENSION PLANS

I. Introduction

The purpose of this memorandum is to ensure consistent investigative processes and case-closing practices among the Employee Benefits Security Administration's Regional Offices conducting Terminated Vested Participants Project (TVPP) audits and to facilitate voluntary compliance efforts by plan fiduciaries.

II. Background

The TVPP has three key objectives for defined benefit pension plans. First, to ensure these plans maintain adequate census and other records necessary to determine (a) the identity and address of participants and beneficiaries due benefits under the plan, (b) the amount of benefits due under the plan, and (c) when participants and beneficiaries are eligible to commence benefits. Second, to ensure these plans have appropriate procedures for advising participants with vested accrued benefits ("terminated vested participants" or "TVPs") of their eligibility to apply for benefits as they near normal retirement age and the date they must start required minimum distributions (RMDs) under federal tax law. Third, to ensure these plans implement appropriate search procedures for terminated participants and beneficiaries for whom they have incorrect or incomplete information.

When plan participants and beneficiaries are "missing" or unresponsive to plan communications, and do not timely receive their benefits, their benefits and retirement security are at risk. Without their retirement benefits, participants and beneficiaries may have to live on substantially less income than they need to meet their physical and health needs. Even if they ultimately

receive their benefits, they may face significant and unnecessary RMD related excise taxes.¹ Plans may be unable to communicate with terminated participants who are owed benefits, or their designated beneficiaries, because of inadequate recordkeeping practices, ineffective processes for communicating with terminated participants and beneficiaries², and faulty procedures for searching for participants and beneficiaries for whom they have incorrect or incomplete contact information. Such fiduciary failures can result in financial injury to the plan's participants, spouses, and other designated beneficiaries who fail to make benefit claims or otherwise start receiving their retirement benefits.

III. Investigations

A. *Opening the Investigation*

TVPP investigations of defined benefit plans focus on plans that appear to have systemic issues with plan administration, particularly issues related to keeping track of terminated vested participants and beneficiaries, and timely distributing benefits. For example, a plan administrator may report a large number of retired or terminated vested participants who are entitled to future benefits (or beneficiaries, in the case of deceased former participants) on the plan's latest Form 5500 filing. Similarly, when a plan sponsor faces bankruptcy or is involved in a merger or acquisition, there is an increased risk of systemic issues resulting in the loss of participant data. EBSA opens cases in such instances to help plans meet their obligation to locate missing participants and beneficiaries and pay them their benefits when due. Participants also contact EBSA for assistance if they believe they are entitled to benefits, but their plans have not provided the opportunity to claim them.

B. *Information We Ask For*

When we open an investigation, we seek to determine the scope of any potential problems the plan may have with recordkeeping or administration of benefits for terminated vested participants and beneficiaries. Several classes of records and documents help in this analysis.

- The plan document(s) (including summary plan descriptions) and any relevant amendments tell us what the plan's distribution rules are, and whether they comply with ERISA.
- Participant census records, noting the employment status of each participant and their contact information, help us to understand whether a plan has demographic and contact information sufficient to determine when benefits are due and to communicate with TVPs in a timely fashion.

¹ The Department notes that if such excise taxes result from the fiduciary's violation of ERISA, EBSA may ask the plan's fiduciary to correct the breach by obtaining a waiver of such excise taxes from the Internal Revenue Service (e.g., through Employee Plans Compliance Resolution System) or reimbursing the recipient of the distribution for any such excise taxes and associated expenses.

² The final rule, titled Default Electronic Disclosure by Employee Pension Benefit Plans under ERISA, gives plans a new tool to communicate more effectively with terminated participants and beneficiaries. 85 FR 31884 (May 27, 2020).

- Actuarial reports or other reports prepared by the plan’s actuary are useful to understanding the plan’s demographics.
- We also examine the plan’s procedures for communicating with TVPs, spouses and other designated beneficiaries. To that end, evaluating the plan’s policies and practices regarding preparation and distribution of individual benefit statements, and other periodic communications to participants, spouses, or other beneficiaries entitled to benefits, is helpful to understanding whether the plan can effectively communicate information regarding benefit rights and claims procedures to eligible participants, spouses, and designated beneficiaries.
- We also seek information to determine whether the plan takes sufficient steps to address missing participant situations when they occur.³ This includes examining internal procedures and practices for reaching out to unresponsive TVPs or for searching for them (for example, through the plan sponsor’s human resources department or in the records of related employee benefit plans), and contracts and experience with third-parties who perform recordkeeping and missing participant search functions for the plan. These documents and information, combined with interviews of the relevant parties, help us to verify what the plan, responsible plan fiduciaries, and relevant service providers do (or do not do) when confronted with TVPs or beneficiaries who are eligible to receive their benefits, but have not made a claim for benefits or otherwise entered pay status.

While these are the principal types of documents and information that EBSA requests in the TVPP, EBSA’s document requests may also include other types of documents or information depending on the facts and circumstances in individual cases.

Generally, EBSA will send two letters requesting documents and information: the letter opening the case and a follow-up letter requesting more targeted information. We will ask plans, plan fiduciaries, and plan sponsors voluntarily to produce requested documents by the response date set in the letter. Depending upon the amount and quality of information provided, matters discovered in the course of the investigation, and other factors, additional information requests may be necessary. We also will provide a reasonable opportunity for the letters’ recipients to raise concerns about burden and costs associated with complying with a request, consider reasonable suggestions on alternative document productions that will provide the necessary information and grant reasonable requests to extend the response date. However, if such efforts are not successful or result in undue delay of the investigation or implementation of corrective action, EBSA will issue subpoenas to compel production of requested documents.⁴ We also note that some plans and service providers will not voluntarily produce protected personal information of participants and beneficiaries without a subpoena due to privacy and other legal concerns.

³ Plans that rely on the new electronic disclosure rule’s provisions requiring prompt action to address inaccurate electronic addresses should find a dramatic reduction in the scope of this problem. *See* 29 CFR 2520.104b-31(f)(4) and final rule preamble discussion at 85 FR 31884, 31889-90.

⁴ Section 502(c)(6) of ERISA permits the Department to assess a civil penalty for each failure to provide documents or information requested by the Department. In 2020, the penalty may be as high as \$159 per day per item requested capped at \$1,594 per request. The Department views each document and data set as a separate request.

C. Errors We Look For

Our review of the plan's records and procedures is designed to determine whether there are systemic issues in the plan's administration of terminated vested participant benefits. All investigations are case-specific, but generally, we look for:

- Systemic errors in plan recordkeeping and administration that create a risk of loss associated with the failure of a terminated vested participant or their beneficiary to enter pay status before death or the imposition of excise taxes on RMD amounts.
- Inadequate procedures for identifying and locating missing participants and beneficiaries.
- Inadequate procedures for contacting TVPs nearing normal retirement age to inform them of their right to commence payment of their benefits.
- Inadequate procedures for contacting TVPs and the beneficiaries of deceased TVPs who are not in pay status at or near the date that they must commence RMDs to inform them of actions the plan will take and what they must do to enter pay status and avoid RMD excise taxes.
- Inadequate procedures for addressing uncashed distribution checks.

“Red flags” often may lead us to believe problems exist. For example, in plan census records, the presence of participants with missing and incomplete data – such as names, dates of birth, and social security numbers – is problematic, as discussed above. Sometimes plans have clearly flawed data, for example, where birthdates are “1/1/1900” or names are placeholder “John Does.” We also review returned mail records. Participant communications (such as annual funding notices) returned to sender, or benefit checks that remain uncashed suggest that the plan lacks sufficient contact information to reach and pay eligible TVPs or beneficiaries. More than a small number of terminated vested participants who are eligible to claim benefits (e.g., participants who have reached normal retirement age or the RMD required beginning date), but have not done so, may warrant additional inquiries.

Certain practices suggest that a plan's procedures for dealing with TVPs are insufficient. Continuing to deliver required communications to a known “bad address” without taking steps to verify the correct address, failing to use simple methods and resources like the USPS Address Correction Service and/or the National Change of Address (NCOA) database to find replacement addresses, can indicate problems. EBSA's experience is that many plan fiduciaries fail to take advantage of or properly use the missing participant search and location services offered or provided by the plan's record keeper or other service providers. Fiduciaries should carefully monitor the performance of retained, third party search firms, and ensure that they are complying with any applicable contractual commitments regarding missing persons.

Benefit notices to TVPs/beneficiaries should clearly explain to the recipient their right to pension benefits. Notices that do not clearly state the vested status of the participant or their spouse, the date of their right to benefits (especially if immediate), or the consequence of excise taxes due to a delay in starting minimum required distributions also contribute to a TVP problem.

We have also noticed other examples of practices that contribute to the TVP problem. For example, letters to terminated vested participants that are not in “plain English.” Similarly, the plan may cover populations of participants who are not fluent in English, but fail to provide language assistance or notify them of the availability of such assistance. Workers may have participated in predecessor plans or worked for companies that had different names than the current plan or employer as a result of mergers or acquisitions, yet the successor plan’s correspondence does not include the name of the predecessor employer or plan.

In our experience, mergers, acquisitions, and company name changes commonly present risks that participants will ignore mail addressed to them from a company for which they believe they never worked. These situations also present risks that the records of predecessor plans will not be fully integrated into the successor plan’s records. For example, we have come across cases where the plan fiduciary deletes missing participants’ names from the plan’s census data and does not maintain the records necessary to reinstate the participant’s benefits when he or she subsequently submits a claim.

D. How Cases Are Closed

After receiving all the requested information, investigators should promptly inform the responsible fiduciaries of the agency’s findings and invite them to discuss how they can remedy the identified problems. For example, when EBSA finds systemic errors in plan records that have hindered TVPs, spouses or other eligible beneficiaries from claiming benefits, our aim is to help the plan find as many adversely affected participants and beneficiaries as possible and help the plan fashion an appropriate remedy for each affected individual. We also will ask the plan to take appropriate corrective actions regarding their policies and practices regarding missing participants.

While an EBSA Voluntary Compliance (VC) letter will address potential ERISA violations, a VC letter, as a general matter, absent especially substantial errors or widespread fiduciary breaches, will not cite individual plan fiduciaries with specific ERISA violations. EBSA will give plan fiduciaries a reasonable amount of time to respond to a VC letter. Upon receipt of a timely response, EBSA will engage in meaningful discussions with plan fiduciaries on legal and factual issues related to the existence of a violation and appropriate correction of problems addressed in the VC letter.

If the responsible plan fiduciaries provide appropriate remedies for affected individuals and correct any flaws in their recordkeeping, communication, search and other relevant policies, EBSA will generally recite those corrective steps, without citing the individual plan fiduciaries for specific violations of ERISA when closing out a case.

The contents of this document do not have the force and effect of law, and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

FIELD ASSISTANCE BULLETIN NO. 2021-01

DATE: JANUARY 12, 2021

MEMORANDUM FOR: MABEL CAPOLONGO, DIRECTOR OF ENFORCEMENT
REGIONAL DIRECTORS

THROUGH: TIMOTHY D. HAUSER
DEPUTY ASSISTANT SECRETARY FOR NATIONAL OFFICE
OPERATIONS

AMY J. TURNER
DEPUTY ASSISTANT SECRETARY FOR REGIONAL OFFICE
OPERATIONS

FROM: JOHN J. CANARY
DIRECTOR OF REGULATIONS AND INTERPRETATIONS

SUBJECT: TEMPORARY ENFORCEMENT POLICY REGARDING THE
PARTICIPATION OF TERMINATING DEFINED CONTRIBUTION PLANS IN
THE PBGC MISSING PARTICIPANTS PROGRAM

This memorandum announces the Department of Labor's temporary enforcement policy on terminating defined contribution plans' (e.g., 401(k) plans) use of the Pension Benefit Guaranty Corporation's (PBGC) expanded Missing Participants Program. The policy applies to fiduciaries of terminating defined contribution plans and qualified termination administrators (QTA) of abandoned individual account plans (abandoned plans).

BACKGROUND

The Department of Labor's regulation at 29 CFR 2550.404a-3 provides a fiduciary safe harbor for use in making distributions from terminated individual account plans (as defined in section 3(34) of ERISA) and abandoned plans (as described in 29 CFR 2578.1) on behalf of participants and beneficiaries who fail to make an election regarding a form of benefit distribution, including "missing participants." The safe harbor generally requires that distributions be rolled over to an individual retirement account or annuity (IRA), although in limited circumstances fiduciaries may make distributions to certain bank accounts or to a state unclaimed property fund. If the conditions of the safe harbor are met, a fiduciary (including a QTA in the case of an abandoned plan) is deemed to have satisfied the requirements of section 404(a) of ERISA with respect to distributing benefits, selecting a transferee entity, and investing funds in connection with the distribution.

On December 22, 2017, PBGC established the PBGC Defined Contribution Missing Participants Program (Program) to hold retirement benefits for missing participants and beneficiaries in most terminated defined contribution plans and to help those participants and beneficiaries find and

receive those benefits.¹ 29 CFR 4050.201 - 207. The PBGC cites multiple benefits of the Program, including:

- benefits of any size can be transferred to the PBGC;
- periodic active searches by the PBGC increases the likelihood of connecting missing participants with their benefits;
- benefits are not diminished by ongoing maintenance fees or distribution charges;
- transferred amounts grow with interest (at the applicable Federal mid-term rate); and
- lifetime income options are available for balance transfers over \$5,000.

The Department consulted with the PBGC during the PBGC's development of its Defined Contribution Missing Participants Program. As noted in the preamble to the final rule adopting the Program, the Department intends to look into what changes are needed to its safe harbor regulation so that transfers to the PBGC by terminating individual account plans would be eligible for relief under the safe harbor.²

The COVID-19 emergency may result in some disruption of recordkeeping and search activities of employers, plan fiduciaries and service providers who closed their offices, operate under social distancing or work remotely. We expect that the economic disruption caused by the outbreak could result in large numbers of workers losing contact with their employers and plans. Accordingly, it is even more important in the wake of the pandemic to facilitate the transfer of missing participants' account balances to the PBGC upon the termination or abandonment of an individual account plan and, thereby, increase the likelihood that missing participants can locate and access their benefits.

TEMPORARY ENFORCEMENT POLICY

Pending further guidance, the Department will not pursue violations under section 404(a) of ERISA against either responsible plan fiduciaries of terminating defined contribution plans or QTAs of abandoned plans as described in 29 CFR 2578.1 in connection with the transfer of a missing or non-responsive participant's or beneficiary's account balance to the PBGC in accordance with the PBGC's missing participant regulations rather than to an IRA, certain bank accounts, or to a state unclaimed property fund, as specified in 29 CFR 2550.404a-3, if the plan fiduciary or QTA complies with the guidance in this memorandum and has acted in accordance with a good faith, reasonable interpretation of section 404 of ERISA with respect to matters not specifically addressed in this memorandum.³

¹ 82 FR 60800. Until recently, the PBGC Program covered only the PBGC-insured single-employer defined benefit plans as part of the standard termination process. The program was expanded to cover defined contribution plans (e.g., 401(k) plans), and certain other defined benefit plans that terminate on or after January 1, 2018.

² 82 FR 60800, 60801.

³ With regard to the account balance of a missing participant that was conditionally forfeited under a plan provision incorporating Treasury Regulation 26 CFR 1.411(a)-4(b)(6), the preamble to the PBGC's final missing participant regulation states that: "PBGC believes that such a claim to benefits isn't lost on plan termination, and so the final missing participants regulation treats these individuals the same as any other missing participant." 82 FR 60800,

However, this temporary enforcement policy does not preclude the Department from pursuing violations under sections 404 or 406 of ERISA for a failure to diligently search for participants and beneficiaries prior to the transfer of their account balances to the PBGC or from pursuing violations under sections 107, 209 or 404 of ERISA for a failure to maintain plan and employer records. This memorandum expresses a temporary enforcement policy; it does not address the rights or obligations of other parties. To the extent this memorandum conflicts with the distribution guidance of Field Assistance Bulletin 2014-01, this memorandum controls.

Transferring Plans

A plan fiduciary or QTA who chooses to participate in the PBGC Defined Contribution Missing Participants Program must otherwise comply with the requirements of the safe harbor regulation at 29 CFR 2550.404a-3, except that the content of the notice to participants and beneficiaries must be modified to reflect the transfer to the PBGC, rather than to an IRA, bank or savings account, or state unclaimed property fund. Notices to participants and beneficiaries must state clearly that their account balances are being transferred to the “Pension Benefit Guaranty Corporation’s Defined Contribution Missing Participants Program,” and include the PBGC’s website address and customer contact number.

A plan fiduciary or QTA may also transfer to the PBGC the account balances of participants and beneficiaries who elected a lump sum distribution of the entire account under the terms of the plan if that distribution was paid by check and the check remains uncashed after: (1) the “cash-by” date prescribed on the check (or in an accompanying notice) that is at least 45 days after the check’s issuance, or (2) the check's stale date if no “cash by” date is prescribed.

PBGC Fee

The PBGC charges a flat fee for certain accounts transferred to the PBGC Defined Contribution Missing Participants Program. A plan fiduciary may pay this fee from the transferred account unless the plan terms prohibit such payment.⁴ In the case of an abandoned plan, the Department will not treat a QTA as violating section 404(a)(1)(D) for a failure to comply with plan terms merely because the QTA disregards plan terms that require such expenses to be paid by an employer that is no longer available.

Notifying Plans

Under the PBGC Defined Contribution Missing Participants Program, a plan that does not elect to transfer the account balances of all missing participants to the PBGC may choose to notify the PBGC about the disposition of the account balances of all or some missing participants. The

60805. Accordingly, with the exception of an abandoned plan, this temporary enforcement policy will not apply to a terminating individual account plan containing a Treasury Regulation 26 CFR 1.411(a)-4(b)(6) conditional forfeiture provision, unless the conditionally forfeited accounts of all missing participants and beneficiaries are fully restored and transferred to the PBGC.

⁴ ERISA section 404(a)(1)(D) provides that fiduciaries must administer the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I and Title IV of ERISA.

PBGC regulation at 29 CFR 4050.203(a)(2) defines such a plan as a “notifying plan.” The Department encourages plan fiduciaries and QTAs who do not elect to transfer account balances to the PBGC to participate in the PBGC Defined Contribution Missing Participants Program by electing the notifying plan option.

FOR FURTHER INFORMATION

Questions concerning this memorandum may be directed to EBSA’s Office of Regulations and Interpretations at (202) 693-8500.

The contents of this document do not have the force and effect of law, and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.