

## PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4001, 4003, 4041, 4041A, and 4050

RIN 1212-AB13

### Missing Participants

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) administers a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help those participants and beneficiaries find and receive the benefits being held for them. The existing program is limited to single-employer defined benefit pension plans covered by the pension insurance system under the Employee Retirement Income Security Act of 1974 (ERISA). With this final regulation, PBGC revises the existing program to simplify procedures and remove unnecessary rules and, as authorized by the Pension Protection Act of 2006, establishes similar programs for most defined contribution plans, multiemployer plans covered by the pension insurance system, and certain defined benefit plans that are not covered.

**DATES:** *Effective date:* This rule is effective January 22, 2018.

*Applicability date:* This rule applies to termination of a plan other than a multiemployer plan covered by title IV of ERISA where the date of plan termination is after calendar year 2017. This rule applies to the close-out of a multiemployer plan covered by title IV of ERISA where the close-out is completed after calendar year 2017. This rule does not apply to PBGC's payment of missing participant benefits attributable to prior terminations. The provisions of 29 CFR part 4050 as in effect immediately before January 22, 2018 apply to PBGC's payment of missing participant benefits attributable to prior terminations.

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extension 3451 or 202-326-4400 extension 6352.)

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

##### *Purpose of the Regulatory Action*

This regulation is needed to implement changes in the statutory basis for the missing participants program. The changes provide for expansion of the program to cover defined contribution (individual account) plans, multiemployer pension plans, and small professional service employer plans not covered by title IV of ERISA.

PBGC's legal authority for this action comes from section 4002(b)(3) of ERISA, which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4050 of ERISA, which gives PBGC authority to prescribe regulations regarding missing persons owed benefits under terminated retirement plans, including rules on the amounts to be paid to and from the program and how to search for missing participants and beneficiaries.

##### *Major Provisions of the Regulatory Action*

The final regulation streamlines requirements and eliminates unnecessary provisions in the existing missing participants program, expands the program to most terminated defined contribution plans, to terminated multiemployer plans covered by title IV, and to terminated professional service plans with 25 or fewer participants. Under the regulatory action, PBGC will charge fees for plans to transfer benefits into the program; the fees will not exceed PBGC's costs. Responding to comments on the proposed rule, the regulatory action modifies the criteria for being "missing," provides more flexibility in the diligent search rules for defined benefit plans, and simplifies the existing procedures for defined benefit plans to determine the appropriate sum to transfer to PBGC on behalf of a missing participant or beneficiary.

##### Background

##### *In General*

The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA), which applies to most defined benefit (DB) plans. In general terms, a DB plan is a retirement plan that provides specified benefits and is subject to certain funding requirements. Within statutory limits, PBGC guarantees benefits of participants and

their beneficiaries upon the underfunded termination of a plan covered by title IV. PBGC also monitors the termination of covered plans that are fully funded for guaranteed benefits, which must follow procedures provided under title IV.

The process of closing out a terminated retirement plan involves the disposition of plan assets to satisfy the benefits of plan participants and beneficiaries. One difficulty faced by a plan administrator in closing out a terminated plan is how to provide for the benefits of missing persons. This problem was addressed for single-employer plans subject to the title IV insurance program by the creation, under the Retirement Protection Act of 1994 (RPA '94), of a program administered by PBGC to deal with the benefits of missing participants and beneficiaries in terminated plans.<sup>1</sup> Section 4050 of ERISA, as added by RPA '94, requires a plan administrator to undertake a diligent search (subject to definition in PBGC regulations) for each missing participant or beneficiary. It further describes procedures for a plan to follow in calculating the amount to be transferred to PBGC for a person who is missing, and for PBGC to follow in providing benefits to the person when the person ultimately appears—also subject to PBGC regulations. PBGC implemented the program in part 4050 of its regulations in 1996.

##### *Authorization of Expanded Program*

The Pension Protection Act of 2006 amended section 4050 of ERISA to expand its scope dramatically—offering the prospect of participation in the missing participants program to terminated multiemployer plans covered by title IV and several categories of terminated non-covered plans, including most defined contribution (DC) plans. In general terms, a DC plan is a retirement plan that provides for a participant to receive whatever is in the vested portion of the participant's retirement account. Section 4050(c) of ERISA provides for program participation for title IV multiemployer plans similar to that for title IV single-employer plans now in the program (although close-out of a multiemployer plan may not follow immediately upon plan termination). Non-title IV plans described under

<sup>1</sup> Not all terminated plans are included. ERISA section 4050(a)(1) refers to plans subject to ERISA section 4041(b)(3)(A). That includes plans in standard terminations (as stated in section 4041(b)(3)(A)) and plans in "sufficient distress terminations" (as provided for in section 4041(c)(3)(B)(i) and (ii)), but not plans trustee by PBGC.

section 4050(d) of ERISA would be eligible (but not required) to turn benefits of missing participants and beneficiaries over to PBGC, and PBGC is further authorized (but not required) to provide for non-title IV plans to report how they dealt with missing persons' benefits not placed either with PBGC or another retirement plan. To develop a better understanding of the DC plan community's needs and desires for, and likely responses to, an expanded missing participants program, PBGC published a request for information (RFI) on June 21, 2013 (at 78 FR 37598). The RFI sought information about the number of missing participants in terminated plans, the size of their benefits, and how the benefits were handled. PBGC received 22 responses. Commenters embraced expansion of PBGC's missing participants program to accept accounts from terminated DC plans and to include those owed money in a searchable database of missing participants and beneficiaries.<sup>2</sup> There was broad support for coordination among federal agencies on issues related to sponsor obligations. Commenters urged the need for both flexibility and safe harbors.

In November 2013, the Advisory Council on Employee Welfare and Pension Benefit Plans (ERISA Advisory Council) issued a report<sup>3</sup> on Locating Missing and Lost Participants based on hearings at which a PBGC staff member testified (among other things) about responses to PBGC's RFI. The Advisory Council report recommended development of effective methods for and guidance on searching for missing participants, including use of web search and commercial locator services. It also recommended that, if PBGC implemented a missing participants program for terminated DC plans, compliance with the PBGC program should be accorded safe harbor status under ERISA. And it urged cooperation among federal agencies, in particular to develop and implement PBGC's missing participants program.

On August 14, 2014, the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) issued Field Assistance Bulletin No. 2014-01 on Fiduciary Duties And Missing Participants In Terminated Defined Contribution Plans (the FAB).<sup>4</sup> The FAB provides guidance about required search steps and distribution

options for benefits of missing participants in terminated DC plans.

#### *Coordination and Consultation*

As recommended by the ERISA Advisory Council, PBGC staff consulted with EBSA staff and staff at the Solicitor of Labor's Plan Benefits Security Division, as well as the Internal Revenue Service (IRS) and the Department of the Treasury. Those consultations were very helpful in developing the proposed and final regulations.

In those consultations, the IRS informed PBGC that it anticipates a DC plan would not fail to be qualified solely because it transfers appropriate amounts to PBGC in accordance with PBGC's missing participants program pursuant to section 4050(a)(2) of ERISA.

IRS also informed PBGC that, consistent with existing treatment of transfers to PBGC from terminated single-employer DB plans covered by title IV of ERISA, amounts transferred by terminated DC and other plans to PBGC under the expanded missing participants program are not taxable distributions subject to withholding or reporting.

The Department of Labor advised PBGC that it intends to review and possibly revise its regulations and guidance to coordinate with PBGC's implementation of a final rule on missing participants. For instance, the Department of Labor indicated its intent to review its fiduciary safe harbor regulation entitled "Safe Harbor for Distributions from Terminated Individual Account Plans," which provides for distributions to individual retirement plans in such circumstances as when the participant or beneficiary was furnished a notice but failed to elect a form of distribution in a timely manner,<sup>5</sup> and thus would be considered missing under this final rule.<sup>6</sup> As part of its review, the Department of Labor said it specifically intends to consider transfers to PBGC appropriate in these same circumstances. The Department of Labor also indicated its intent to review its regulation on Termination of Abandoned Individual Account Plans, which currently provides for distributions generally to individual retirement plans in circumstances identical to those set forth in the Safe

Harbor for Distributions from Terminated Individual Account Plans.<sup>7</sup>

#### *Proposed Regulation*

On September 20, 2016, PBGC published a proposed regulation (at 81 FR 64700) to expand the missing participants program to terminated multiemployer plans covered by title IV of ERISA similar to the program for covered single-employer plans. The proposal also provided for a voluntary program for terminated defined contribution plans and small professional service defined benefit plans not covered by PBGC insurance. PBGC received 14 written comments on the proposal from across the retirement community, including comments from plan sponsors, third party administrators, financial institutions, representatives of participants and beneficiaries, and participants themselves. PBGC adopted a few changes in the final regulation in response to comments, but the regulation is substantially similar to what was proposed. An overview of the program's features, the regulation's organization, and the comments and PBGC's responses are discussed below.

#### **Introduction**

##### *Features of the Program*

This final rulemaking lays the legal foundation for a program whose features extend far beyond the confines of the missing participants regulation. Major features of the new program include:

- A new option for DC plans to deal with missing participants and beneficiaries when closing out the plan and to make it more likely that missing persons will receive their benefits.
- A unified unclaimed pension database of information about missing participants and their benefits from terminated DB and DC plans.
- A centralized, reliable, easy-to-use directory through which persons who may be owed retirement benefits from DB or DC plans could find out whether benefits are being held for them.
- Robust features to protect private information about missing participants and their beneficiaries from inadvertent disclosure.
- Periodic active searches by PBGC for missing participants.
- Considerable benefits gained by reuniting missing participants with their lost retirement money that far outweigh the modest costs to plans and participants.
- Provision for a one-time administrative fee to be charged for

<sup>2</sup> See <http://www.pbtc.gov/documents/2013-14834.pdf>.

<sup>3</sup> See <http://www.dol.gov/ebsa/publications/2013ACreport3.html>.

<sup>4</sup> See <http://www.dol.gov/ebsa/regs/fab2014-1.html>.

<sup>5</sup> See 29 CFR 2550.404a-3. In certain limited circumstances, the Department of Labor's safe harbor permits a fiduciary to distribute a missing participant's account balance to a federally insured savings account in the missing participant's name or a State unclaimed property fund in lieu of a rollover to an individual retirement plan.

<sup>6</sup> See 29 CFR 4050.202.

<sup>7</sup> See 29 CFR 2578.1.

plans that transfer missing participants' benefits into the program; no fee for benefits of \$250 or less, no ongoing maintenance fees, and no distribution charge.

- Treating participants or beneficiaries as "missing" if they fail to make necessary benefit elections upon plan termination or fail to accept lump sum benefits, such as where there are uncashed checks.

- Fewer benefit categories and fewer sets of actuarial assumptions for DB plans determining the amount to transfer to PBGC and a free on-line calculator to do certain actuarial calculations.

- Elimination of unnecessary rules.

#### *Organization of the Regulation*

While the basic requirements are the same across all four types of plans, because some terminology and processes may vary with each plan type, the final regulation is divided into four subparts for readability, with each subpart describing the requirements for one of the four categories of plans. The four subparts of the regulation are:

- A revised version of the existing program for single-employer DB plans covered by the title IV insurance program (subpart A),
- New requirements for DC plans (subpart B),<sup>8</sup>
- New requirements for small professional service DB plans (subpart C),<sup>9</sup> and
- New requirements for multiemployer plans covered by the title IV insurance program (subpart D).

Each subpart contains seven sections, dealing with "Purpose and scope," "Definitions," "Duties" (and options for non-PBGC-insured plans), "Diligent search," "Filing with PBGC" (including fees), "Missing participant benefits," and "PBGC discretion."

Used throughout the regulation is the term "distributee." The regulation that is being replaced, following the statute, used the phrase "missing participant" to

refer to either a beneficiary or a participant. To reduce possible confusion from using the word "participant" in a phrase that may refer to a beneficiary, the final regulation (like the proposed) uses the term "missing distributee" to refer to a missing participant or missing beneficiary. However, some headings in the regulation and some discussion in this preamble refer to missing participants, the more familiar phrase.

#### **Discussion of Final Regulation and Public Comments**

The public comments focused exclusively on the revised rules for PBGC-insured single-employer DB plans and the new rules for DC plans (which are not insured by PBGC). There were no comments specific to multiemployer plans and non-PBGC-insured small professional service DB plans. However, because the diligent search rules, benefit transfer (pay-in) rules, and rules PBGC follows for paying benefits to located participants (pay-out rules) are the same across all DB plans, changes made to those requirements for PBGC-insured single-employer DB plans are carried over into the requirements for the other two types of DB plans. Similarly, because the program is voluntary for all non-PBGC-insured plans, any changes to rules implementing the voluntary features for DC plans are carried into the same rules for small professional service DB plans.

#### **Scope**

##### *Terminated Plans*

As authorized by the Pension Protection Act of 2006 (PPA), this final regulation makes PBGC's missing participants program—heretofore limited to terminated single-employer DB plans covered by title IV's insurance program—available to other terminated retirement plans.

Commenters commended PBGC for opening up the missing participants program to terminated DC plans in particular, and six commenters expressed support for going even further. They encouraged PBGC to look past a plan's terminated status and assert authority to permit ongoing plans (particularly ongoing DC plans) with missing participants to use the program too.

Commenters explained that whether ongoing or terminated, plans face challenges handling the benefits of participants they can't locate. Two commenters explained that the challenges will grow as the number of missing participants continues to grow along with an increasingly mobile

workforce, automatic enrollment in DC plans, etc. Others stated that PBGC's unclaimed pension search database would be more comprehensive if it also included information about missing participants from ongoing plans. Two mentioned legislative efforts in the last Congress to create another government repository for missing participant information and accounts, and noted that coordination and inclusion of ongoing plans in PBGC's program could discourage duplication, complication, and inefficiencies that might follow from potential multiple federal programs.<sup>10</sup> Notwithstanding the importance of the issues raised by these commenters, such an expansion of the program is beyond the scope of this rulemaking.

##### *Voluntary Reporting for DC Plans*

The final regulation, like the proposed, provides that PBGC's missing participants program is voluntary for terminated non-PBGC-insured plans, e.g., DC plans, and that a non-PBGC-insured plan that chooses to use the program may elect to be a "transferring plan" or a "notifying plan." A transferring plan sends the benefit amounts of missing distributees to PBGC's missing participants program. A notifying plan informs PBGC of the disposition of the benefits of one or more of its missing distributees. PBGC received comments both supporting and opposing this voluntary reporting program for DC plans.

Section 4050(d)(1) of ERISA permits but does not require non-PBGC-insured plans covered by the program to turn missing participants' benefits over to PBGC. Section 4050(d)(2) of ERISA, on the other hand, says that (to the extent provided in PBGC regulations) non-PBGC-insured plans must upon plan termination provide information about the disposition of missing participants' benefits that are not transferred to another pension plan. PBGC's 2013 request for information (RFI) flagged this reporting provision for public comment. There were some differences of opinion on whether reporting should be required or just permitted. In general, employer advocates considered mandatory reporting unnecessarily burdensome, while participant advocates considered it an essential part of an effective pension search program. PBGC proposed to begin by making participation in the missing participants

<sup>8</sup> These are plans that would be described in section 4021 of ERISA but for section 4021(b)(1), (5), (12), and (13) of ERISA and that could transfer benefits to PBGC in money (even if stock were used for other purposes) including plans described in section 403(b) of the Code under which benefits are provided through custodial accounts described in section 403(b)(7) of the Code. PBGC's reading of section 4050(d)(4) of ERISA as plausibly encompassing certain plans described in section 403(b) of the Code applies with respect to title IV of ERISA only and should not be read to suggest that the Internal Revenue Service would interpret this language similarly with respect to the application of sections 401(a) and 403(b) of the Code or for any other purpose under the Code.

<sup>9</sup> These are plans that would be described in section 4021 of ERISA but for section 4021(b)(13) of ERISA.

<sup>10</sup> See, S. 3078, the Retirement Savings Lost and Found Act of 2016, 114th Congress, which would have required the Department of the Treasury and the Social Security Administration to create an online "lost and found" for missing participant accounts.

program voluntary for such plans. PBGC received the same division of comment on the proposal as on the RFI. Participant advocates denied reporting would be burdensome to plans and employers since information needed to establish an individual retirement account (IRA) on behalf of the participant should be the same information needed to report to PBGC. They also continued to support mandatory reporting as essential to having a complete unclaimed pension search database and effective missing participants program. Employers, practitioners, and financial institutions supported a voluntary program to ensure that plan fiduciaries continue to have options in handling missing participant benefits.

PBGC again considered the comments from both sides and decided to maintain the direction taken in the proposal—that is, to keep reporting voluntary for plans not covered by title IV—but to reevaluate the decision after plans and PBGC gain actual experience with the program. That will allow PBGC to use experience to determine the need for and costs of a mandatory requirement weighed against the completeness of the unclaimed pension search database.

#### *Anti-Cherry-Picking for Transferring DC Plans*

Under the final regulation, as under the proposed, a DC plan that chooses to participate in the missing participants program and elects to be a transferring plan must transfer the benefits of all its missing participants into the missing participants program. In the preamble to the proposal, PBGC stated that it was concerned about the possibility of “cherry-picking”—that is, selective use of the missing participants program—by transferring plans. For example, a plan might turn over all its small accounts to PBGC, while larger accounts that can generate larger maintenance fees for commercial individual retirement plan providers might be turned over to private-sector institutions that charge asset-based fees. PBGC proposed that if a DC plan voluntarily participates in the missing participants program as a transferring plan, it may not pick and choose the missing distributees whose benefits it turns over to PBGC. PBGC invited public comment on the validity of its concerns about cherry-picking and on its proposal for dealing with those concerns.

PBGC received four comments: Three supporting the anti-cherry-picking rule and one objecting to it. Two supporters asserted that the rule would increase the number of individuals about whom PBGC has information in the unclaimed

pension search database, making the database and overall missing participants program more effective, with one adding that the rule would simplify program administration and alleviate participant confusion. Another said it did not object if PBGC believes such a rule improves the program’s ability to succeed. The commenter opposing the rule stated the rule is inconsistent with, and unnecessary to, a voluntary program. In the commenter’s experience, the market hasn’t failed to adequately handle larger missing participant accounts, which can be rolled over into IRAs, and some commercial providers have routinely taken in smaller automatic rollover accounts. The same commenter noted that the rule in any event may be unnecessary because most missing participant accounts are small.

PBGC considered the commenters’ arguments. PBGC disagrees that the anti-cherry-picking rule changes the voluntary nature of the program; DC plans may participate in PBGC’s missing participants program as transferring or notifying plans, or not at all. Further, the rule ensures that the amount in a missing participant’s account, and the ability of that account to withstand fees charged by IRA providers, aren’t factors in whether a plan transfers accounts into the missing participants program or into IRAs. The rule is consonant with section 4050 of ERISA, which does not put upper or lower limits on the size of the accounts DC plans may transfer into the missing participants program. Therefore, PBGC has adopted the anti-cherry-picking rule with respect to transferring plans without change in the final regulation.

#### *Scope of DB Plan Program*

The final regulation, like the proposed, defines what is a DB plan for purposes of the rules under subparts A (single-employer), C (small professional service), and D (multiemployer). For all three types of DB plans, the regulation provides that individual account plans (DC plans) are not included in the scope of the program for DB plans. One commenter asked PBGC to clarify that the regulation treats “rollover accounts” in DB plans like DC plans.

The IRS regulations under Code section 414(I) are instructive in responding to this comment. For purposes of 26 CFR 1.414(I)-1 (dealing with mergers and consolidations), a plan is a “single plan” if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to plan participants and beneficiaries. Where a plan document provides that a portion of the assets is reserved for payment of

individual account benefits and another portion for payment of pension annuities, the two portions of the assets pertain to two distinct plans. For example, see Code section 414(k).<sup>11</sup> When a DB plan under section 414(k) of the Code terminates, the DB portion and the individual account portion must each be terminated according to the rules associated with each kind of benefit. It follows that if the terminated plan has missing participants in the DB portion, individual account portion, or both, the DB portion would follow the processes with respect to those missing participants under the relevant subpart for DB plans, and the individual account portion would follow the processes under subpart B for DC plans.

In other cases, a participant may roll over a distribution from the participant’s DC plan into the same sponsor’s DB plan, pursuant to section 402(c) of the Code, to enable payment of a larger annuity benefit under the DB plan. These rollovers increase the participant’s benefit under the DB plan and there is no separate DC account maintained in the DB plan.<sup>12</sup> If the participant is missing upon close-out of the plan, for purposes of the missing participants program, the entire benefit would be treated under the rules for DB plans, including how plans calculate the benefit and how PBGC pays the benefit when the participant is located.

#### **Fees**

PBGC stated in the preamble to its proposed regulation that it will charge fees for participation in the missing participants program. PBGC received five comments on fees, which are discussed below.

PBGC determined in the proposal to set fees at levels not to exceed its costs to run the missing participants program and provide essential services, such as periodically looking for participants and paying benefits. PBGC’s methodology for setting fees under the missing participants program would incorporate the following elements and principles:

(1) PBGC would set fees in a manner consistent with the requirements of 31 U.S.C. 9701 and relevant guidance of the Office of Management and Budget<sup>13</sup> and the Government Accountability

<sup>11</sup> Under Code section 414(k), a DB plan that provides a benefit derived from employer contributions based partly on the balance of a participant’s separate account is treated as a DC plan for certain purposes and as a DB plan for other purposes.

<sup>12</sup> See 79 FR 70090 (November 25, 2014); such a rollover is discussed in Rev. Rul. 2012-4, 2012-8 IRB 386.

<sup>13</sup> See OMB Circular A-25, User Charges, [https://www.whitehouse.gov/omb/circulars\\_a025](https://www.whitehouse.gov/omb/circulars_a025).

Office.<sup>14</sup> Fees would be based on PBGC's costs, the value of the program to plans and participants, policy considerations (of plans, sponsors, practitioners, and participants and beneficiaries, encouraging plan participation in the program, and with due regard for private-sector providers' concerns), and other relevant factors.

(2) PBGC would set fees with a view to collecting, on average and over time, no more than its out-of-pocket costs for performance of non-governmental functions in support of the missing participants program. PBGC would not seek to recover through fees the value of performance of governmental functions by government employees.

(3) PBGC would set fees as one-time charges, payable when benefits are paid to PBGC, without any obligation to pay PBGC continuing "maintenance" fees or a distribution fee. Fees would not be charged for reporting to PBGC the disposition of benefits where no amount is transferred to PBGC.

After considering various fee structures, PBGC proposed a flat fee that would be simple to understand and easy for plans to administer. The fee was based on preliminary cost estimates to provide services for an estimated number of DB and DC missing participants coming into the new expanded program each year. Based on those estimates, PBGC will charge a one-time \$35 fee per missing distributee, payable when benefit transfer amounts are paid to PBGC. There will be no charge for amounts transferred to PBGC of \$250 or less. There will be no charge for plans that only send to PBGC information about where benefits are held (such as in an IRA or under an annuity contract). Fees will be set forth in the program's forms and instructions.

Most of the five commenters agreed that \$35 is reasonable. Three commenters suggested PBGC would further increase the value and encourage the use of its missing participants program by increasing the size of the benefit exempt from the fee. Commenters suggested a range of benefit amounts—from \$1,000 or less, to \$700 or \$500 or less—to exempt from the one-time fee. The commenter that recommended a fee exemption for accounts of \$1,000 or less suggested, alternatively, a tiered fee structure for small accounts up to \$1,000. Another commenter added that plan sponsors

should pay the fee because they make the decisions to terminate plans.

Whether an expense is properly paid by the sponsor or the plan (or charged to a participant's account in the case of a DC plan) is an issue outside the scope of this rule. With respect to the suggestions for raising the benefit amount exempt from the fee, the various amounts presented show there isn't consensus supporting a fee amount or structure different from what PBGC initially proposed, and no quantitative data to back up one amount over another. Therefore, PBGC has decided not to change its initial fee structure. PBGC will review both the amount of the fee and fee structure to determine what is appropriate based on PBGC's actual experience with the new program and the principles stated herein.

Concurrently with publication of this final regulation, PBGC has posted on its website ([www.pb.gc.gov](http://www.pb.gc.gov)) forms and instructions for the missing participants program, which include the statement of fees, for which approval by the Office of Management and Budget has been requested.

### Missing

#### *Missing—Proposed Regulation*

The proposed regulation provided that a distributee is "missing" if, for a DB plan, the plan does not know where the distributee is on close-out. A DB plan distributee also would be missing if the distributee's benefit was subject to mandatory "cash-out" under the terms of the plan and the distributee failed to elect a method of distribution on close-out of the plan.<sup>15</sup> For a DC plan, the proposal provided that a distributee is missing if the distributee failed to elect a method of distribution on close-out of the plan.

PBGC distinguished in the proposed rule DB plan distributees with benefits not subject to mandatory cash-out under plan terms, *i.e.*, distributees with a right to an annuity. No benefit election is generally required of these distributees, and absent an election, the distributee's benefit would be annuitized, preserving the distributee's rights and options under the DB plan. Accordingly, the proposed rule provided that DB plan distributees who are not subject to mandatory cash out under plan terms are missing only if the plan did not know where they were. The proposed definition of "missing" for DC plans followed Department of Labor

regulations,<sup>16</sup> which treat DC plan distributees who cannot be found following a diligent search similar to distributees whose whereabouts are known but who do not elect a form of distribution.<sup>17</sup>

#### *Missing—Final Regulation*

The final rule adopts the proposed rule's definition of "missing" for DB plans and the proposed rule's definition of "missing" for DC plans, but with some refinements.

The criterion of not knowing the whereabouts of a distributee was stated expressly for DB plans in the proposed rule. It is stated expressly for DB and DC plans in the final rule. PBGC also reconsidered the language in the proposed rule describing the concept of a distributee as being missing if the plan does not know where the distributee is on close-out. If this language were taken literally, a plan may never know with absolute certainty where a distributee is on close-out. The final rule provides that one of the conditions for "missing" is that the plan does not know "with reasonable certainty" (*e.g.*, if a notice from the plan to a distributee's last known address was returned as undeliverable) the location of the distributee on close-out.

In addition to the above refinements, PBGC further modified the definition of "missing," and clarified the definition in the preamble, in response to several comments. Those comments are discussed below.

#### *Uncashed Benefit Checks*

Two commenters recommended that PBGC clarify that plans may transfer into the missing participants program assets being held for distributees who do not accept lump sum distributions due them, for example amounts held to pay uncashed benefit distribution checks issued by a terminated plan. Under the proposed regulation, a distributee was not considered missing if the distributee had elected a form of distribution upon close-out of the plan. This definition would not have included a distributee whose benefit was being paid from the plan by check even if the check subsequently went uncashed.

PBGC considered the commenters' recommendations and modified "missing" for DB and DC plans in the

<sup>16</sup> See 29 CFR 2550.404a-3 and 2578.1.

<sup>17</sup> A missing distributee in a terminated DC plan would include a distributee who fails to elect a form of distribution in response to a notice meeting the requirements of 29 CFR 2550.404a-3. If the notice is returned as undeliverable, the DC plan administrator must conduct a diligent search that meets the requirements of section 404 of ERISA.

<sup>14</sup> See GAO reports numbers GAO-12-193, User Fees: Additional Guidance and Documentation Could Further Strengthen IRS's Biennial Review of Fees, <http://www.gao.gov/assets/590/586448.html>, and GAO-08-386SP, Federal User Fees: A Design Guide, <http://www.gao.gov/assets/210/203357.pdf>.

<sup>15</sup> A qualified plan is permitted to require a mandatory cash out of a participant's benefit pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code.

final regulation. Under the revised definition, a distributee is treated as missing if, upon close-out, the distributee does not accept a lump sum distribution made in accordance with the terms of the plan and, if applicable, any election made by the distributee. For example, if a check issued pursuant to a distributee's election of a lump sum remains uncashed after the last date prescribed on the check or an accompanying notice (e.g., by the bank or the plan) for cashing it (the "cash-by" date), the distributee is considered not to have accepted the lump sum. The "cash-by" date must be a date that is at least 45 days after issuance of the check. If there is no such "cash-by" date, the lump sum is considered unaccepted if the check remains uncashed after its stale date. This definition applies regardless of whether the lump sum distribution was the result of a mandatory cash out provision or a voluntary election.

The benefit transfer amount for a missing distributee who does not cash a distribution check is to be determined in the same way as for any other missing distributee. The distributee's benefit transfer amount must reflect the total value of the benefit without any reduction for tax withholding.<sup>18</sup> PBGC will withhold taxes as appropriate when a missing distributee is found and paid. However, PBGC believes that there is room for flexibility in how the benefit is paid to PBGC in circumstances where it may not be practical to reflect the total value of the benefit in the amount transferred. For example, it would be permissible for the qualified termination administrator (QTA) of an abandoned DC plan (as defined under Department of Labor regulations at 29 CFR 2578.1) to transfer to PBGC the net amount of the uncashed check. PBGC believes that the final rule's provision allowing discretion to promote the purposes of the missing participants program provides PBGC with the necessary flexibility to accommodate such situations.

PBGC believes this modified definition of "missing" for DB and DC plans relieves some administrative burden on plans trying to complete a termination when a distributee's benefit check remains uncashed. And it gives distributees some protection by allowing transfer of the benefit amount to the missing participants program where the distributee can search and be

searched for and retirement benefits eventually claimed.

#### *Conditional Forfeitures*

Two commenters asked PBGC to clarify whether participants for whom benefits were previously forfeited pursuant to Department of the Treasury regulation § 1.411(a)-4(b)(6), because the plan could not locate them, may be treated as missing under the final regulation. Treasury regulation § 1.411(a)-4(b)(6) provides that a benefit isn't treated as forfeitable "merely because the benefit is forfeitable on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit." 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. Thus, for example, in a single-employer DB plan covered by title IV of ERISA, the plan must either purchase an irrevocable commitment from an insurer or transfer the benefits to PBGC's program. In a DC plan, the plan may use PBGC's program as either a transferring or notifying plan. PBGC takes no position on the permissibility of conditional forfeitures under title I of ERISA.

One commenter requested that if the final regulation treats these individuals as any other missing participant (as it does), that PBGC provide transition guidance for terminating single-employer DB plans. The commenter stated that some plans may not have the records necessary to value the benefit of a missing participant whose benefit was conditionally forfeited under Treas. Reg. § 1.411(a)-4(b)(6). Because forfeiture is conditioned on the right to reinstatement if a claim is made for the benefits, the plan necessarily should have the records to determine the benefits the plan must reinstate if a participant makes a claim. PBGC therefore assumes plans will have such records. PBGC would expect to deal with defects in such records as it would with defects in any records on a case-by-case basis.

PBGC also recognizes that QTAs of abandoned DC plans for which there is no plan sponsor may not be able to reinstate benefits if there have been conditional forfeitures. As stated elsewhere with respect to abandoned DC plans, PBGC believes that the final rule's provision allowing discretion to promote the purposes of the missing participants program provides flexibility

to accommodate this situation if it arises.

#### *DB Plan De Minimis Benefits Rolled Over Into IRAs*

As stated above, the final regulation modifies the existing definition of "missing" for DB plans to include a non-responsive distributee, i.e., a distributee whose benefit is to be paid as a lump sum and who has not responded to a notice about the distribution of the distributee's benefit, or has not accepted the distribution, upon close-out of the plan. Two commenters requested that PBGC clarify how it will treat a distributee's benefit that was subject to mandatory cash-out under the plan and rolled over into an IRA around the time of the plan's termination. Commenters questioned whether terminating single-employer DB plans that have rolled over mandatory cash-out amounts to IRAs could be required to recover those amounts and transfer them into the missing participants program.

Distributions made in contemplation of plan termination but before the formal commencement of termination proceedings under title IV of ERISA have been a matter of concern to PBGC because those to whom such distributions are made do not receive the protections that the termination process is designed to give distributees on termination. Transfers made just before the formal commencement of termination proceedings in a form that would be improper for a transfer upon plan termination deserve particular scrutiny. If such a distribution were found to be in violation of title IV,<sup>19</sup> the appropriate remedy might be to reverse it.

In general, however, distributions made by an on-going DB plan in accordance with plan provisions and consistent with the plan's pre-termination practices would not be swept into the termination process. "Distributee" under this final rule refers to a person entitled to a distribution pursuant to close-out of a plan. Someone whose benefit is rolled over to an IRA before plan termination is not entitled to a distribution pursuant to close-out because the benefit has already been distributed. The final rule does not contemplate the undoing of pre-termination rollovers.

#### **Diligent Search**

##### *Whom To Search For*

As discussed under *Missing*, some distributees may be considered

<sup>18</sup> A payor or plan administrator may file with the IRS to request a refund of tax amounts withheld. See IRS Internal Revenue Manual 21.7.2.4.6. Adjusted Employer's Federal Tax Return or Claim for Refund.

<sup>19</sup> 29 CFR 4044.4 Violations.

“missing” because they are non-responsive, without regard to whether their plan knows with reasonable certainty their location. If a plan does indeed know where a non-responsive distributee is, there is clearly nothing to be gained by a diligent search for that distributee.

The proposed rule provided that a diligent search was required for every missing participant, but contained a proviso (in the section on plan duties) that a diligent search was not required for a missing distributee if the plan knew where the distributee was. PBGC concluded that this way of expressing the applicability of the diligent search requirement was potentially confusing. Accordingly, PBGC in the final rule in both the section on plan duties and the section on diligent search states that diligent searches are required only for missing distributees whose location the plan doesn't know with reasonable certainty.

As in the proposed rule, whether a distributee is considered missing depends on the distributee's status upon close-out; and likewise, whether a plan knows with reasonable certainty a missing distributee's whereabouts, for purposes of the diligent search requirement, is determined as of close-out.

#### *Diligent Search Methods for DC Plans*

The final regulation, like the proposed, provides that a DC plan must search for each missing distributee whose location the plan does not know with reasonable certainty. The plan must search in accordance with regulations and other applicable guidance issued by the Secretary of Labor under section 404 of ERISA. Compliance with that guidance satisfies PBGC's “diligent search” standard for DC plans.<sup>20</sup> PBGC received several comments on this topic, with two commenters specifically commending PBGC for harmonizing the DC program with search guidance already established by the Department of Labor and followed by terminated plans. Another commenter recommended PBGC incorporate specific search methods into the final regulation (much the same as for DB plans). In that way,

<sup>20</sup> A distribution generally is permitted under the Department of Labor's safe harbor regulation with no additional search beyond the notification sent to the last known address of the participant or beneficiary in accordance with the requirements of 29 CFR 2520.104b-1(b)(1). If a notice is returned to the plan as undeliverable, the plan fiduciary must, consistent with its duties under section 404(a)(1) of ERISA, take steps to locate the participant or beneficiary and provide notice before making the distribution. See EBSA's FAB 2014-01 for guidance on search steps.

PBGC, as the agency administering the missing participants program, would have control over the search methods used to meet the diligent search standard. The same commenter recommended that the Department of Labor in turn harmonize its search guidance for DC plans with PBGC's diligent search standard. Another commenter recommended waiving use of a commercial locator service to find a participant with an account balance of less than \$200 as fees for locator services can be charged to DC plan accounts and may reduce small accounts by large percentages.

Harmonization is the hallmark of the DC plan missing participants program. The ERISA Advisory Council in its 2013 report (see the discussion above in *Background*) urged cooperation among federal agencies to develop and implement the missing participants program. Commenters to the RFI also urged agreement in guidance and rules from the Department of the Treasury (and Internal Revenue Service), the Department of Labor's Employee Benefits Security Administration (EBSA), and the Pension Benefit Guaranty Corporation that affect searching for and distributing the benefits of missing participants. Guidance from EBSA on searching for missing participants of terminated DC plans has been available since 2004 and was updated in 2014. The Department of Labor's (DOL's) regulatory safe harbor for terminated plans was effective in 2006. Noting the existing fiduciary guidance on search requirements for terminated DC plans, PBGC determined that double search standards established by two agencies applicable to one type of plan (DCs) would create unnecessary administrative burden and confusion for plans, service providers, and participants. PBGC therefore adopts in the final regulation without change the provision that compliance with DOL's fiduciary search guidance satisfies PBGC's diligent search standard.

As for waiving use of a commercial locator service, EBSA has advised PBGC that use of a commercial locator service is not necessarily required for DC plans. As explained in FAB 2014-01, a plan fiduciary at a minimum should take certain steps to find a participant. If those steps fail, ERISA's duties of prudence and loyalty require the fiduciary to consider if additional search steps are appropriate. In making this determination, the fiduciary should consider the size of the participant's account balance and cost of further search efforts. As a result, the specific additional steps that a plan fiduciary takes to locate a missing participant may

vary depending on the facts and circumstances. Possible additional search steps include the use of internet search tools, commercial locator services, credit reporting agencies, information brokers, investigation databases and analogous services that may involve charges.

#### *Unknown Beneficiary of a Deceased DC Plan Participant*

As noted in the preamble to the proposed regulation, where a DC plan knows a participant is deceased and has no known beneficiary, the unknown beneficiary is a distributee under the missing participants program. In the context of an abandoned DC plan (as defined under Department of Labor regulations at 29 CFR 2578.1), one commenter asked for clarification on how to handle benefits where a beneficiary can't be determined based on available information. The commenter said that a QTA of an abandoned plan particularly may not have adequate information to determine beneficiaries as the QTA may not have been the plan's contractor for services such as maintaining beneficiary designations or providing qualified domestic relations order (QDRO) review.

PBGC expects that there will be instances where a DC plan knows a participant is deceased but has little or no information about a beneficiary. Where an unknown beneficiary of a deceased participant is missing, as defined in the final regulation, the account balance of the deceased participant may be transferred into the missing participants program. PBGC will take into account the fact that there is no known person to search for in evaluating the plan's fulfillment of the diligent search requirement for any such distributee. Plan fiduciaries and QTAs would file in accordance with the forms and instructions for DC plans what information they have about the participant and beneficiary. See the section on Filing with PBGC, below, about flexibilities in filing for abandoned DC plans.

#### *Diligent Search Methods for DB Plans*

The search standard for DB plans in the proposed regulation was based on the requirements in the existing regulation with modifications inspired by the guidelines in EBSA's FAB.<sup>21</sup> The proposed standard listed five specific search methods. The first three were to

<sup>21</sup> Under the existing regulation, the diligent search rules for single-employer DB plans covered by title IV imposed three requirements: Timeliness, seeking information from beneficiaries of a missing participant, and use of a commercial locator service.

seek information from records of the plan that is closing out, from the employer, and from other plans of the employer (including health plans), and to mine these sources for information to locate the missing individual as well as leads to beneficiaries. The fourth method was to use a no-fee internet search engine or database, and the fifth was to use a commercial locator service as specifically defined in the regulation. PBGC received several comments on the proposed DB plan diligent search requirement, which are described below.

While PBGC's proposed regulation attempted to bring its existing search rules into closer alignment with the search guidance in the FAB, PBGC believed that DB plans would welcome a more explicit and concrete "checklist" of steps as outlined in the proposal. PBGC sought comment on whether DB plans would be better served by a different or less prescriptive search standard. The one response affirmed PBGC's belief that a more explicit checklist for DB plans is warranted. Therefore the final regulation, like the proposed, retains this structure.

PBGC also invited comment on searching using a commercial locator service. The proposed regulation gave meaning to what is a commercial locator service for purposes of a diligent search to ensure a more robust, but also necessarily more expensive search, which might not be cost-effective for distributees with relatively small benefits. PBGC proposed to address this issue by reserving to itself the authority to place limits in the missing participants forms and instructions on the requirement for DB plans to use a commercial locator service. PBGC asked whether a waiver should be based on the monthly amount of a distributee's benefit or the present value of the benefit or on some other criterion, and on whether the waiver should be codified in the regulation.

In response, two commenters said they supported waiving use of the commercial locator service method for certain DB distributees and codifying such waiver. One commenter suggested a waiver for small plans (not small benefits) with fewer than 500 participants because a locator service may not be cost-effective for these plans. Another suggested a waiver for monthly annuity benefits of less than \$100. One of these commenters added that codification would give plans notice that a waiver is available and if a waiver is subsequently changed.

PBGC considered the commenters' feedback and re-structured the final regulation so that a DB plan need not

use the commercial locator service method for a distributee with a very small monthly benefit. The final regulation provides that a plan administrator must have diligently searched for a missing distributee using one of two search methods: A commercial locator service or, as an alternative for a distributee with a very small benefit, *i.e.*, a distributee whose normal retirement benefit is \$50 or less per month, the "records search method." PBGC did not draw the line at plan size, as recommended by one commenter, because small plans may have distributees with large benefits. With more at stake, more expense is justified. In contrast, the smaller the benefit, the weaker the justification for requiring use of an expensive search method. Therefore, the final regulation provides that DB plans can choose to use, instead of a commercial locator service, a potentially less costly search method (the "records search method") for a participant with a very small benefit.

The "records search method" includes the following steps: Searching the records of the plan that is closing out, of the employer, and of each retirement or welfare plan of the employer, for information to locate the distributee; contacting each beneficiary of the distributee identified from the records; and using an internet search for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" website.

PBGC received comments on two search steps in the proposal that are now part of the final rule's "records search method"—searching using no-fee internet search engines and databases, and searching employer records.

Regarding no-fee internet searches, one commenter recommended that a plan that has used a commercial locator service but has not found a distributee be permitted to skip a no-charge internet search for that distributee. The commenter argued that no-fee internet searches are unwieldy for plans with large numbers of missing participants and that search results can be hard to verify. As stated above, the final regulation provides that a DB plan must have diligently searched for a distributee who is missing upon close-out using only one of two search methods, a commercial locator service or the "records search method." If a DB plan uses a commercial locator service and does not locate the distributee, regardless of whether the benefit is large or small, no further searching is required. Similarly, if the "records

search method" does not locate the distributee with a very small benefit, no further searching is required.

Two commenters recommended that PBGC modify or eliminate a search of the records of the employer that last employed the distributee and maintained the plan, claiming that this search could be more burdensome than useful. One commenter's suggestion was to limit the period for searching to the last employer that employed the participant within the previous 12 months. Another suggested the method should be optional to account for situations where a plan is acquired by another employer and the missing participant is a terminated vested participant of the former sponsor. In this case, the former sponsor is unlikely to have kept records on the separated employee.

PBGC considered the potential burden and fruitfulness of records searches that could go back many years or require searching the records of another employer. To that end and to keep the cost of the "records search method" in general reasonable, the final regulation provides that its requirements (*e.g.*, searching the records of the employer (the contributing sponsor) that most recently maintained the plan and employed the distributee) apply only to the extent reasonably feasible and affordable. Searching is not affordable to the extent that the cost (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. What is reasonable is a matter of judgment and plan fiduciaries are familiar with reasonableness requirements. See for example ERISA section 404(a)(1)(A)(ii). Spending more to search for a distributee than the value of the distributee's benefit would seem clearly unreasonable. Searching is not feasible to the extent that it is thwarted by legal or practical lack of access to records.

All these requirements are designed to support the basic function of a diligent search—to demonstrate that an appropriate level of effort has gone into finding a person who remains missing. To that end, plan administrators are expected to the extent possible to search using as much information about a distributee as possible, such as name, social security number, date of birth, and last known address. As one commenter explained, searches using multiple data points reduce false positives and oversized search results, producing a more effective search.

A plan (DB or DC) that uses PBGC's missing participants program to provide for the benefits of, or to provide information about the disposition of



benefits for, a person whose whereabouts are unknown, must have followed the diligent search requirements and failed to locate the participant.

#### *Diligent Search Timeframe*

Under the proposed regulation, a diligent search must have been completed within six months before the last distribution to a non-missing distributee (if the plan is sending information to PBGC) or within six months before the date the benefit is transferred to PBGC's program. One commenter recommended allowing a period longer than six months to do a diligent search. Experience shows that missing distributees can be found, and it is more efficient—and typically more advantageous for the distributee—to be found before close-out, so that benefits can be distributed in the normal manner. The fact that a distributee could not be found in the past does not mean that the distributee is forever lost. PBGC thus believes that diligent searches should be relatively recent. But after considering the comment, PBGC has concluded that nine months—rather than the six months provided in the proposal—is a reasonable time frame for a diligent search.

As stated above, the proposed regulation measured the diligent search period from a different date depending on whether PBGC received money or just information about a missing distributee. PBGC believes different dates aren't necessary and may be unworkable, for example if a plan has only missing distributees. So, the final regulation uses the same date for all cases. The nine-month period ends when the distributee is identified as missing in a filing with PBGC.

#### **Amounts To Be Transferred**

##### *DC Plan Pay-In Rules*

The amount to be transferred to PBGC on behalf of a missing distributee—the “benefit transfer amount”—is relatively simple for DC plans: It is the amount available for distribution to the distributee in connection with the close-out of the plan. PBGC received no comments on its proposed definition of benefit transfer amount for DC plans, and the final regulation follows the proposed in this regard. For a missing distributee who was a participant, the benefit transfer amount would generally be the participant's account balance, but might not be if (for example) a qualified domestic relations order (QDRO) required distribution of a portion of the account to another person. The benefit transfer amount for a DC plan missing

distributee also might (but might not) reflect the deduction of expenses. PBGC will not inquire into whether an account balance has been reduced for administrative expenses before it was transferred to PBGC. Whether plan termination expenses were properly allocated among all plan participants by the plan's fiduciary before the transfer is beyond the scope of this regulation.

##### *DB Plan Pay-In Rules—Proposal*

For DB plans, the proposed regulation provided that the amount to be transferred to PBGC is the “benefit transfer amount” of a missing distributee (and a “plan make-up amount” if applicable). The benefit transfer amount would be the present value of future payments of an annuity.

The proposed valuation rules for determining the benefit transfer amount represented a significant departure from the existing valuation rules (for benefits from single-employer plans covered by title IV insurance). The proposal abandoned a four-category approach to valuing benefits in the existing regulation in favor of a leaner three-category approach consistent with that of the statute.<sup>22</sup> The four benefit categories under the existing regulation were arrived at by breaking the first statutory category into two: Benefits actually subject to mandatory cash-out under plan terms, and benefits that could be involuntarily cashed out under the law but not under plan terms. The existing regulation prescribed three sets of assumptions: Plan lump sum assumptions and two sets of PBGC missing participant assumptions (“missing participant lump sum assumptions” and “missing participant annuity assumptions”).<sup>23</sup> Whichever

<sup>22</sup> Section 4050 of ERISA describes three benefit categories: “de minimis” benefits that a plan could lawfully cash out without consent; benefits payable only as annuities; and benefits for which a lump sum is elective. A plan is to use its own lump sum assumptions to value benefits in the first category; PBGC missing participant assumptions for those in the second category; and for the third category, whichever of the two sets of assumptions produces the greater present value.

<sup>23</sup> Under the existing regulation, benefits actually subject to mandatory cash-out under plan terms are to be valued using plan assumptions. Benefits that could be involuntarily cashed out under the law but not under plan terms are to be valued using the “missing participant lump sum assumptions.” Benefits not subject to either voluntary cash-out under the plan or mandatory cash-out under the statute are to be valued using the “missing participant annuity assumptions.” Finally, benefits that could not be involuntarily cashed out under the law but for which a lump sum option is available are to be valued using either the “missing participant annuity assumptions” or plan assumptions, whichever produces the greater value. Among missing participants whose benefits are transferred to PBGC under the current program, about 87 percent have benefits that are de minimis under plan or PBGC assumptions.

assumptions were used, the existing regulation specified that they were to be applied to the most valuable benefit. Thus, the plan had to value each benefit separately for a starting date in each year out into the future in order to find the most valuable one.

In addition to discarding the four-category approach to benefit valuations, PBGC proposed to abandon the “missing participant lump sum assumptions” and to modify the “missing participant annuity assumptions” (which were closer to termination assumptions in PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044)) into a new, single set of “PBGC missing participant assumptions.” The proposed “PBGC missing participant assumptions” included no adjustment for expenses—neither the adjustment that is part of the 4044 assumptions nor the load that is part of the missing participant annuity assumptions in the existing regulation. Mortality and interest under the proposed new assumptions were to be the same as under the existing old assumptions, except that the interest assumption in effect for valuations in January would be used for the entire calendar year.

Also under the proposal, pre-retirement death benefits were to be disregarded and the benefit to be valued was to be a straight life annuity beginning at the expected retirement age (XRA).<sup>24</sup> Using XRA avoided the requirement to value the benefit at every age to determine the most valuable benefit and made the new assumptions more like the 4044 assumptions.

A plan that pays no lump sums (even for de minimis amounts) would have no “plan assumptions” for lump sums. Under the existing regulation, such plans used “missing participant lump sum assumptions” to value all benefits that could lawfully be cashed out. With the elimination of the “missing participant lump sum assumptions” and the associated benefit valuation category, the proposed regulation provided that such plans should use assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code (dealing with determination of the present value of certain benefits).

Benefits were to be valued as of the date the benefit transfer amount was paid to PBGC (the “benefit transfer date”). PBGC invited comment on this point. Valuing benefits as of the benefit transfer date would eliminate the need for the rules in the existing regulation about interest on transfers to PBGC

<sup>24</sup> Special “XRA” rules would apply to pay-status distributees and non-participant distributees.

between the valuation date and the payment date, since those two dates would be the same.

Plans were to account separately for the value of benefits payable in the future (the “benefit transfer amount”) and the value of benefit payments missed (or treated as missed) in the past (the “plan make-up amount”). The value of a missed payment would be the accumulated value of the payment (reflecting interest from the date the payment was due to the date of the plan’s payment to PBGC), without reduction for mortality—that is, on the assumption that the annuitant was alive. Interest was to be calculated in the same way as for underpayments of guaranteed benefits by PBGC under PBGC’s regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) using the Federal mid-term rate described in section 1274(d) of the Code with monthly compounding. PBGC was to use the same interest assumption for crediting interest between the date of receipt of a payment from a plan and the date of payment of a lump sum by PBGC. This rate, to be called the “missing participants interest rate,” is the same rate prescribed in the existing missing participants regulation as the “designated benefit interest rate.”

The proposed plan make-up amount was to include not only missed payments to distributees who became missing after they had begun to receive benefit payments, but also payments not made after the required beginning date under section 401(a)(9)(C) of the Code, regardless of which assumptions (PBGC or Plan) were used to determine the transfer amount.

#### *DB Plan Pay-In Rules—Final; Benefit Determination Date*

PBGC received three comments dealing with determining the value of benefits as of the benefit transfer date. One appreciated the clarity and consistency of valuing benefits as of the benefit transfer date as proposed. But two commenters expressed concern that the proposal would create undue complications and additional work where the actual transfer took place after the anticipated close-out date, especially with respect to lump sums. Commenters noted that plans determine the lump sum amounts payable to participants as of an assumed payment date, generally the anticipated close-out date. However, in some cases, a plan might not know that a participant is missing at the time the calculations are done. If the plan finds out that someone is missing after the fact, the actual benefit transfer date might be a month or two later than originally anticipated

(i.e., not the assumed date used to determine the lump sum amount). In such situations, the proposal would seem to require that the plan recalculate the missing participant’s benefit transfer amount on the participant’s actual benefit transfer date, which adds cost and burden to the termination process. In addition, one commenter said that recalculation using a much-later-than-anticipated benefit transfer date could affect whether a participant is still subject to mandatory cash-out and treated as missing.

Commenters recommended PBGC apply either a 30-day grace period during which no adjustment to the benefit transfer amount is required, or essentially go back to the existing rule under which interest is owed if payment to PBGC is made significantly after the assumed payment date underlying the calculation of the benefit transfer amount.

In response, the final regulation departs significantly from the proposed, with a view to reducing burden and simplifying the procedures DB plans must follow. The benefit transfer date is replaced by a benefit determination date. The benefit transfer amount will be determined as of the benefit determination date and will not change even if it is paid to PBGC on a later date. When paying lump sums, PBGC will pay a participant the value of the participant’s benefit plus interest for the full period from the date as of which the benefit was valued by the plan to the date PBGC pays the participant. But for administrative convenience, PBGC will allow DB plans a 90-day grace period from the benefit determination date before it collects interest for amounts not yet transferred. However, if payment is more than 90 days after the benefit determination date, interest at the Federal mid-term rate will be owed for the period after 90 days through the actual transfer date. (For a DC plan, the benefit determination date is the same as the date the plan pays PBGC, because the plan simply pays PBGC the amount in the account on that date.)

The benefit determination date will be selected by the plan subject to the limitation that it be within the period from the first distribution to a non-missing distributee to the last such distribution.

#### *DB Plan Pay-In Rules—Final; Reported Amounts*

While the proposed regulation recognized that benefits must begin no later than the required beginning date under section 401(a)(9)(C) of the Code, it did not consider that some plans do not actuarially increase benefits for

terminated vested participants that commence after normal retirement date and instead provide a lump sum to account for the accumulated value of benefits that weren’t paid from normal retirement date to the benefit commencement date. For such plans, the proposal had a few shortcomings. For example, with respect to a missing participant under age 55 with a non-de minimis benefit, the proposal anticipated that a plan would be required to report the monthly straight life annuity payable at each integral age from 55 through the required beginning date. When the participant was located, the annuity PBGC would have provided would have been based on those reported amounts. For a plan that doesn’t actuarially increase benefits after normal retirement age, the amounts reported to PBGC would have been the same at each age from normal retirement date through required beginning date, so the monthly benefit PBGC would have provided had the participant been located and commenced payment after normal retirement age would have been the same as if the participant had commenced payment at normal retirement date. Since there was no “pay-out” provision to account for missing payments before the required beginning date in the proposal, that participant would have been shortchanged.

To take plans of this type into account while still having a simplified approach that works for all DB plans, the final regulation modifies the pay-out rules for post-normal retirement age start dates, and the methodology for determining benefit transfer amounts using “PBGC missing participant assumptions,” for non-pay status participants past normal retirement age (with a corresponding change in the filing requirements).

Under the revised approach, a plan is required to report the monthly straight life annuity payable at each integral age from 55 through the normal retirement date (or in some cases accrual cessation date as explained below). When the participant is located, the annuity PBGC provides is based on those reported amounts (with missed payments paid as a lump sum with interest). With this approach, participants whose benefits aren’t actuarially increased after normal retirement date aren’t short-changed, and neither are participants who accrued benefits after normal retirement date.

#### *DB Plans—Final; Normal Retirement Date and Accrual Cessation Date*

As stated above, the normal retirement date, or if later, the date the participant stopped accruing benefits

(*i.e.*, “accrual cessation date”) replaces the required beginning date.

In the proposal, for purposes of determining the present value of future benefits using PBGC missing participant assumptions, the assumed benefit start date (for determining the annuity to value) for a participant past normal retirement date but not yet past required beginning date, was the benefit transfer date and for a participant past required beginning date, the required beginning date. In the final rule, the assumed benefit start date for a participant past normal retirement date is generally the normal retirement date. However, to account for situations where a non-pay status missing participant accrued benefits after the plan’s normal retirement date, the final rule provides that the assumed benefit start date in this situation is the date the participant ceased accruals. (The final rule does this to ensure that the annuity PBGC will provide to such a missing participant when found is no less than what the plan would have provided.)

With respect to participants not yet past normal retirement age, participants in pay status, and beneficiaries, the final rule retains the assumed benefit start date provisions from the proposed regulation for purposes of determining pay-in amounts.

In summary, under the final pay-in rules, the assumed benefit start date for purposes of the PBGC missing participant assumptions is:

- The expected retirement age (XRA) in PBGC’s valuation regulation, for a participant not in pay status who has not reached normal retirement date;
- The normal retirement date (or accrual cessation date if later), for a participant not in pay status who has reached normal retirement date;
- The actual benefit start date, for a participant in pay status; and
- For a beneficiary, the later of the benefit determination date or the earliest date the beneficiary could receive benefits under the plan.

PBGC has created an on-line spreadsheet that will calculate the present value of a missing participant’s benefit expected to be paid on or after the benefit determination date with the new PBGC missing participant assumptions. A person would simply enter data, such as eligibility for early and unreduced retirement and benefit amounts, and the spreadsheet would do the calculations—including XRA calculations—necessary to determine the present value of benefits, thus making the new PBGC missing participant assumptions easier to use.

Except for making the change from required beginning date to normal

retirement date (or accrual cessation date if later), the final regulation retains the other PBGC missing participant assumptions in the proposed regulation (*e.g.*, mortality, interest, form of payment).

#### *DB Plans—Final; Missed Payments*

Under the proposed regulation, the amount transferred to PBGC for some distributees—those in pay status or past the required beginning date—included both the benefit transfer amount and a “plan make-up amount,” representing payments that should have been made but were missed. The plan make-up amount accumulated the missed payments with interest at the Federal mid-term rate. In reconsidering its proposal as questioned above, PBGC found itself questioning whether the proposed manner of valuing missed payments, and the requirement to include it in the amount transferred, was appropriate in situations where benefits are valued using plan lump sum assumptions. For example, if a plan determines lump sum amounts for participants past normal retirement age as the present value of an actuarially increased benefit, there is no need for a plan make up amount (*i.e.*, the value of post-normal retirement age missed payments is built into the present value calculation). In addition, it seems unlikely that plans generally would use the Federal mid-term rate to accumulate missed payments in calculating lump sums. Accordingly, PBGC in the final regulation has revised how the benefit transfer amount is determined for calculations based on plan lump sum assumptions to provide that missed payments are to be valued in whatever way the plan would ordinarily value them.

Thus, the term “plan make-up amount” is eliminated. However, the concept is retained for calculations determined using PBGC missing participant assumptions. For those calculations, the amount of missed payments with interest is added to the present value of future benefits to yield the benefit transfer amount.

#### **Filing With PBGC**

##### *What To File*

The proposed regulation specified certain items to be filed for each missing distributee, such as the benefit transfer amount or information about where the missing distributee’s benefit is being held, diligent search documentation and other information, fees, and certifications.

There was some support among the comments for documentation of diligent

searches, and PBGC considered this matter in developing the final regulation. With a view primarily to reducing burden, PBGC decided that it would not initially require that a plan submit specific documentation of diligent searches with its filing, since compliance with the regulation (including the performance of diligent searches) must be certified on the form. PBGC might revisit this decision if it appears necessary to encourage compliance with the diligent search requirements.

PBGC decided further to make the regulation less specific about documentation generally. PBGC realized, for example, that information would be required not just for each missing distributee (as the proposed regulation said) but also for the filing plan. Rather than trying to be more inclusive about data to be filed, the final rule simply refers to the missing participant forms and instructions for data required. The final rule does, however, list the three types of payments required: fees, benefit transfer amounts, and interest on the latter (for DB plans, if owed). And it retains the supplemental filing requirement from the proposed regulation for a plan to submit additional information if PBGC requests. But the nature of supplemental information that may be requested is more generally stated.

Not within the scope of this rule are documentation, recordkeeping and other requirements of plans and plan terminations elsewhere under ERISA and the Code. While PBGC as administrator of the title IV insurance program can and will audit ERISA title IV plans (such as single-employer DB plans under a standard termination), such other requirements for non-title IV plans are properly subject to the audit and enforcement mechanisms under title I of ERISA and the Code for ensuring that terminations are properly carried out.

##### *Forms and Instructions*

The missing participants forms and instructions for DB plans require the reporting of the monthly amount of each missing participant’s accrued benefit (if not *de minimis*) in straight-life form assuming commencement at each integral age going forward from the later of the benefit determination date or age 55 to the normal retirement date (or accrual cessation date if later).<sup>25</sup> Because of the change in the final rule from the required beginning date to the normal retirement date as the last date

<sup>25</sup> PBGC would interpolate where necessary to obtain figures for fractional ages.

when benefits can be paid or begin to be paid, plans will have fewer amounts to calculate and report for missing participants with non-de minimis benefits.

Information on missing participants forms filed for DB and DC plans with PBGC must be certified. A commenter suggested that PBGC add a checkbox to the forms requiring filers to assert that benefit transfer amounts are correct, to remind filers of their obligations. PBGC believes the general certification is sufficient and that adding another checkbox to the form is unlikely to increase compliance.

One commenter recommended that some questions be added to the Form 5500 Annual Return/Report of Employee Benefit Plan about whether and how DC plans used the missing participants program. PBGC will consider this comment as part of its review of the Form 5500.

#### *Filing for Abandoned DC Plans*

The final regulation, like the proposed, provides that the requirements to use the missing participants program, including filing requirements and forms and instructions, apply to all terminated DC plans that choose to use the program, including abandoned plans and QTAs winding up such plans. One commenter asked PBGC to clarify filing requirements for abandoned DC plans with respect to diligent searches. The commenter noted that a QTA may not have or have access to the kinds of records that typically yield participant contact information as part of a diligent search.

The diligent search requirement for DC plans, including abandoned DC plans, is basically the same as the corresponding guidance for fiduciaries issued by the Department of Labor under section 404 of ERISA. PBGC expects that any documentation sufficient to demonstrate compliance with the fiduciary duty to search for missing participants would likewise satisfy any filing requirements PBGC might impose for diligent searches.<sup>26</sup> As indicated under *What to file* above, PBGC has decided not to require submission of diligent search documentation with missing participants forms; but if it were to do so, such documentation would most naturally relate to the QTA's search

efforts rather than to the content of historical records.

Missing or incomplete historical records can present a challenge to any plan, not just abandoned DC plans (although the latter as a group are particularly likely to suffer from this problem). PBGC expects the challenges of making, keeping, finding, and using records to be dealt with carefully, skillfully, prudently, and diligently, and where that is the case, PBGC believes this final rule provides flexibility to accommodate difficulties of the kind contemplated by the commenter.

#### *Filing Deadline*

In the proposed regulation, the filing deadline for title IV single-employer DB plans would have been 90 days after the distribution deadline in PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). (For plans undergoing sufficient distress terminations, the distribution deadline reflects such plans' special circumstances.) For all other plans, including DC plans, the filing deadline would be 90 days after completion of all distributions not subject to the missing participants program.

One commenter expressed concern that the proposed filing deadline for DC plans—90 days after the last distribution to a participant who isn't missing—might not give DC plans enough time to complete diligent search and other termination tasks if the plan potentially has many missing participants. The commenter suggested the timeframe be extended to 180 days. There was also a question from a commenter as to whether payment from DC plans (of the benefit transfer amount and fees, if any) would be required when forms were filed. PBGC responds to this latter comment that it expects that forms and any required payment would be sent simultaneously.

As to the former, PBGC has given new thought to its administrative procedures for processing filings and now believes that the mechanics of filing are better left to the missing participants forms and instructions, where there is a bit more flexibility than if the procedures were hard-wired in the regulatory text. With regard to filing deadlines for DC plans, while PBGC wants plans to act promptly, it does not want to set standards that discourage DC plan participation. PBGC's understanding is that plans not covered by title IV of ERISA must distribute all assets to participants and beneficiaries as soon as administratively feasible after the plan's termination date. As a rule of thumb, plans are expected to complete termination within one year.

Accordingly, the filing instructions set the filing deadline for plans not covered by title IV as the later of 90 days after the last distribution not subject to the missing participants regulation or one year after the plan's termination date under IRS Rev. Rul. 89-87.<sup>27</sup>

For single-employer plans covered by title IV, the filing deadline set in the filing instructions is the same as under the existing regulations, the date the post-distribution certification is due, *i.e.*, within 30 days after the last distribution date. This deadline was changed back to the existing rule from what was in the proposed regulation to maintain consistency in filing for single-employer DB plans undergoing standard terminations.

#### **PBGC Reliance**

The vast majority of plans using the expanded missing participants program will be DC plans, over which (beyond their participation in the program) PBGC has no authority. The same is true of small professional service DB plans. This circumstance has led PBGC to re-evaluate its function under the missing participants program with respect to all plans covered by the program; that re-evaluation is reflected in the revision of the administrative review regulation including noting that a participant's recourse is against the plan or plan sponsor, and not PBGC, if a plan incorrectly calculated a benefit transfer amount (see *Administrative Review* under *Related Regulatory Amendments* below). PBGC has concluded that in its role as administrator of the missing participants program, it has and may exercise only very constrained authority. Accordingly, PBGC has removed from the final regulation provisions dealing with audits and related matters and replaced them with provisions making clear that as the missing participants program administrator, PBGC relies on information from plans participating in the program and accepts that information. PBGC holds the information and funds entrusted to it and passes them on to proper claimants. While this does not mean that mistakes cannot be corrected, it does mean that the missing participants program will not be expected to take the initiative in making corrections. However, PBGC's role as administrator of the missing participants program does not detract from its authority as administrator of the title IV insurance program, including as to matters bearing on the missing participants program (such as the amount of benefit a missing distributee

<sup>26</sup> See, FAB 2014-01, which states: "Plan fiduciaries must be able to demonstrate compliance with ERISA's fiduciary standards for all decisions made to locate missing participants and distribute benefits on their behalf. If audited, plan fiduciaries could demonstrate compliance using paper or electronic records."

<sup>27</sup> 1989-2 CB 81.

may be entitled to from a plan terminated in a standard termination). The extent of that authority is not a proper subject of the missing participants regulation. Neither is the extent of the authority of other federal agencies to pursue violations of ERISA and the Code including with respect to plan terminations and the distribution of assets to participants missing or not. No provision of the missing participants regulation detracts from that authority.

### Benefits Paid to Located Participants

#### *Pay-Out Rules Common to DB and DC Plans*

One principle that carries over from the existing regulation to the final regulation is that PBGC will receive money for the benefits of some missing distributees but only information about the benefits of others. As under the current program, therefore, there will be two ways PBGC may connect claimants with their benefits. PBGC may pay benefits itself (where PBGC has received a benefit transfer amount from the claimant's plan) or may provide information to the claimant from the plan about how benefits not transferred to PBGC can be claimed (for example, where they have been annuitized with an insurer or transferred to an IRA). The final regulation, like the proposed, modifies the language about PBGC's providing information to clarify that PBGC's role in such circumstances (which is subject to the Privacy Act) does not include resolution of questions about entitlement to a benefit held by another entity (such as an insurance company). Those questions, and questions about revealing personal information about such a missing participant to a different claimant, are more properly resolved by the entity (for example, insurer or custodian) holding the benefit.

A concept common to both DB and DC plans in the final regulation, as in the proposed, is that of "qualified survivors," who would be entitled to benefits with respect to a missing participant in situations involving—for example—deceased missing participants without spouses.

The difference between the proposed and final rules is that for both DB and DC plans, PBGC in the final rule would look to beneficiary designations provided by the plan in its filing with PBGC as part of determining who would be entitled to benefits with respect to a deceased missing participant. The proposed rule only included this provision for DC plans. While it may be uncommon that a DB plan would have a valid beneficiary designation on file

before a benefit election is made, it is not unheard-of. To recognize these cases, PBGC included in the definition of "qualified survivor" for DB plans reference to beneficiary designations provided by the plan in its filing with PBGC.

The final rule, therefore, provides that PBGC will identify qualified survivors for both DB and DC plan missing distributees by looking first to provisions of any applicable QDRO; then, PBGC will look to the plan's filing with PBGC for identification of persons potentially entitled to benefits with respect to the decedent under plan provisions (including beneficiary designations consistent with plan provisions); finally, if the plan's filing did not identify a person entitled to benefits with respect to a decedent, PBGC will refer to a list of relatives that echoes § 4022.93 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, but includes just four categories:<sup>28</sup> Spouses, children, parents, and siblings.<sup>29</sup>

When PBGC finds a participant, depending on whether the amount is de minimis, the participant has a choice of distribution options and methods. Several commenters queried whether PBGC could distribute lump sum retirement savings to found participants in a direct rollover to a qualified plan or IRA. PBGC does offer participants the option of tax-free rollovers directly into a qualified retirement plan or IRA. PBGC also allows for partial rollovers, rollovers to Roth IRAs, and taxable direct deposit into a savings or checking account (and participants may choose to be paid out by check). In addition, PBGC believes the missing participants program complies with all applicable tax withholding and reporting rules with respect to retirement plan money held in the program and rolled over or otherwise distributed to found participants.

The final regulation, like the proposed, does not provide pay-out rules for situations involving DB participants whose benefits went into pay status under the plan before they became missing. Nor does it provide pay-out rules for situations—under either DB or DC plans—involving missing beneficiaries (such as situations involving missing alternate payees or situations where a plan knows a

participant is dead and has a beneficiary, but the beneficiary is missing). PBGC considers such circumstances sufficiently uncommon that the new regulation need not address them. PBGC had invited public comment about whether the regulation should address such circumstances and if so, how. One commenter acknowledged PBGC's conclusion, but suggested that PBGC might find those circumstances more common under the new program. While PBGC did not make a change in the final regulation, it intends to review whether pay-out rules may be necessary in such circumstances as it gains experience with the new missing participants program.

For both DB and DC plans, the final regulation does not deal (as the existing regulation does) with details such as election of annuity starting dates, which are left to policies and procedures reflected in PBGC's missing participants forms and instructions.

#### *DC Plan Pay-Out Rules*

The DC plan pay-out rules in the final regulation, like the proposed, are relatively simple. The rules specify that PBGC will pay lump sums to found participants whose benefit transfer amounts are de minimis (defined under section 411(a)(11) of the Code and section 203(e) of ERISA as \$5,000 or less). A found distributee whose benefit transfer amount is non-de minimis will be paid an annuity (a 50 percent joint and survivor annuity if married), unless the distributee elects (with spousal consent if married) a lump sum (or another type of annuity) instead. PBGC will make available the same annuity forms that it does for participants in trustee plans under § 4022.8.

One commenter pointed out that most DC plans don't include annuity options and are designed to satisfy the statutory exception under the Code and ERISA (section 401(a)(11)(B)(iii) of the Code and section 205(b)(1)(C) of ERISA) from the qualified joint and survivor annuity rules. The commenter questioned why PBGC would propose a pay-out rule for participants with non-de minimis benefits contrary to the distribution options these DC plan participants might be expecting. Another commenter stated its support for having annuity options as the default pay-out for non-de minimis accounts.

As stated above, found participants with de minimis benefit transfer amounts will receive their distribution in a lump sum, as will the survivors of a deceased participant with no living spouse. This makes sense where benefits are small or spouses don't exist. PBGC believes found participants (and

<sup>28</sup> The final rule does not include on this list the two other categories of § 4022.93 which are: Estates, if open, and next of kin in accordance with applicable state law.

<sup>29</sup> In PBGC's view, this terminology includes adoptive relationships (but not "step" relationships); thus the terminology is used without qualifying adjectives (such as "natural or adopted").

their spouses) with larger benefits should have a choice of distribution options, which include various annuity forms and lump sums. Participants are not prevented from choosing a lump sum, and PBGC makes valuable lifetime income options available to them regardless of whether the plan did so. PBGC has retained this choice for DC plan participants and adopted the proposed pay-out rules in the final regulation without change.

Additionally, as in the proposed regulation, lump sum distributions will include interest at the Federal mid-term rate. Conversions to annuities will be made using assumptions under section 205(g)(3) of ERISA and section 417(e)(3) of the Code. For elections before the participant's age 55, PBGC will provide information on all available payment options for the individual's consideration, including annuity benefits, which are only available at 55 or later.

#### *DB Plan Pay-Out Rules*

As discussed above (under *DB Plans—Final; Reported Amounts*), PBGC in the final regulation recognizes that some DB plans require that benefits begin no later than the normal retirement date. Thus, wherever the proposed regulation specified the required beginning date, the final regulation specifies the normal retirement date (or accrual cessation date if later), to maintain a simplified approach consistent with the rules for valuing benefit transfer amounts.

The pay-out rules that PBGC proposed for DB plan participants were generally standardized, rather than reflecting each participant's plan provisions. To collect, retain (perhaps for decades), interpret, and apply plan provisions for hundreds of plans, some of which might apply to only one missing distributee, seemed (and still seems) a daunting administrative challenge—a challenge out of proportion to the ideal of paying the benefits of found distributees as their plans would have paid them. Instead, PBGC focused on two pay-out features that loomed largest as having the most value to participants—eligibility for lump sums and early retirement subsidies—and proposed to preserve those, while in other respects treating all distributees according to common rules.

Two commenters recommended that PBGC preserve more of the features of each participant's plan—such as the early retirement date—or even that PBGC follow all pay-out provisions of each distributee's plan. PBGC understands the allure of reproducing the features of every distributee's plan,

but believes it has drawn the line at a reasonable place. Accordingly, the pay-out rules are personalized in the final regulation only as much as in the proposed.

Flowing from the principle of preserving certain material rights under plans, PBGC will no longer compute annuity benefits for a participant as the actuarial equivalent of the benefit transfer amount (as under the existing regulation). Rather, PBGC will provide annuity benefits based on what the plan would have provided, including any early retirement subsidies to which participants would have been entitled had they not been missing. This is possible because plans must report the straight life annuity payable to the participant commencing at each integral age from age 55 to normal retirement date (or accrual cessation date if later).

Another commenter recommended that lump-sum pay-outs by PBGC for non-de minimis benefits be based on the value of distributees' benefits determined using plan assumptions. The benefit transfer amount is the larger of the amount determined using plan assumptions or the amount determined using PBGC missing participant assumptions. Thus, accepting this recommendation would appear to require additional reporting by plans and record-keeping by PBGC and to result in somewhat lower benefits for some distributees. PBGC has concluded on balance that the recommendation would introduce unnecessary administrative complexity without providing a clearly commensurate advantage. Accordingly, PBGC has not adopted this suggestion.

In the proposed rule, PBGC provided pay-out rules for deceased missing participants in DB plans that were the same whether the benefit was de minimis or non-de minimis. PBGC has rethought this approach in light of the fact that its benefit payment policy for trustee plans treats the two categories of benefits differently. Lump sums are routinely paid to participants with de minimis benefits and become available for distribution to participants' heirs. In contrast, non-de minimis benefits are routinely paid as annuities. PBGC anticipates less opportunity for confusion in processing payments to located participants if its approach to deceased missing participants with de minimis benefits follows more closely its approach to deceased participants with de minimis benefits in trustee plans. Accordingly, PBGC has revised the proposed DB pay-out rules for deceased participants to make those rules applicable to non-de minimis benefits only, and has added a new

provision for payment of a deceased missing participant's de minimis benefit to the participant's qualified survivors as a lump sum.

The main elements of the DB pay-out rules are:

- Mandatory lump sums paid if the amount transferred to PBGC is \$5,000 or less.
- Elective lump sums available if available under the plan and the amount transferred to PBGC is over \$5,000 (subject to spousal consent if married).
- A variety of annuity payment forms available if the amount transferred to PBGC is over \$5,000.
- Annuities available as early as age 55 if the amount transferred to PBGC is over \$5,000.
- Amount of a straight life annuity starting at an integral age equal to the amount the plan would have paid at that age (as reported by the plan) (with linear interpolation between integral ages<sup>30</sup>); amounts of other annuity forms determined using PBGC conversion methodology.
- Annuity payments starting after normal retirement date calculated as if the annuity began at normal retirement date (or accrual cessation date if later), with missed payments paid as a lump sum with interest.
- Pre-retirement death benefits available if a married missing participant dies before the normal retirement date; but not if the participant is unmarried.
- Post-retirement death benefits available if a missing participant dies after normal retirement date whether married or not.

If the annuity PBGC would pay a participant is not a straight life annuity, the payments would be set to make the benefit actuarially equivalent to the straight life annuity that would have been payable starting at the same time. PBGC will use the actuarial assumptions under its regulation dealing with optional forms of benefit in trustee plans (29 CFR 4022.8(c)(7)) to make the conversion. If, on the other hand, PBGC pays a lump sum, it would be equal to the amount transferred to PBGC plus interest at the Federal mid-term rate.

Lump sums—where available—are payable at any age (while annuities are not paid before a participant's age 55). Spousal consent is required if a participant wants to receive a non-de minimis benefit in any form other than a joint and 50-percent survivor annuity. In situations requiring spousal consent to payment of a lump sum before age 55,

<sup>30</sup> For example, a monthly benefit starting at age 55¾ would be 75 percent of the age 56 amount plus 25 percent of the age 55 amount.

PBGC will provide the participant with information about the availability of payment options.

If an annuity begins later than the participant's normal retirement date (or accrual cessation date if later), missed payments with interest (make-up amount) will be paid in a lump sum. If the participant dies before normal retirement age, the survivor annuity will be deemed to begin on the later of the participant's 55th birthday or date of death. If the participant dies on or after the normal retirement date, the survivor annuity will be deemed to begin at the normal retirement date (or accrual cessation date if later). For missing participants under contributory plans, PBGC will pay benefits (including pre-retirement death benefits) at least equal to the accumulated mandatory employee contributions.

#### **PBGC Discretion**

It is impossible to anticipate and appropriately provide for every state of events in an undertaking like the missing participants program. To preserve as much flexibility as possible while treating like cases in like manner, the final regulation, like the proposed, incorporates in each subpart a section authorizing PBGC to grant waivers, extend deadlines, and in general adapt to unforeseen circumstances, with the proviso that similar treatment be given to similar situations. This provision takes the place of § 4050.12(g). No comments were received on the proposed provision and it is adopted without change in the final regulation.

#### **Repeal of Unnecessary Provisions**

Most of the special provisions in §§ 4050.11 and 4050.12 of the existing regulation are repealed as unnecessary or inappropriate:

- References to the maximum benefit under Code section 415 (if any) (§ 4050.5(a) of the existing regulation) and the minimum benefit under a contributory plan (§ 4050.12(c)(1)). Those limitations apply to the provisions and administration of plans generally and are not specific to the missing participants program.

- The exclusive benefit provision in § 4050.11(a) and the limitation on benefits to the amount transferred to PBGC by a plan for a missing participant (§ 4050.11(a) and (b)). The first of these seems unnecessary and the second would no longer be true.

- Relationship of benefits paid to the guaranteed benefit (§ 4050.11(c)), benefits payable in a sufficient distress termination (§ 4050.12(e)), and benefits payable on audit or other events (§ 4050.12(f)).

- Limitations on the annuity starting date (§ 4050.11(d)). PBGC plans to deal with such matters in its policies for administering the expanded missing participants program.

- Disposition of voluntary contributions (§ 4050.12(c)(2)) and residual assets (§ 4050.12(d)). PBGC specifically solicited comment on repeal of the treatment of residual assets (assets not needed to satisfy plan benefits), but received none.

- Provisions regarding missing participants located quickly by PBGC (§ 4050.12(a)). This provision has not been used, and PBGC believes that enforcement measures where a plan misrepresents its compliance with diligent search requirements will be more effective than this provision.

- QDROs (§ 4050.12(b)). PBGC provides in the pay-out rules that allowance be made for QDROs.

- Payments beginning after the required beginning date (§ 4050.12(h)). This subject is dealt with in the benefit pay-out provisions.

#### **Related Regulatory Amendments**

##### *In General*

PBGC is making conforming amendments to its regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000), Terminology (29 CFR part 4001), Termination of Single-Employer Plans (29 CFR part 4041), and Termination of Multiemployer Plans (29 CFR part 4041A).

##### *Administrative Review*

PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) sets forth the determinations, listed in § 4003.1(b), for which aggrieved persons are required to seek administrative review, (i.e., in the form of administrative appeals or reconsiderations) before they may seek judicial review. Section 4003.1(b)(11) applies to the missing participants program. Subparagraph (i) of § 4003.1(b)(11) relates to a determination about the benefits payable by PBGC based on the amount paid to PBGC under the program (assuming the amount paid to PBGC was correct). Subparagraph (ii) of § 4003.1(b)(11) relates to a determination as to the correctness of an amount paid to PBGC under the program (to the extent that the benefit to be paid does not exceed the guaranteed benefit).

PBGC proposed changes to the administrative review regulation and received no comment on the proposed changes. The changes, which are

adopted in the final regulation, are as follows. PBGC is changing § 4003.1(b)(11) by revising the content of paragraph (b)(11)(i) and eliminating paragraph (b)(11)(ii). Therefore section 4003.1(b)(11) will no longer have two subparagraphs. Section 4003.1(b)(11) does not refer to benefits based on an amount paid to PBGC, because in some cases benefits paid by PBGC under the new program will be monthly annuities based on information, such as calculations, reported by the plan, not on amounts paid to PBGC. Thus, an appeal right based on a determination pursuant to revised § 4003.1(b)(11) relates simply to a determination of the benefit payable under section 4050 of ERISA and the missing participants regulation.

An appeal based on a determination made under existing regulation § 4003.1(b)(11)(i)—that the right amount was paid to PBGC—is no longer permitted. PBGC does not make determinations about the amounts to be transferred to PBGC by plans under the missing participants program; rather, it is plans themselves that determine how much to transfer. Thus, there is no PBGC action for a person to be aggrieved by or for PBGC to revoke or change. Recourse must be against the plan or, if the plan no longer exists, the plan sponsor. If a claimant's benefit is guaranteed by PBGC, and the claimant is unable to collect from the plan or sponsor, the claimant may have a right to payment of the guaranteed benefit by PBGC, and a dispute about PBGC's determination of the amount of that benefit is subject to the requirement to pursue administrative review under § 4003.1(b)(8).

#### **Cost-Benefit Analysis**

##### *In General*

This rulemaking is not subject to the requirements of Executive Order 13771 because it results in no more than de minimis net costs. The rule has been determined to be "significant" under Executive Order 12866. The Office of Management and Budget has reviewed this final rule under E.O. 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes retrospective review of regulations, harmonizing rules, and promoting flexibility. E.O. 13771 directs agencies

to offset new incremental costs imposed by new regulations by the elimination of existing costs associated with two prior regulations; where there are no new incremental costs, as here, this requirement does not apply.

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. It has been determined that this final rule is not economically significant. Thus a comprehensive regulatory impact analysis is not required. PBGC has nonetheless examined the economic and policy implications of this rule and has concluded that the net effect of the action is to reduce costs in relation to benefits.

This final rule repeals part 4050 of PBGC's regulations and substitutes an expanded but simpler and more cost-effective part.

This final rule is the cornerstone of a freshly designed program that expects to improve the process of reconnecting American workers with lost retirement benefits, at a relatively tiny cost. Here's how the program will work.

- PBGC will accept the retirement benefits and record information of missing participants from terminating retirement plans.
- PBGC will maintain a pension search directory where missing participants can find their lost retirement benefits.
- PBGC will actively search for missing participants.
- The benefits held by PBGC will earn interest and be protected against investment losses.

- When missing participants are found, PBGC will pay their benefits in annuity or lump sum form.

This program will save retirement plans time and money in dealing with the benefits of missing participants. More participants will receive their retirement benefits because the centralized pension search directory will make finding lost benefits much easier and PBGC will search for missing participants.

PBGC has been successfully operating a small-scale version of this program for years, limited to single-employer DB plans covered by title IV of ERISA. Allowing the far greater number of DC plans into the program will permit economies of scale. PBGC estimates that the transfer impacts of this final rule will be close to \$19 million, as shown in the table below.

Annual transfer amounts	Before final rule	After final rule	Net transfer
Benefits recovered .....	\$7 million .....	\$26 million .....	\$19 million.
Annual cost amounts	Before final rule	After final rule	Net cost
Filling out forms .....	\$456,590 .....	\$645,750 .....	\$189,160.
Valuing benefits (DB) .....	No change.		
Searching (DB) .....	\$19,100 .....	\$32,500 .....	\$13,400.
Total .....	\$0.5 million .....	\$0.7 million .....	\$0.2 million.

The “before” column of the table shows benefits and costs if the final rule did not become effective. The “after” column shows benefits and costs if the final rule becomes effective. The “net” column shows the effect of the final rule (the “after” column minus the “before” column). (The costs for DC plans are not imposed by the final rule, but arise from plans’ voluntary election to participate in the program.)

*Benefits Recovered*

The missing participants program provides the promise of a “one-stop shop” for workers to find lost benefits from terminated retirement plans, augmented by active searches by PBGC to find those to whom benefits are owed. By expanding the number of those who benefit from the current program, both absolutely and in relation to associated costs, this final rule cuts costs in relation to benefits.

For fiscal years 2013–2015, PBGC restored about \$2.27 million in lost benefits annually to those entitled to them, while taking in about 955 missing participants per year from about 200 DB plans. Extrapolating from data gleaned from the existing single-employer DB program and Form 5500 filings, PBGC is

projecting that its intake under this final rule will expand by 10,000 missing participants per year from 3,100 DC plans. In the proposed rule, PBGC calculated the anticipated benefit recovery based on the increase in the number of plans (about a 16-fold increase). PBGC believes a better and more conservative approach is to calculate its anticipated payment of benefits based on the projected increase in the number of missing participants (about an 11-fold increase). Accordingly, PBGC is projecting that it will unite missing participants with an estimated \$26 million worth of lost retirement benefits each year under this final rule (\$2.27 million × 10,955/955).<sup>31</sup>

As noted above, PBGC’s current benefit pay-out is about \$2.27 million. But this is for DB plans only. Although DC plans have not been able to participate in the centralized missing participants program, PBGC assumes that some lost DC benefits are recovered. PBGC also assumes that the difference

between the ease of finding benefits in a single centralized governmental data base versus many fragmented private-sector ones means that the benefit recovery ratio is far more favorable for the former. Accordingly, PBGC assumes that, among the DC plans that will choose to participate in the expanded missing participants program, the amount of benefits that would be recovered without the program is about 20 percent of the amount recoverable with the program, or about \$4.75 million. Thus the total benefits that PBGC assumes would be reunited with those entitled to them in the absence of this final rule is about \$7 million. The effect of the final rule will be to increase benefits by \$19 million.

*Filling Out Forms*

As discussed in the proposal, the burden of using PBGC’s existing forms (or comparable forms) for the expanded program would be about \$861,000 (for 3,300 plans per year), assuming two hours per plan. In the absence of this final rule, the portion of this cost attributable to 200 DB plans (about \$52,180) would still be incurred. In addition, the 3,100 DC plans that PBGC expects to participate in the expanded

<sup>31</sup> Benefits paid out each year are not limited to those of missing participants taken into the program that year. It may take years to find a missing participant. But the number of participants entering the program is an indication of the program’s size.



program would, in the absence of this final rule, have to provide comparable information about their missing participants to whatever financial institutions were to hold the participants' benefits. PBGC thinks it likely that such institutions would require plans to spend at least an hour filling out forms or otherwise providing information about missing participants. Using the same assumptions for pricing paperwork burden, this represents a cost of about \$404,410. Thus in the absence of this rule, the cost incurred for filling out forms would be about \$456,590.

PBGC has redesigned its missing participants forms for use in the new program. The new forms contain only about 75 percent as many blanks to fill in as the current forms. Accordingly, PBGC is revising the assumed cost of filing under the final rule to 75 percent of the \$861,000 previously assumed, or \$645,750. For DB plans, this represents a decrease in costs. For DC plans, the costs will only be incurred by plans that decide to use the missing participants program. If, as PBGC assumes, 3,100 DC plans make that decision, the impact of the final rule is to increase costs by \$189,160.

#### *Valuing Benefits*

Since DC plans simply send missing participants' account balances to PBGC, they incur no cost for benefit valuation. And although the final rule changes the valuation rules for DB plans, the changes tend to offset each other. As indicated in the proposed rule, therefore, PBGC believes that the final rule makes no significant change in costs or benefits associated with valuing benefits.

#### *Searching*

Since the final rule imposes no search requirement on DC plans beyond what is already required under title I of ERISA, DC search costs are the same with or without the final rule and thus can be ignored in considering the changes in benefits and costs attributable to adoption of the final rule.

In the proposed rule, PBGC discussed DB search costs on a plan-by-plan basis, consistent with the proposal that the same search rules (records searches plus a commercial locator service search) apply to all missing participants. The final rule generally requires a commercial locator service search, but permits plans to use a simple records search method for participants with normal retirement benefits of not more than \$50 a month. Accordingly, the analysis must now be participant-by-participant.

PBGC believes its estimate that a search using a commercial locator service as defined in the final rule costs about \$40 per participant is conservative. PBGC further believes that under the existing program (without a definition of "commercial locator service"), many plans are incurring such costs, although many are not, and thus that it is reasonable to estimate that on average, search costs under the existing regulation are \$20 per participant. On that basis, search costs under the existing program may be estimated at \$19,100 (\$20 each for 955 missing participants).

PBGC does not currently collect data on missing participants' normal retirement benefits because it simply pays annuities that are actuarially equivalent to the amounts plans deposit with PBGC. But the actuarial value of a \$50 normal retirement benefit can be calculated for any age, and PBGC has statistics on the distribution of ages and benefit sizes among missing participants. Using this information, PBGC estimates that 80 percent of missing participants have normal retirement benefits of not more than \$50. Out of 955 missing participants, therefore, PBGC expects 764 to be searched for by the commercial locator service method at a cost of \$40 each (total \$30,560).

Plans could choose to use commercial locator services for the 191 other missing participants, but since this group includes some very small benefits, PBGC assumes that simple records searches will be done for them. For smaller benefits, the "affordability" limitation in the final rule will keep costs low. For larger benefits, the cost of records searches will vary with the availability and format of records, but PBGC expects many record systems to be electronic, permitting nearly instantaneous searching. For purposes of this analysis, PBGC is putting a figure of \$10 on the records search process. That makes the search cost for this group \$1,910, and the total cost of searching under the final rule \$32,470.

#### *Fees*

While actions establishing or changing fees for governmental services are not considered costs requiring offsets, as explained in OMB guidance on the requirements of E.O. 13771,<sup>32</sup> fees are taken into account for purposes of analyzing the transfers, costs and benefits of a rulemaking under E.O.

<sup>32</sup> M-17-21, Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs," Q&A 13, April 5, 2017.

12866. Therefore, the missing participant program administrative fee is described here.

As noted above, PBGC's working hypothesis is that opening the missing participants program to DC plans will add 10,000 missing participants per year to the current figure of 955. The fee is only paid on benefits transferred that are greater than \$250. Statistics on the current DB-only program indicate that about 86 percent of missing participants have benefits worth over \$250. Extrapolating to the new combined program, PBGC expects \$35 fees to be paid for about 9,420 missing participants, a total of about \$330,000.

Under the current DB-only program, fees are paid in the form of a "load" of \$300 built into the actuarial assumptions for valuing benefits over \$5,000. About 210 (22 percent) of the 955 missing participants currently entering the program annually have benefits at least that high; thus annual fees are currently running at about \$63,000. But fees are a factor in the placement of retirement benefits outside PBGC's program as well. One commenter described the exhaustion of a \$100 account within months due to a combination of set-up and maintenance fees. Fees for account statements and for processing withdrawals are also common. Because it may be years before a missing participant finds and claims a benefit, maintenance or management fees can cumulate to very substantial levels. For the 10,000 missing participants that PBGC assumes DC plans would choose to bring into the PBGC missing participants program, the burden of fees in the absence of the program—in the absence of the final rule—can conservatively be considered equivalent to a single up-front charge of \$100. For an assumed 10,000 missing participants, that amounts to \$1 million a year. Thus, in the absence of this final rule, fees would be running about \$1.06 million a year.

Accordingly, the effect of the final rule will be to reduce fees by about \$730,000.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires

that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

#### *Small Entities*

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is consistent with certain requirements in title I of ERISA<sup>33</sup> and the Internal Revenue Code,<sup>34</sup> as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.<sup>35</sup>

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. PBGC received no comments on this point.

#### *Certification*

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on PBGC's estimate (discussed above) that the economic impact of the final rule on any entity would be insignificant. PBGC believes that the expanded missing participants program will be particularly helpful to small DC plans

<sup>33</sup> See, e.g., ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

<sup>34</sup> See, e.g., Code section 430(g)(2)(B), which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

<sup>35</sup> See, e.g., DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

and that the improvements to the existing program will be helpful to small DB plans.

#### **Paperwork Reduction Act**

PBGC is submitting the information collection requirements under part 4050 to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act. The collection of information under part 4050 is currently approved under OMB control number 1212-0036 (expires November 30, 2017). That control number also covers PBGC's information collection on plan termination. PBGC is seeking paperwork approval of the new missing participants forms and instructions under a new control number. 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.

PBGC needs the information submitted by plans under part 4050 to identify the entities that are to provide benefits with respect to missing distributees whose benefits are not transferred to PBGC; and to attempt to find missing distributees whose benefits are transferred to PBGC and to pay their benefits.

PBGC estimates that the time for a plan to comply with the collection of information for the current program is 2 hours. But PBGC has significantly simplified its forms, reducing the number of items by a quarter. PBGC thus estimates that the burden of compliance will be 75 percent of the burden estimated in the proposed rule. As discussed in this final rulemaking, there would be about 3,300 respondents each year, and the total hours spent on the information collection would be 4,950. PBGC estimates that 20 percent of the work will be done in-house and 80 percent contracted out. Thus the hour burden for plans is estimated at about 990 hours (20 percent of 4,950 hours). The dollar burden of the 3,960 hours contracted out (80 percent of 4,950 hours) is estimated at about \$621,750. The dollar equivalent of the 990 in-house hours is about \$24,000. Total paperwork burden is estimated at \$646,000.

#### **List of Subjects**

##### *29 CFR Part 4000*

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

##### *29 CFR Part 4001*

Employee benefit plans, Pension insurance, Pensions.

##### *29 CFR Part 4003*

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

##### *29 CFR Part 4041*

Employee benefit plans, Pension insurance, Pensions.

##### *29 CFR Part 4041A*

Employee benefit plans, Pension insurance, Pensions.

##### *29 CFR Part 4050*

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

In consideration of the foregoing, PBGC amends 29 CFR parts 4000, 4001, 4003, 4041, 4041A, and 4050 as follows:

#### **PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION**

- 1. The authority citation for part 4000 continues to read as follows:

**Authority:** 29 U.S.C. 1083(k), 1302(b)(3).

##### **§ 4000.41 [Amended]**

- 2. In § 4000.41, remove “(premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants)” and add in its place “(premium payments)”.

#### **PART 4001—TERMINOLOGY**

- 3. The authority citation for part 4001 continues to read as follows:

**Authority:** 29 U.S.C. 1301, 1302(b)(3).

- 4. In § 4001.1:

- a. The existing text is designated as paragraph (a) with the paragraph heading “*In general.*” added.

- b. Paragraph (b) is added to read as follows:

##### **§ 4001.1 Purpose and scope.**

\* \* \* \* \*

(b) *Title IV coverage.* Coverage by section 4050 of ERISA is not and does not result in or confer coverage by title IV of ERISA.

##### **§ 4001.2 [Amended]**

- 5. In § 4001.2, the definition of “Distribution date” is amended as follows:

- a. Paragraph (2) and paragraph (1) introductory text are removed.

- b. Paragraphs (1)(i) and (ii) are redesignated as paragraphs (1) and (2), respectively.

**PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS**

■ 6. The authority citation for part 4003 continues to read as follows:

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

■ 7. In § 4003.1, paragraph (b)(11) is revised to read as follows:

**§ 4003.1 Purpose and scope.**

\* \* \* \* \*

(b) \* \* \*

(11) Determinations with respect to benefits payable by PBGC under section 4050 of ERISA and part 4050 of this chapter.

\* \* \* \* \*

**PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS**

■ 8. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 9. In § 4041.28:

- a. Paragraph (a)(3) is added;
- b. Paragraph (c)(5) is amended by removing “part 4050” and adding in its place “subpart A of part 4050 of this chapter”.

The addition reads as follows:

**§ 4041.28 Closeout of plan.**

(a) \* \* \*

(3) *Missing participants and beneficiaries.* The distribution deadline is considered met with respect to a missing distributee to whom subpart A of part 4050 of this chapter applies if the benefit transfer amount for the missing distributee is considered timely transferred to PBGC under subpart A of part 4050 of this chapter.

\* \* \* \* \*

**PART 4041A—TERMINATION OF MULTIEmployer PLANS**

■ 10. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

■ 11. In § 4041A.42:

- a. The existing text of § 4041A.42 is designated as paragraph (a) with the paragraph heading “*In general.*” added.
- b. Paragraph (b) is added to read as follows:

**§ 4041A.42 Method of distribution.**

\* \* \* \* \*

(b) *Missing participants and beneficiaries.* The plan sponsor must distribute plan benefits of missing distributees in accordance with subpart D of part 4050 of this chapter.

■ 12. Part 4050 is revised to read as follows:

**PART 4050—MISSING PARTICIPANTS**

**Subpart A—Single-Employer Plans Covered by Title IV**

Sec.

- 4050.101 Purpose and scope.
- 4050.102 Definitions.
- 4050.103 Duties of plan administrator.
- 4050.104 Diligent search.
- 4050.105 Filing with PBGC.
- 4050.106 Missing participant benefits.
- 4050.107 PBGC discretion.

**Subpart B—Defined Contribution Plans**

- 4050.201 Purpose and scope.
- 4050.202 Definitions.
- 4050.203 Options and duties of plan.
- 4050.204 Diligent search.
- 4050.205 Filing with PBGC.
- 4050.206 Missing participant benefits.
- 4050.207 PBGC discretion.

**Subpart C—Certain Defined Benefit Plans Not Covered by Title IV**

- 4050.301 Purpose and scope.
- 4050.302 Definitions.
- 4050.303 Options and duties of plan administrator.
- 4050.304 Diligent search.
- 4050.305 Filing with PBGC.
- 4050.306 Missing participant benefits.
- 4050.307 PBGC discretion.

**Subpart D—Multiemployer Plans Covered by Title IV**

- 4050.401 Purpose and scope.
- 4050.402 Definitions.
- 4050.403 Duties of plan sponsor.
- 4050.404 Diligent search.
- 4050.405 Filing with PBGC.
- 4050.406 Missing participant benefits.
- 4050.407 PBGC discretion.

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

**Subpart A—Single-Employer Plans Covered by Title IV**

**§ 4050.101 Purpose and scope.**

(a) *In general.* This subpart describes PBGC’s missing participants program for single-employer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a single-employer defined benefit plan that—

- (1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA and
- (2) Terminates in a standard termination or in a distress termination

described in section 4041(c)(3)(B)(i) or (ii) of ERISA (“sufficient distress termination”).

(b) *Plans that terminate but do not close out.* This subpart does not apply to a plan that terminates but does not close out, such as a plan that terminates in a distress termination described in section 4041(c)(3)(B)(iii) of ERISA (“insufficient distress termination”).

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

**§ 4050.102 Definitions.**

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, insurer, irrevocable commitment, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

*Accrual cessation date* for a participant under a subpart A plan means the date the participant stopped accruing benefits under the terms of the plan.

*Accumulated single sum* means, with respect to a missing distributee, the distributee’s benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

*Benefit determination date* with respect to a subpart A plan means the single date selected by the plan administrator for valuing benefits under § 4050.103(d); this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

*Benefit transfer amount* for a missing distributee of a subpart A plan means the amount determined by the plan administrator under § 4050.103(d) in the close-out of the plan.

*Close-out or close out* with respect to a subpart A plan means the process of the final distribution or transfer of assets pursuant to the termination of the plan.

*De minimis* means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the

Code (without regard to plan provisions).

*Distributee* means, with respect to a subpart A plan, a participant or beneficiary entitled to a distribution under the plan pursuant to the close-out of the plan.

*Missing*, with respect to a distributee under a subpart A plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan administrator does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A "cash-by" date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such "cash-by" date is so prescribed, the check's stale date.

*Missing participants forms and instructions* means the forms and instructions provided by PBGC for use in connection with the missing participants program.

*Missing participants interest rate* means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

*Normal retirement date* for a participant under a subpart A plan means the normal retirement date of the participant under the terms of the plan.

*Pay-status* or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

*PBGC missing participants assumptions* means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy

male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II-C of Appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

*Plan lump sum assumptions* means, with respect to a subpart A plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

*QDRO* means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

*Qualified survivor* of a participant or beneficiary under a subpart A plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

*Subpart A plan* or *plan* means a plan to which this subpart A applies, as described in § 4050.101.

#### § 4050.103 Duties of plan administrator.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must provide for the distributee's plan benefits either—

(1) By purchasing an irrevocable commitment from an insurer, or

(2) By—

(i) Determining the distributee's benefit transfer amount under paragraph (d) of this section, and

(ii) Transferring to PBGC as described in this subpart A an amount equal to the distributee's benefit transfer amount.

(b) *Diligent search.* For each distributee whose location the plan administrator does not know with reasonable certainty upon close-out of a subpart A plan, the plan administrator must have conducted a diligent search as described in § 4050.104.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must file with PBGC as described in § 4050.105.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan administrator as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past)

determined using plan lump sum assumptions is not de minimis, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan administrator; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

#### **§ 4050.104 Diligent search.**

(a) *Search requirement.* The plan administrator of a subpart A plan must, within the time frame described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan administrator does not know with reasonable certainty upon close-out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than \$50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method—(1) In general.* Using the commercial locator service method

means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of "commercial locator service."* For purposes of this section, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method—(1) In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the plan's contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the plan's contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" website.

(2) *Limits on method.* For purposes of this section—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.105 identifying the distributee as a missing distributee.

#### **§ 4050.105 Filing with PBGC.**

(a) *What to file.* The plan administrator of a subpart A plan must file with PBGC the information specified in the missing participants forms and instructions and, for a missing distributee referred to in § 4050.103(a)(2), payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan administrator must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions. Payment of a benefit transfer amount will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041 of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart A plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan administrators in connection with the program. This reliance does not affect PBGC's authority as administrator of the title IV insurance program to audit or make inquiries of subpart A plans, including about the amount to which a missing distributee may be entitled.

#### **§ 4050.106 Missing participant benefits.**

(a) *In general—(1) Benefit transfer amount not paid.* If a subpart A plan files with PBGC information about an irrevocable commitment provided by the subpart A plan for a missing distributee, PBGC will provide information about the irrevocable commitment to the distributee or another claimant that may be entitled to

payment pursuant to the irrevocable commitment.

(2) *Benefit transfer amount paid.* If a subpart A plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart A plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart A plan would have paid the participant, starting at the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart A plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation

date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant

beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and (k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart A plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis,—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2)

of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart A plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump

sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart A plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant at least the amount of accumulated contributions as reported by the subpart A plan, accumulated at

the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

- (1) The date the participant receives or begins to receive a benefit, or
- (2) The date the participant dies.

#### **§ 4050.107 PBGC discretion.**

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

### **Subpart B—Defined Contribution Plans**

#### **§ 4050.201 Purpose and scope.**

(a) *In general.* This subpart describes PBGC's missing participants program for single-employer and multiemployer defined contribution retirement plans. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it elects to use the missing participants program for missing participants and beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a plan—

(1) That—

(i) Is a defined contribution (individual account) plan described in section 3(34) of ERISA; or

(ii) Is treated as a defined contribution (individual account) plan under section 3(35) of ERISA (to the extent so treated);

(2) That is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (1), (5), (12), or (13), including a plan described in section 403(b) of the Code under which benefits are provided through custodial accounts described in section 403(b)(7) of the Code;

(3) That, if it is a transferring plan, pays all benefit transfer amounts to PBGC in money, consistent with plan provisions and applicable law; and

(4) That terminates and closes out.

(b) *Defined contribution plans that are part of defined benefit plans.* This subpart does not fail to apply to a plan

merely because the plan is described in the same plan document as a defined benefit plan (to which this subpart does not apply). For example, this subpart may apply to employee contributions (or interest or earnings thereon) held as an individual account under a defined benefit plan.

(c) *Defined contribution plans that are abandoned plans.* This subpart does not fail to apply to a plan merely because the plan is an abandoned plan, as defined in 29 CFR 2578.1.

#### § 4050.202 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, PBGC, and person. In addition, for purposes of this subpart:

*Accumulated single sum* means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the date when the subpart B plan pays PBGC the benefit transfer amount for the missing distributee to the date when PBGC makes or commences payment to or with respect to the distributee.

*Benefit conversion assumptions* means, with respect to an annuity, the applicable mortality table and applicable interest rate under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year in which PBGC begins paying the annuity.

*Benefit transfer amount* for a missing distributee in a transferring plan means the amount available for distribution to the distributee in connection with the close-out of the subpart B plan.

*Close-out* or *close out* with respect to a subpart B plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart B plan.

*De minimis* means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

*Distributee* means, with respect to a subpart B plan, a participant or beneficiary entitled to a distribution under the plan pursuant to the close-out of the plan, except that a person is not a distributee if the subpart B plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

*Missing*, with respect to a distributee under a subpart B plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan does not know with reasonable certainty the location of the distributee.

(2) The distributee has not elected a form of distribution in response to a notice about the distribution.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A “cash-by” date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such “cash-by” date is so prescribed, the check's stale date.

*Missing participants forms and instructions* means the forms and instructions provided by PBGC for use in connection with the missing participants program.

*Missing participants interest rate* means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

*Notifying plan* means a subpart B plan that elects notifying plan status in accordance with § 4050.203.

*QDRO* means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

*Qualified survivor* of a participant or beneficiary under a subpart B plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

- (i) Spouse, or if none,
- (ii) Child, or if none,
- (iii) Parent, or if none,
- (iv) Sibling.

*Subpart B plan* or *plan* means a plan to which this subpart B applies, as described in § 4050.201.

*Transferring plan* means a subpart B plan that elects transferring plan status in accordance with § 4050.203.

#### § 4050.203 Options and duties of plan.

(a) *Options.* A subpart B plan that is closing out upon plan termination may (but need not) elect, by filing under § 4050.205, that the subpart B plan—

(1) Will be a “transferring plan,” that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the plan and will be bound by the provisions of this subpart B to the extent that they apply to transferring plans, or

(2) Will be a “notifying plan,” that is, will notify PBGC of the disposition of the benefits of each distributee identified in the filing who is missing upon close-out of the plan and will, with respect to those distributees, be bound by the provisions of this subpart B to the extent that they apply to notifying plans.

(b) *Diligent search*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for each distributee whose location the plan does not know with reasonable certainty upon close-out of a subpart B plan, the plan must have conducted a diligent search as described in § 4050.204.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (b)(1) of this section applies only to distributees identified in the filing with PBGC.

(c) *Filing with PBGC*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, for each distributee who is missing upon close-out of a subpart B plan, the plan must file with PBGC as described in § 4050.205.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (c)(1) of this section applies only to distributees identified in the filing with PBGC.

#### § 4050.204 Diligent search.

(a) *Search requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a subpart B plan must, within the time frame described in paragraph (b) of this section, have diligently searched for each distributee of the plan whose location the plan does not know with reasonable certainty upon close-out in accordance with regulations and other applicable guidance issued by the Secretary of Labor under section 404 of ERISA.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (a)(1) of this section applies only to distributees identified in the filing with PBGC.

(b) *Time frame.* A search for a missing distributee must be made within nine months before a filing is made under



§ 4050.205 identifying the distributee as a missing distributee.

**§ 4050.205 Filing with PBGC.**

(a) *What to file.* A subpart B plan must file with PBGC the information specified in the missing participants forms and instructions, and if the plan is a transferring plan, payment of—

(1) The benefit transfer amount for the missing distributee; and

(2) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart B plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plans in connection with the program.

**§ 4050.206 Missing participant benefits.**

(a) *In general*—(1) *Notifying plan.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart B plan for a missing distributee, PBGC will provide information about the disposition of benefits to the distributee or another claimant that may be entitled to the benefits.

(2) *Transferring plan.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), and (e) of this section describe the benefits that PBGC will pay to a missing

participant of a subpart B plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55; or, if the participant so elects, the lump sum described in paragraph (d)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is, at the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (d)(2) is the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55; or, if the participant so elects with the consent of the participant's spouse, the lump sum described in paragraph (e)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (e)(2) is the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), and (i) of this section describe the benefits that PBGC will pay with respect to a missing

participant of a subpart B plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, and the participant's qualified survivor claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; non-spousal qualified survivor.* If the benefit transfer amount of a married or unmarried participant described in paragraph (f) of this section is not de minimis, and the participant's qualified survivor is not the participant's surviving spouse and claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(i) *Non-de minimis benefit; surviving spouse is qualified survivor.* If the benefit transfer amount of a married participant described in paragraph (f) of this section is not de minimis, and the participant's qualified survivor is the participant's surviving spouse and claims a benefit under the missing participants program, PBGC will, at the spouse's election, either pay the spouse, beginning not before the participant would have reached age 55, the annuity described in paragraph (i)(1) of this section; or pay the spouse the lump sum described in paragraph (i)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is a straight life annuity for the life of the spouse in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (i)(2) is a lump sum equal to the participant's accumulated single sum.

(j) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

(1) The date the participant receives or begins to receive a benefit, or

(2) The date the participant dies.

**§ 4050.207 PBGC discretion.**

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be

treated in like manner under this section.

### Subpart C—Certain Defined Benefit Plans Not Covered by Title IV

#### § 4050.301 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for small professional service defined benefit retirement plans not covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it elects to use the missing participants program for missing participants and beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a single-employer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (13), and

(2) Terminates and closes out with sufficient assets to satisfy all liabilities with respect to employees and their beneficiaries.

(b) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

#### § 4050.302 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

*Accrual cessation date* for a participant under a subpart C plan means the date the participant stopped accruing benefits under the terms of the plan.

*Accumulated single sum* means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

*Benefit determination date* with respect to a subpart C plan means the single date selected by the plan administrator for valuing benefits under § 4050.303(d); this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

*Benefit transfer amount* for a missing distributee in a transferring plan means the amount determined by the plan administrator under § 4050.303(d) in the close-out of the subpart C plan.

*Close-out* or *close out* with respect to a subpart C plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart C plan.

*De minimis* means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

*Distributee* means, with respect to a subpart C plan, a participant or beneficiary entitled to a distribution under the subpart C plan pursuant to the close-out of the subpart C plan, except that a person is not a distributee if the subpart C plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

*Missing*, with respect to a distributee under a subpart C plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan administrator does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A "cash-by" date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such "cash-by" date is so prescribed, the check's stale date.

*Missing participants forms and instructions* means the forms and instructions provided by PBGC for use

in connection with the missing participants program.

*Missing participants interest rate* means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

*Normal retirement date* for a participant under a subpart C plan means the normal retirement date of the participant under the terms of the plan.

*Notifying plan* means a subpart C plan for which the plan administrator elects notifying plan status in accordance with § 4050.303.

*Pay-status* or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

*PBGC missing participants assumptions* means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II—C of Appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are

assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

*Plan lump sum assumptions* means, with respect to a subpart C plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

*QDRO* means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

*Qualified survivor* of a participant or beneficiary under a subpart C plan means, for any benefit with respect to the participant or beneficiary—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

- (i) Spouse, or if none,
- (ii) Child, or if none,
- (iii) Parent, or if none,
- (iv) Sibling.

*Subpart C plan or plan* means a plan to which this subpart C applies, as described in § 4050.301.

*Transferring plan* means a subpart C plan for which the plan administrator elects transferring plan status in accordance with § 4050.303.

#### § 4050.303 Options and duties of plan administrator.

(a) *Options.* The plan administrator of a subpart C plan that is closing out upon plan termination may (but need not), by filing under § 4050.305, elect that the subpart C plan—

(1) Will be a “transferring plan,” that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the subpart C plan and will be bound by the provisions of this subpart C to the extent that they apply to transferring plans, or

(2) Will be a “notifying plan,” that is, will notify PBGC of the disposition of the benefits of each distributee identified in the filing who is missing upon close-out of the plan and will, with respect to those distributees, be bound by the provisions of this subpart C to the extent that they apply to notifying plans.

(b) *Diligent search*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for each distributee whose location the plan administrator does not know with reasonable certainty upon close-out of a subpart C plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (b)(1) of this section applies only to distributees identified in the filing with PBGC.

(c) *Filing with PBGC*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, for each distributee who is missing upon close-out of a subpart C plan, the plan administrator must file with PBGC as described in § 4050.305.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (c)(1) of this section applies only to distributees identified in the filing with PBGC.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan administrator as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan administrator; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

#### § 4050.304 Diligent search.

(a) *Search requirement.* For each distributee of a subpart C plan who is described in § 4050.303(b), the plan administrator must, within the time frame described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan administrator does not know with reasonable certainty upon close out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than \$50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method*—(1) *In general.* Using the commercial locator service method means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of “commercial locator service.”* For purposes of this section, a commercial locator service is a business

that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method*—(1) *In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the plan's contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the plan's contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" website.

(2) *Limits on method.* For purposes of this section—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.305 identifying the distributee as a missing distributee.

#### § 4050.305 Filing with PBGC.

(a) *What to file.* The plan administrator of a subpart C plan must file with PBGC the information specified in the missing participants forms and instructions, and if the plan is a transferring plan, payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after

the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan administrator must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions.

(c) *Place, method and date of filing; time periods.*

(1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart C plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan administrators in connection with the program.

#### § 4050.306 Missing participant benefits.

(a) *In general*—(1) *Notifying plan.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart C plan for a missing distributee, PBGC will provide information about the disposition of benefits to the distributee or another claimant that may be entitled to the benefits.

(2) *Transferring plan.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart C plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant

described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart C plan would have paid the participant, starting at the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart C plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer

amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and (k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart C plan who dies without

receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis,—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart C plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a

benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart C plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant, at least the amount of accumulated contributions as reported by the subpart C plan, accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

- (1) The date the participant receives or begins to receive a benefit, or
- (2) The date the participant dies.

#### **§ 4050.307 PBGC discretion.**

PBGC may in appropriate circumstances extend deadlines, excuse

noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

#### **Subpart D—Multiemployer Plans Covered by Title IV**

##### **§ 4050.401 Purpose and scope.**

(a) *In general.* This subpart describes PBGC's missing participants program for multiemployer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in retirement plans that are closing out and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a multiemployer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA, and

(2) Completes the process of closing out under subpart D of PBGC's regulation on Termination of Multiemployer Plans (29 CFR part 4041A).

(b) *Plans that terminate but do not close out.* This subpart does not apply to plans that terminate but do not close out.

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

##### **§ 4050.402 Definitions.**

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, insurer, PBGC, person, and plan sponsor. In addition, for purposes of this subpart:

*Accrual cessation date* for a participant under a subpart D plan means the date the participant stopped accruing benefits under the terms of the plan.

*Accumulated single sum* means, with respect to a missing distributee, the

distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

*Benefit determination date* with respect to a subpart D plan means the single date selected by the plan sponsor for valuing benefits under § 4050.103(d); this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

*Benefit transfer amount* for a missing distributee of a subpart D plan means the amount determined by the plan sponsor under § 4050.403(d) in the close-out of the plan.

*Close-out or close out* with respect to a subpart D plan means the process of the final distribution or transfer of assets in satisfaction of plan benefits.

*De minimis* means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

*Distributee* means, with respect to a subpart D plan, a participant or beneficiary entitled to a distribution under the subpart D plan pursuant to the close-out of the subpart D plan.

*Missing*, with respect to a distributee under a subpart D plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan sponsor does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A "cash-by" date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such "cash-by" date is so prescribed, the check's stale date.

*Missing participants forms and instructions* means the forms and instructions provided by PBGC for use

in connection with the missing participants program.

*Missing participants interest rate* means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

*Normal retirement date* for a participant under a subpart D plan means the normal retirement date of the participant under the terms of the plan.

*Pay-status* or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

*PBGC missing participants assumptions* means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to

commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

*Plan lump sum assumptions* means, with respect to a subpart D plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

*QDRO* means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

*Qualified survivor* of a participant or beneficiary under a subpart D plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

*Subpart D plan* or *plan* means a plan to which this subpart D applies, as described in § 4050.401.

#### § 4050.403 Duties of plan sponsor.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must provide for the distributee's plan benefits either—

(1) By purchase of an annuity contract from an insurer; or

(2) By—

(i) Determining the distributee's benefit transfer amount under paragraph (e) of this section, and

(ii) Transferring to PBGC as described in this subpart D an amount equal to the distributee's benefit transfer amount.

(b) *Diligent search.* For each distributee whose location the plan sponsor does not know with reasonable certainty upon close-out of a subpart D plan, the plan sponsor must have conducted a diligent search as described in § 4050.404.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must file with PBGC as described in § 4050.405.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan sponsor as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan sponsor; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum

assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

**§ 4050.404 Diligent search.**

(a) *Search requirement.* The plan sponsor of a subpart D plan must, within the time frame described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan sponsor does not know with reasonable certainty upon close-out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than \$50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method*—(1) *In general.* Using the commercial locator service method means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of "commercial locator service."* For purposes of this section, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method*—(1) *In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a "social media" website.

(2) *Limits on method.* For purposes of this section,—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.405 identifying the distributee as a missing distributee.

**§ 4050.405 Filing with PBGC.**

(a) *What to file.* The plan sponsor of a subpart D plan must file with PBGC the information specified in the missing participants forms and instructions and, for a missing distributee referred to in § 4050.403(a)(2), payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan sponsor must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions. Payment of a benefit transfer amount will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041A of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified

in the request), the plan sponsor of a subpart D plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan sponsors in connection with the program. This reliance does not affect PBGC's authority as administrator of the title IV insurance program to audit or make inquiries of subpart D plans, including about the amount to which a missing distributee may be entitled.

**§ 4050.406 Missing participant benefits.**

(a) *In general*—(1) *Benefit transfer amount not paid.* If a subpart D plan files with PBGC information about an annuity contract purchased by the subpart D plan from an insurer for a missing distributee, PBGC will provide information about the annuity contract to the distributee or another claimant that may be entitled to payment pursuant to the contract.

(2) *Benefit transfer amount paid.* If a subpart D plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart D plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart D plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart



D plan would have paid the participant, starting at the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart D plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart D plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal

retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and (k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart D plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to

the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart D plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would

have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a

benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when

PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart D plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant, at least the amount of accumulated contributions as reported by the subpart D plan, accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

- (1) The date the participant receives or begins to receive a benefit, or
- (2) The date the participant dies.

#### **§ 4050.407 PBGC discretion.**

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Issued in Washington, DC.

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