PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2616, 2617, and 2629

RIN 1212–AA81

Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement the new missing participants program under section 4050 of the Employee Retirement Income Security Act of 1974. Section 4050 applies to single-employer defined benefit plans distributing benefits in accordance with the standard termination procedures of Title IV.

EFFECTIVE DATE: January 1, 1996. The missing participants program is effective for distributions in plan years beginning on or after January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On August 24, 1995, the PBGC published in the Federal Register (60 FR 44158) a proposed rule to implement section 4050 of ERISA.

When a participant or beneficiary cannot be located in a standard termination a plan administrator can either purchase an annuity or pay funds to the PBGC. If funds are paid to the PBGC, the PBGC will search for the participant or beneficiary and pay benefits to those who are located.

The missing participants regulation describes the ''diligent search'' that must be made for a missing participant before funds are paid to the PBGC. (The term ''missing participant'' includes beneficiaries as well as participants, and thus may include alternate payees under qualified domestic relations orders.) It also sets forth rules on how to determine the amount to be paid to the PBGC (the ''designated benefit''), how to pay funds and submit information to the PBGC, and how the PBGC will pay benefits when missing participants (or their survivors) are found.

There were five statements commenting on the rule.

Diligent Search

A plan administrator must conduct a diligent search before paying a missing participant's benefit to the PBGC. Commenters suggested that the PBGC should not require plan administrators to use a commercial locator service. They suggested that it should be sufficient if the plan administrator uses the Internal Revenue Service or Social Security Administration letter-forwarding programs, or simply uses the search methods required by the prudence requirements of Title I of ERISA. One commenter suggested that the PBGC should allow searches to be conducted by persons other than the plan administrator and to start before the plan begins the termination process.

The PBGC searches for participants in plans that the PBGC trustees. It is the PBGC's experience that commercial locator services are cost-effective, timely, and thorough. The IRS and SSA programs simply forward letters, and a missing participant who receives a letter may or may not contact the plan. Furthermore, IRS and SSA letter forwarding times may vary, and the forwarding area may in some cases be limited to one region of the country.

The diligent search requirement is independent of the prudence requirement of ERISA. The diligent search requirement is intended to ensure that plan administrators make every effort to search out a missing participant before turning the effort over to the government.

The PBGC is changing the regulation to allow a search by someone other than the plan administrator, as long as the plan administrator certifies on the missing participant forms that a diligent search was made, and to allow searches to commence up to six months before the termination process begins. The final regulation also makes clear that missing participants cannot be charged, nor their benefits reduced, to pay search costs.

Payments to the PBGC (Designated Benefit)

One commenter questioned the assumptions used for calculating the designated benefit. The commenter felt that the $300 administrative load was inappropriate, especially for small benefits, that the designated benefit should not be based on the ''most valuable'' benefit, and that, in most cases, the plan administrator should be able to use plan assumptions.

The regulations include an explicit $300 per participant administrative load that the plan administrator must pay when valuing the participant's benefit using the missing participant annuity assumptions. This load is a simplified version of the administrative load that must be paid under the PBGC's single-employer annuity valuation regulation. (The ''missing participant lump sum assumptions'' include an implicit load; insurance company annuity rates include similar loads.) The final regulation provides that the $300 load will not apply to benefits whose value is $3,500 or less.

The final regulation retains the proposed structure of the designated benefit determination rules. Use of the most valuable benefit is consistent with insurance company annuity pricing practices. Use of the PBGC annuity assumptions is consistent with section 4050(b)(2)(C), which makes the designated benefit equal to the greater of the lump sum (under plan assumptions) or the value of the annuity (under PBGC assumptions).

Benefit Payments by the PBGC

The PBGC received no comments on provisions regarding its payment of benefits, but is making clarifications in those provisions.

Procedural Requirements

One commenter stated that the PBGC's standard termination process already had sufficient procedural deadlines and that the PBGC should not add additional deadlines for the missing participants program. The commenter also felt that the six-year recordkeeping requirement was too long.

The regulation coordinates the missing participant filing requirements with the termination requirements. The proposed regulation's changes from the standard termination deadlines provide relief from situations where, late in the termination process, the plan administrator located a missing participant (''late-discovered participant'') or discovered that a participant was missing (''recently-missing participant''). The final regulation provides further relief for these situations by allowing the PBGC in its sole discretion, where there are unusual circumstances, to grant additional extensions.

The final regulation leaves the recordkeeping requirement as six years. This parallels the recordkeeping period for the rest of the termination program and also the recordkeeping provisions of section 107 of ERISA.

Finally, in response to a commenter's question, the PBGC reminds plan administrators that ERISA section 4071 prescribes penalties for failure to provide certain material information timely, including information under the missing participants regulation.