

## PBGC's Missing Participants Program for Defined Contribution Plans

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Did you know that the Pension Benefit Guaranty Corporation (PBGC) administers a missing participants program for defined contribution plans? We ask because PBGC has indicated, informally, that few defined contribution plans have taken advantage of this program.

### Missing Participants Program

In the benefits community, it is well known that PBGC administers a termination insurance program applicable to most defined benefit pension plans, and that, upon termination, a defined benefit pension plan may be required to participate in PBGC's Missing Participants Program.

Less well known is that, if a defined contribution plan (DC Plan)<sup>1</sup> terminates on or after January 1, 2018, that plan voluntarily can participate in PBGC's Missing Participants Program. The goal of the program is to connect missing participants with their benefits. Although the program is referred to as the "Missing Participants Program," it applies also to missing beneficiaries and to "unresponsive" individuals whose address is known, but who, upon plan termination, fail to fill out necessary paperwork or to accept a lump sum payment.<sup>2</sup>

A terminating DC Plan can choose to participate in the Missing Participants Program as a "Transferring Plan" or as a "Notifying Plan." A Transferring Plan must transfer to PBGC the account balances of **all** Missing Participants. A Notifying Plan participates by sending information to PBGC about the financial institution or unclaimed property fund to which the Missing Participant's DC Plan account balance has been transferred. A Notifying Plan may choose to notify PBGC with respect to **some or all** Missing Participants.

## Fees

1. **Transferring Plans.** PBGC charges a one-time \$35 administrative fee for each Missing Participant whose payment obligation of more than \$250 is transferred to PBGC. PBGC does not charge a fee for transferred payment obligations of \$250 or less.
2. **Notifying Plans.** Notifying Plans are not charged a fee.

## Distributions

1. **Distributions from DC Plan to PBGC.** Amounts transferred to PBGC pursuant to the Missing Participants Program will not be treated as taxable distributions subject to withholding or reporting.
2. **Distributions from PBGC to Missing Participants.** When a Missing Participant is located, the PBGC will offer that Missing Participant a lump sum payout and, if the benefit is in excess of \$5,000, the PBGC also will offer payment in the form of an annuity.<sup>3</sup> Tax-free rollovers (e.g., into a qualified retirement plan or IRA) also are available.

## Timing

The latest date for submitting a Missing Participants filing to PBGC (and for payment of any monies owed to PBGC) is 90 days after the later of (i) the date all distributions have been made to individuals who are not Missing Participants, or (ii) one year after the plan termination date.

Within nine months before submitting a Missing Participants filing to PBGC, a DC Plan must conduct a diligent search for Missing Participants. For this purpose, a diligent search is one that satisfies regulations and other applicable guidance issued by the U.S. Department of Labor.

## Flexibility

The Preamble to the Missing Participants regulation explains that, because “it is impossible to anticipate and appropriately provide for every state of events” the PBGC is authorized “to grant waivers, extend deadlines, and in general adapt to unforeseen circumstances, with the proviso that similar treatment be given to similar situations.”

## Advantages

Fiduciaries of terminating DC Plans may determine that it is in the best interest of DC Plan participants for the DC Plan to participate in PBGC’s Missing Participants Program. Advantages of participation include the following:

1. **Notifying Plan.** Without paying a fee, a terminating DC Plan can add a Missing Participant’s name to the PBGC database, making it more likely that the Missing Participant will be reunited with his or her DC Plan benefits.

2. **Transferring Plan.** DC Plan benefits transferred to PBGC are not subject to ongoing administrative fees.<sup>4</sup>

3. **Search.** PBGC will conduct periodic searches for Missing Participants.

For more information about PBGC's Missing Participants Program for terminating DC Plans, you can contact PBGC by phone at (800) 453-9584 or by email at: [MissingParticipants@pbgc.gov](mailto:MissingParticipants@pbgc.gov). You can also contact one of our benefits attorneys.

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<sup>1</sup> In this article, the term "DC Plan" refers to 401(k) plans, profit sharing plans, money purchase plans, target benefit plans, employee stock ownership plans, stock bonus plans, and 403(b)(7) plans subject to Title 1 of ERISA. Examples of plans not included in this definition because they are not covered by PBGC's Missing Participants Program are governmental plans, church plans, and plans that cannot pay benefits to PBGC in cash. See, 29 CFR 4050.201 of PBGC's Missing Participants regulation for more information.

<sup>2</sup> In this article, we use the term "Missing Participant" to refer to missing participants, to missing beneficiaries and to "unresponsive" individuals as described above.

<sup>3</sup> Annuities are offered regardless of whether the terminated DC Plan contained an annuity distribution option.

<sup>4</sup> If the Missing Participant's benefit is paid as a lump sum, it will be credited with interest at the Federal mid-term rate. If the Missing Participant's benefit is paid as an annuity, it will be converted using assumptions under Internal Revenue Code Section 417(e)(3).