



November 21, 2016

*Submitted via the Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov)

Regulatory Affairs Group  
Office of the General Counsel  
Pension Benefit Guaranty Corporation  
1200 K Street NW  
Washington, D.C. 20005-4026

**RE: RIN 1212-AB13 - Missing Participants Proposed Rule**

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter to the Pension Benefit Guaranty Corporation (PBGC) in response to the proposed rule on Missing Participants, which was issued on September 20, 2016.<sup>1</sup> The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business — manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

The PBGC proposes to expand its missing participants program to include multiemployer plans covered by Title IV, most defined contribution plans, and certain plans not already covered. In 2013, the Chamber responded to a Request for Information on Missing Participants in Individual Account Plans issued by the PBGC.<sup>2</sup> In that comment letter, the Chamber encouraged the PBGC to move forward with allowing for option participation for individual account plans in the Missing Participants program and recommended that the PBGC create a program whereby fiduciaries of terminating plans that transfer the accounts for missing participants to the PBGC can be confident that: (1) they no longer have fiduciary liability for such amounts; (2) the funds will be handled appropriately; (3) the account will be charged no more than reasonable fees; and (4) the participant (once found) will be able to obtain an accounting of the manner in which their funds have been handled by the PBGC.<sup>3</sup>

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<sup>1</sup> 81 FR 64700, September 20, 2016.

<sup>2</sup> 78 FR 37598, June 21, 2013.

<sup>3</sup> The Chamber filed comments jointly with the ERISA Industry Committee and the Plan Sponsor Council of America.

<https://www.uschamber.com/sites/default/files/documents/files/PBGC%20Missing%20Participants%20RFI%20-%20ERIC%20-%20PSCA%20and%20Chamber.pdf>.

In general, the Chamber supports the proposed rule and encourages the agency to move forward in the finalizing the rule. Specifically, the Chamber appreciates that the PBGC has streamlined the process where applicable and tried to minimize burdens on plan sponsors, particularly small plan sponsors.

Understanding that the statute addresses only terminated plans, the Chamber nevertheless encourages the PBGC to coordinate with other efforts to track and locate participant accounts. For example, a bill has been introduced in Congress that would create a pension registry that would serve as a central location of retirement plan information and would connect individuals with their retirement benefits.<sup>4</sup> While the Chamber has not specifically endorsed this bill, it is important that all efforts in this area be coordinated to ensure that various programs do not become complicated or duplicative for plan sponsors and participants.

### Comments

Below, we have provided answers to certain specific issues raised in the proposed rule.

**In the interest of uniformity for all DB plans participating in PBGC's missing participants programs, including DB plans not covered by title IV, PBGC proposes to substitute for the current timeliness standard a simple requirement that a diligent search be made during a six-month period before the plan closes out and the benefit transfer amount is paid. This same requirement would apply to DC plans. PBGC invites comment on the appropriateness of this standard and suggestions for alternatives.**

The Chamber appreciates this uniformity. In addition, the Chamber recommends that the PBGC require the plan sponsor to search the most recent employer's records only if that employer employed the missing participant at any time during some period prior to the close out, such as 12 months before. Otherwise, if the most recent employer goes back, for example, 10 years, then the burden on the employer will outweigh the potential benefit the search will have for the plan.

**PBGC proposes to define a commercial locator service as 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. This proposed requirement is designed to ensure a more robust search, but might not be cost-effective for distributees with relatively small benefits. PBGC proposes to address this issue by reserving to itself the authority to place limits in the missing participants forms and instructions on the requirement to use a commercial locator service. PBGC invites comment on this subject, including commenters' views on 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.**

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<sup>4</sup> The Retirement Savings Lost and Found Act of 2016 (S. 3078). <https://www.congress.gov/bill/114th-congress/senate-bill/3078>.

The Chamber appreciates the agency's recognition of the additional burden that might be placed on certain accounts. For clarity, we recommend that a waiver be codified in the regulation so plans are made aware of it. Moreover, this will allow for notice and comment if any changes are made to the waivers.

Fees for locator services range based on the type of search needed. For example, there is a “basic” search that might find most people but then another charge to comply with ERISA for those that are not found and for which the plan sponsor wants to do an automatic rollover. These amounts can be charged to the DC plan account and can represent a large percentage of a small account. Therefore, the Chamber recommends that the PBGC implement a waiver for accounts smaller than \$200 in an individual account plan and for annuities of less than \$100 per month in a defined benefit plan.

**Under the proposal, benefits would be valued as of the date the benefit transfer amount is paid to PBGC (the “benefit transfer date”). The PBGC invites comment on this point. Valuing benefits as of the benefit transfer date would eliminate the need for the rules in the current regulation about interest on transfers to PBGC between the valuation date and the payment date, since those two dates would be the same.**

The Chamber supports this recommendation as it will provide greater clarity for DB plans and result in consistency across agencies.

**The Chamber makes the following recommendations for improving the economic cost and benefit analysis of the proposed rule.**

- Correct the paperwork burden hours reported. The PBGC concludes that the burden of the information collection is 1,320 hours.<sup>5</sup> Previously, however, the PBGC states that “the time to file under part 4050 is 6,600 hours.”<sup>6</sup> This conclusion is based on the agency’s assumption that 3,300 plans will file reports each year and that each will require, on average 2 hours of labor time to do so. The agency then assumes that 80 percent (5,280 hours) of this work will be contracted to outside service providers at a cost of \$892,000. In its summation PBGC recognizes only the remaining 1,320 hours as paperwork burden. This is incorrect. The correct paperwork burden to report to OIRA is the 6,600 hours total. The possibility that some of the burden may be shifted to paid outside contracts if relevant for translating the hours burden into a parallel monetary value, but it does not reduce the total paperwork burden imposed on society as defined by the Paperwork Reduction Act.
- Labor cost assumptions for paperwork should be consistent. The PBGC estimates that 80 percent of the 6,600 hour reporting burden would be contracted out and 20 percent conducted in house. For the portion contracted out the agency appropriately estimates a total compensation rate (wages plus benefits) of approximately \$78.50 for human resources management personnel to prepare the report, and the agency then doubles this amount to account for “overhead and other costs,” bringing its total hourly labor-related

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<sup>5</sup> 81 FR at 64711.

<sup>6</sup> Id.

cost rate to \$157. The Chamber is pleased to see overhead costs included in the calculation. This is a significant cost element often omitted by other agencies. It is also notable that PBGC recognizes the human resources manager skill level and cost (\$78.50 per hour) as necessary for the work involved.

In light of the appropriate assumptions made in the analysis of the portion of the compliance work assumed to be outsourced, it is surprising to see inconsistent assumptions in the section of the analysis focused on the in-house work. The PBGC assumes that in-house work will be performed by relatively less skilled clerical personnel at a compensation rate of \$24.40 and no overhead load factor is applied to this rate. At the least, the PBGC should apply a similar overhead cost load to the \$24.40 labor cost cited. Also, the PBGC should either explain why the in-house work would only be performed by office and administrative staff or adopt the higher rate appropriate for benefits managers and actuaries used in the outsourced work component. Keeping the method consistent would increase the in-house component cost from \$32,000 to an amount between \$64,000 to \$207,000, depending on assumptions about the skill level of labor necessary to do the work.

- The commercial search services cost assumption is unclear. PBGC estimates the cost of a commercial locator service to be \$40 per search. No source or basis for this assumption is listed. As we mention above, our members have noted that there is a range in price for commercial locator services. Therefore, PBGC should conduct research to substantiate its assumption regarding this important cost element.
- Regulatory Familiarization Cost Have Been Omitted. Every new regulation imposes on the public an initial cost burden to learn about the new rules and to assess its applicability to one's business or behavior. Knowledge of new rules and their applicability is a real cost of regulating. Awareness of this familiarization cost is a consideration that constrains regulators from changing existing rules or imposing new ones for inconsequential reasons. To calculate familiarization cost the agency should have multiplied the number of entities potentially affected by the hours per entity that initial familiarization would require and by an appropriate wage compensation rate. For example, for the 31,000 additional plans PBGC expects to participate, the firms would have to first understand the rule before participating. Using the same compensation costs and load factor as the contracted work rate (\$157/hour) and assuming that it takes at least one hour to read and understand the new regulation, these costs would be more than \$4.8 million.

**Conclusion**

Thank you for your consideration of these comments. The Chamber appreciates the opportunity to provide comments on the proposed rule and again urges the PBGC to move forward with finalizing the rule.

Sincerely,

A handwritten signature in black ink that reads "Aliya Wong". The signature is written in a cursive, flowing style.

Aliya Wong  
Executive Director, Retirement Policy  
Labor, Immigration & Employee Benefits  
U.S. Chamber of Commerce