



AMERICAN BENEFITS COUNCIL

November 18, 2016

Submitted electronically via regulations.gov

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

RE: RIN 1212-AB13 Proposed Rules on Missing Participants

Dear Sir or Madam:

The American Benefits Council (the “Council”) appreciates this opportunity to comment on the Pension Benefit Guaranty Corporation’s (PBGC) proposed regulations to modify its existing program for missing participants. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. The Council is pleased to support initiatives that streamline plan administration and are in the best interests of plan sponsors and participants. The Council strongly supports the proposed expansion of the PBGC’s missing participants program to terminating defined contribution plans.¹ In fact, the Council strongly urges the PBGC to expand the program to ongoing defined contribution plans.

As you know, the PBGC’s current missing participant program holds retirement plan benefits of missing participants of terminated defined benefit plans. Limiting the defined benefit program to terminating plans generally makes sense since those benefits are paid from the plans only upon retirement when the participant applies for the benefit. Therefore, although expansion of the voluntary missing participants program to cover required minimum distributions from an ongoing defined benefit plan could be helpful, the primary situation where a missing participants program would be

¹ Legislators have been discussing the possibility of created a missing participants’ registry. This letter is not focused on that issue but rather on how the current missing participants program could be expanded to benefit both plan participants and plan sponsors.

necessary for a defined benefit plan is when the plan is terminating. For defined contribution plans, on the other hand, benefits under \$1,000 are generally paid out when a participant terminates employment. Benefits between \$1,000 and \$5,000 may be kept in the plan or forwarded to a safe harbor IRA. Larger amounts are not paid out until the participant requests the distribution or the distribution is otherwise required (e.g., minimum required distributions). If the participants fail to provide updated contact information, many will become officially missing, even after a diligent search, when an amount should be distributed from the plan at a time that is long before any termination of the plan.

Rules governing missing participants need to reflect the workforce of today and tomorrow. Today, not only do individuals change jobs, move between communities and experience restructured families, but employers also engage in numerous different and complicated corporate and business related transactions, such as acquiring and divesting businesses, that impact employees, as well as employee benefit plans, systems and service providers.

Solutions to the problem of missing participants are crucial as we increasingly see plans adopt automatic enrollment and small employers sponsor 401(k) and other individual account plans. These are positive developments but more participants in our system means more participants will become missing despite employers' best efforts. Expanding the program to continuing defined contribution plans would provide a centralized place for participants to look for benefits that might be due to them.

The direction to the PBGC to expand the missing participants program to defined contribution plans was contained in the Pension Protection Act of 2006 (PPA). Although that language directed the PBGC to expand the program to terminating defined contribution plans, there is nothing in that language that precludes expansion of the program to ongoing defined contribution plans. In fact, PBGC's purposes include encouraging the continuation and maintenance of voluntary private pension plans for the benefit of their participants, which is not limited to plans that are subject to Title IV of ERISA. The most logical interpretation of the PPA language is that it directs PBGC to establish a program for missing participants with respect to terminating defined contribution plans (and multiemployer plans) but does not preclude PBGC from establishing a broader missing participant program that is otherwise consistent with PBGC's purposes and applicable law.

Many plans use a procedure under which they forfeit the account balances of participants who are missing at normal retirement age and who cannot be located by the sponsor despite a diligent search. Under these procedures, those forfeited account balances are restored when, or if, the participant returns. Some states even impose escheat laws to missing participant benefits which results in a permanent transfer of the participants' benefits. Transferring these amounts to the PBGC would be a win-win: (1) it benefits the participant as they have a centralized place to look for a benefit that they

did not know they had, and (2) it benefits the plan sponsor as they have comfort that the participant is more likely to be reunited with his/her benefit. The structure for the defined contribution system will need to be set up for terminating defined contribution plans and the system could be set up so that any additional expenses could be paid out of forfeitures from both defined contribution and defined benefit plans. Further guidance on the treatment of defined benefit and defined contribution forfeitures (under the lost participant guidance) would also be helpful.

Therefore, the Council believes that the PBGC has the authority to expand the program to ongoing defined contribution plans as well. We would urge the PBGC to work with the departments of Labor and Treasury to coordinate this program and develop guidance that would allow transfers to the PBGC on behalf of missing participants in active defined contribution plans. Since the PBGC would already be accepting assets on behalf of participants in terminating defined contribution plans, expanding it to include assets from ongoing plans would be a logical and important part of the solution to the missing participant problem in active defined contribution plans. The PBGC could also ask Congress for authorization to expand the program to ongoing defined contribution plans if the PBGC questions its own authority to do so.

There are a couple of issues in the defined benefit plan program that would benefit from clarification in the regulations as well. First, we understand that PBGC has recently clarified their expectation that terminating plans must transfer funds to the agency to cover benefits of missing participants who had benefits forfeited under a plans forfeit/reestablish procedure. However, many plan administrators were not previously aware of this position and may not have records that would allow them to determine these values. PBGC should clearly indicate whether or not it is necessary for a terminating defined benefit plans to transfer assets in connection with previous forfeitures and provide transitional relief where records are not available. Second, the PBGC should clarify that terminating defined benefit plans will not be required to reverse automatic rollovers for missing participants that take place close to the plan's termination date. Finally, the program, and any expansion for other missing participants, should be voluntary. While this may be an effective solution for some situations, it will not be the best solution for all situations.

Again, we really appreciate the opportunity to comment and look forward to working further with the PBGC as it moves ahead on this important initiative. If you have any questions or would like to discuss, please contact me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan Jacobson
Senior Counsel, Retirement Policy