FINDLEY perspective

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Looking for Missing Participants? Help is on the Way

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This article focuses on new provisions for common types of defined contribution (DC) plans that terminate after December 31, 2017.

Missing participants are a constant thorn in the side of retirement plan sponsors. Sponsors (i.e., employers) and recordkeepers alike struggle to establish effective processes to minimize the number of missing participants and uncashed checks and to conduct fruitful searches to reconnect the two. For terminating plans needing to disburse all assets within a short period of time, lost participants can really throw a wrench into the process—prolonging the final closing of the plan and adding to the sponsor's list of fiduciary decisions to wade through.

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What has changed?

The Pension Benefit Guaranty Corporation (PBGC) seeks to solve this problem through its Missing Participants Program, which creates a central repository for long-forgotten retirement benefits, which sponsors, as well as individuals, are free to search. Effective January 22, 2018, this program is expanded to include terminating defined contribution (DC) plans (and other specified plan types previously not covered). Use of this program is voluntary for DC plans. This is welcome news to DC plan fiduciaries attempting to wrap up their plans at a time when Department of Labor (DOL) auditors are showing increased interest in the handling of missing participant accounts.

The program also provides sponsors with the confidence of a multiagency-approved process for dealing with the account balances of lost participants. In the introductory pages of the *new regulation*, the PBGC notes that these rules were written in consultation with the DOL and the Internal Revenue Service (IRS). Hopefully, this change signals the direction the DOL is headed with active, ongoing plans as well, but for now, active plans are not eligible to use the PBGC's program.

Benefits of using the PBGC program

We can still celebrate the PBGC's move in the right direction to include terminating DC plans in the Missing Participants Program—the benefits of which are many:

- There are no stipulations on the size of account balance which can be transferred to the PBGC; however, *Transferring Plans* (defined in more detail below) must send all of their missing accounts to the PBGC.
- While there is a one-time administrative fee of $35 (for balances over $250), the PBGC charges no distribution fees or account maintenance fees, which over many years can wear away at the ultimate balance that is available to the participant should he or she resurface to claim a benefit. No fees are charged for transferring accounts of $250 or less, or for *Notifying Plans* (defined below).
- The account balances in the PBGC's care will earn interest at the federal midterm rate (2.31 percent in February 2018). This has the added benefit of removing the fiduciary decision for sponsors regarding how to invest the funds if they were to roll them to an IRA on behalf of the participant with another financial institution.
- Transferring benefits to the PBGC does not result in taxable income to the participant, so no taxes are reported or withheld.
- The PBGC offers both lump sum and annuity distribution options (for balances over $5,000) to participants who claim their benefits.

The details

Who is considered a missing participant?

A participant is considered missing if, when the plan terminates:

- the sponsor does not know the individual's location (for example, if a notice from the plan is returned as undeliverable);
- the individual does not return the required paperwork within the given time frame for making a distribution election; or
- the participant does not cash the check—issued according to their elections or according to the plan's cash-out rules—by the "cash by" date, which must be at least 45 days after the date the check is issued, or if there is no "cash by" date, then by the check's stale date (typically six months after issue date).

What are the steps for using the PBGC's Missing Participants Program?

First, the plan sponsor must request a case number from the PBGC, which is required to be included on the form used to report the missing participants. This is as simple as sending an email to *missingparticipants@pbgc.gov* with plan identifying information and the date the sponsor expects to submit the filing.

Next, the sponsor must conduct a "diligent search" to attempt to locate any missing participants within nine months of reporting them to the PBGC.

What constitutes a diligent search for DC plans follows the same guidance issued on August 14, 2014, by the DOL in Field Assistance Bulletin (FAB) 2014-001, "Fiduciary Duties and Missing Participants in Terminated Defined Contribution Plans." The sponsor should:

- search other plan records or employee records on file with the sponsor;
- use free electronic search tools, including internet search engines, public record databases, etc.;
- attempt to contact the designated beneficiary on record for the missing participant.

If none of these methods produces results, then consider the size of the account balance and the cost of conducting such a search using a for-fee service to locate the participant (e.g., fee-based internet search tools, commercial locator services, credit reporting agencies, etc.). Note, the sponsor does *not* have to conduct a diligent search for those participants who were unresponsive but for whom the sponsor believes it has a legitimate address.

The sponsor must decide which reporting approach to use—there are two options: a sponsor may file as a Transferring Plan or as a Notifying Plan.

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As a Transferring Plan, the sponsor actually transfers the money to the PBGC, which will hold the assets and eventually distribute the benefits if and when they are claimed. The sponsor must transfer *all* missing participants' balances to the PBGC, not just some of them. For example, the sponsor could not choose to roll the larger balances to IRAs with a financial institution and only send the small balances to the PBGC. It is an all-or-nothing decision.

If the sponsor files as a Notifying Plan, however, it may report on just some of the missing participants. Notifying Plans simply report information on the whereabouts of the missing participants' benefits. So for example, the sponsor might roll the account balances of missing participants into IRAs with a financial institution and then report that information to the PBGC. This way, if a missing participant resurfaces to claim a benefit, the PBGC can direct the participant on where to go to request payment.

Finally, the sponsor must complete, sign, and file a Form MP-200, and attach Schedule A (for Notifying Plans) or Schedule B (for Transferring Plans). The *instructions* are currently pending approval from the Office of Management and Budget (OMB), but they include reporting the last known address of the participant, beneficiary information if known, and the taxable and nontaxable portions of each account balance (for Transferring Plans).

For Transferring Plans, the sponsor has the added step of actually transferring the funds and paying the applicable administration fees to the PBGC. Funds can be transferred electronically or by physical check. The due date for filing Form MP-200 is no later than 90 days after all distributions are paid out to participants or beneficiaries who are *not* missing or one year after the plan termination date, whichever is later.

Documentation

As with so many facets of retirement plan administration, documentation is critically important. No matter how the sponsor decides to distribute the accounts of lost participants, the prudent plan sponsor will put in writing such details as:

- the dates and copies of letters and notices mailed to participants,
- the procedures that were followed to attempt to locate missing participants,
- the results of any searches conducted,
- the method for selecting the IRA provider to which accounts were transferred or the decision to use the PBGC Missing Participants Program, and
- copies of any government filings submitted.

Good documentation will ensure good records to hand over to an auditor if your plan is selected to be reviewed by the DOL or IRS.