

Forms and Instructions

One commenter claimed that the PBGC does not need the information in items 3, 4, and 5 of Attachment B to Schedule MP. This is minimal and simple information that tells the PBGC what benefit to pay and when to pay it. The information is essential to the proper functioning of the missing participants program.

In response to a comment, the PBGC has revised the instructions for Schedule MP to clarify that unavailable or inapplicable information need not be submitted. The PBGC has also made other minor modifications to the missing participant forms and instructions.

The PBGC has implemented the revisions to Forms 501 and 602 and their instructions that were published with the proposed missing participants regulation. The termination forms booklets, which will include Schedule MP (with attachments and instructions), can be obtained from the PBGC's Standard Termination Compliance Division, 1200 K Street, N.W., Suite 930, Washington, DC 20005-4026, or by calling 202-326-4000 (202-326-4179 for hearing-impaired persons).

Compliance With Rulemaking and Paperwork Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this regulation will not have a significant additional economic impact on a substantial number of small entities, given existing procedures. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Plan administrators of terminating plans of all sizes already have a duty to determine the amounts of all benefits, to attempt to locate all persons entitled to benefits, and to annuitize or provide cash accounts for those who cannot be found. The primary effect of this regulation is to substitute a formal procedure involving the PBGC for the informal procedures already being followed. The PBGC does not expect the standardization of these procedures to have a significant effect on plan administrators' burdens. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

The collections of information contained in this part, and the forms and instructions to be used under the missing participants program, have been approved by the Office of Management

and Budget under OMB control number 1212-0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

29 CFR Part 2606

Employee benefit plans, Pension insurance, Pensions, Administrative practice and procedure.

29 CFR Parts 2616, 2617, and 2629

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR chapter XXVI is amended as follows.

1. Part 2629 is added to subchapter C to read as follows:

PART 2629—MISSING PARTICIPANTS

Sec.

2629.1 Purpose and scope.

2629.2 Definitions.

2629.3 Method of distribution for missing participants.

2629.4 Diligent search.

2629.5 Designated benefit.

2629.6 Payment and required documentation.

2629.7 Benefits of missing participants—in general.

2629.8 Automatic lump sum.

2629.9 Annuity or elective lump sum—living missing participant.

2629.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

2629.11 Limitations.

2629.12 Special rules.

2629.13 OMB control number.

Appendix A to Part 2629—Examples of designated benefit determinations for missing participants under § 2629.5.

Appendix B to Part 2629—Examples of benefit payments for missing participants under § 2629.8 through § 2629.10.

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 2629.1 Purpose and scope.

(a) Purpose. This part prescribes rules for distributing benefits under a terminating plan for any individual whom the plan administrator has not located when distributing benefits under § 2617.28(c) of this chapter.

(b) Scope. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 2629.12) is in a plan year beginning on or after January 1, 1996.

§ 2629.2 Definitions.

For purposes of this part:

(a) Act means the Employee Retirement Income Security Act of 1974, as amended.

(b) Code means the Internal Revenue Code of 1986, as amended.

(c) Deemed distribution date means the date selected by the plan administrator of a terminating plan that is on or after the date when all benefit distributions have been made under the plan except for distributions to missing participants whose designated benefits are paid to the PBGC, but not later than the last day of the period in which distribution may be made (determined without regard to the provisions of this part) under § 2616.29(a) or 2617.28(a) of this chapter (whichever applies).

(d) Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 2629.5.

(e) Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 2623.11(d) of this chapter.

(f) Guaranteed benefit form means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trustee plans under parts 2613 and 2621 of this chapter (treating the deemed distribution date as the date of plan termination for this purpose).

(g) Late-discovered participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator locates before the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer) and not more than 90 days before the deemed distribution date.

(h) Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

(i) Missing participant annuity assumptions means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuation in Appendix B to part 2619 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under part 2619 of this chapter, applied—

(1) As if the deemed distribution date were the date of plan termination;