

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: Proposed 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 program is currently limited to single-employer defined benefit pension plans covered by the pension insurance system under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC proposes to make changes to its existing program and, as authorized by the Pension Protection Act of 2006, to establish similar programs for multiemployer plans covered by title IV, certain defined benefit plans that are not covered by title IV, and most defined contribution plans. PBGC seeks public comment on its proposal.

DATES: Comments must be submitted on or before November 21, 2016.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212-AB13, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

- *Email:* reg.comments@pbgc.gov.

- *Fax:* 202-326-4112.

- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212-AB13). Comments received, including personal information provided, will be posted to www.pbgc.gov. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy (murphy.deborah@pbgc.gov), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005-4026; 202-326-4400 extension 3451; or Stephanie Cibinic (cibinic.stephanie@pbgc.gov), Deputy Assistant General Counsel for Regulatory Affairs, 202-326-4400 extension 6352. (TTY and TDD users may call the Federal relay service toll-free at 800-877-8339 and ask to be connected to 202-326-4400 extension 3451 or 202-326-4400 extension 6352.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This proposed rule is needed to implement amendments to section 4050 of ERISA. Those amendments require PBGC to establish rules to handle the benefits of missing participants and beneficiaries under terminated multiemployer plans covered by title IV of ERISA similar to the rules for covered single-employer plans. They also provide for a similar voluntary program for terminated non-covered plans and authorize PBGC to prescribe related reporting requirements.

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 regulatory action would extend the missing participants program to terminated multiemployer plans covered by title IV and make it available to terminated professional service plans with 25 or fewer participants and to most terminated defined contribution plans.

Under the regulatory action, PBGC anticipates charging fees for plans to participate in the missing participants program; the fees would not exceed PBGC's costs.

The regulatory action would also modify the criteria for being "missing" and provide more specificity in the diligent search rules for defined benefit plans. It would modify the procedures for determining the appropriate sum to send to PBGC for the benefits of a

missing participant or beneficiary. It proposes to follow key plan provisions about the benefits to pay to those who are found. Finally, it would eliminate some unnecessary rules.

Background

In General

PBGC administers the pension plan termination insurance program under title IV of 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.¹ 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 cannot be found, 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 1995.

Authorization of New Programs

The Pension Protection Act of 2006 amended section 4050 of ERISA to expand its scope dramatically—offering the prospect of participation in missing participants programs to terminated

¹ 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 trusted by PBGC.

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. Program participation for title IV multiemployer plans is to be 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 would be eligible (but not required) to turn benefits of missing participants and beneficiaries over to PBGC, and PBGC is further authorized to provide for such 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 sought information about the number of missing participants in terminated plans, the size of their benefits, and how the benefits were handled. PBGC then published in the **Federal Register** (at 78 FR 37598, June 21, 2013) a request for information (RFI) about a variety of topics relevant to implementation of the expanded missing participants program.² PBGC received 22 responses from employer, plan, and participant representatives, pension service providers, and financial institutions.³ 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. Opinions were split on whether submission of information about the handling of missing participant accounts not turned over to PBGC should be voluntary or mandatory. 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.

Coordination and Consultation

The Advisory Council on Employee Welfare and Pension Benefit Plans (ERISA Advisory Council) issued a 2013 report⁴ on Locating Missing and Lost Participants based on hearings at which

a PBGC staff member testified (among other things) about responses to PBGC's request for information. 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).⁵ The FAB provides guidance about required search steps and options for dealing with the benefits of missing participants in terminated DC plans.

As recommended by the ERISA Advisory Council, PBGC staff consulted with staff of EBSA and of the Solicitor of Labor's Plan Benefits Security Division and with staff of the Internal Revenue Service (IRS) and the Department of the Treasury. Those consultations were very helpful in developing this proposed rule. PBGC will continue to work closely with these agencies on this rulemaking and other matters affecting missing participants.

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.

The Department of Labor has advised PBGC that it intends to review and possibly revise its regulations and guidance to coordinate with PBGC's development 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 has been furnished a notice but fails to elect a form of distribution in a timely manner,⁶ and thus would be considered

missing under this proposed rule.⁷ As part of its review, the Department of Labor said it specifically intends to consider transfers to PBGC in lieu of rollovers to individual retirement plans in these same circumstances. The Department of Labor also indicated its intent to review its "Abandoned Plan Regulations," which currently provide 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.⁸

Overview

PBGC proposes to completely redesign its existing missing participants program for single-employer DB plans and to adopt three new missing participants programs. The three new programs would be for multiemployer DB plans covered by the title IV insurance program, for professional service employer DB plans not covered by title IV, and for most DC plans. All four programs would follow the same basic design.

Among the most prominent changes to the existing program would be:

- Provision for fees to be charged for plans to participate in the missing participants program.
- A requirement to treat as "missing" non-responsive distributees with *de minimis* benefits subject to mandatory cash-out under the plan's terms.
- More robust requirements for diligent searches, using sponsor and related plan records, free web-search methods, and (subject to waiver) commercial locator services (which would be clearly defined).
- Fewer benefit categories and fewer sets of actuarial assumptions for determining the amount to transfer to PBGC.
- Changes in the rules for paying benefits to missing participants and their beneficiaries.

In addition, the missing participants forms and instructions would require the reporting of the monthly amount of each missing participant's accrued benefit in straight-life form assuming commencement at each exact age going forward from the later of the benefit transfer date or age 55 to the required

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.

⁷ See the discussion of "missing" under Terminology below.

⁸ See 29 CFR 2578.1.

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

³ See <http://www.pbgc.gov/documents/Missing-Participants-in-Individual-Account-Plans-Comments.pdf>.

⁴ See <http://www.dol.gov/ebsa/publications/2013ACreport3.html>.

⁵ See <http://www.dol.gov/ebsa/regs/fab2014-1.html>.

⁶ See 29 CFR 2550.404a-3. In certain limited circumstances, the Department of Labor's safe

beginning date under Code section 401(a)(9)(C).⁹

The program for terminated DC plans would be simpler than the programs for terminated DB plans in recognition of their different structure and regulatory framework. There would be no need for benefit valuation rules to determine the amount for a plan to transfer to PBGC; plans would simply transfer account balances. The definition of “missing” and the diligent search requirements would reflect guidance already established by EBSA and followed by terminated DC plans. Abandoned plans and qualified termination administrators winding up such plans, as defined under Department of Labor regulations,¹⁰ would be able to participate in the missing participants program if they met the same requirements applicable to other DC plans.¹¹

The proposed rule is intended to give DC plans, multiemployer plans, and small professional service plans a new option for dealing with missing participants and beneficiaries when closing out the plan and to make it more likely that missing persons will receive their benefits.

An important part of all of the missing participants programs would be a new unified pension search database. This database would be designed and operated for PBGC according to best practices by a private-sector entity with expertise in such enterprises and will be implemented in a way that protects individuals’ privacy. It would include information about missing participants and their benefits and a directory through which members of the public could easily query the database (using a choice of fields) to determine whether it contained information about benefits being held for them. PBGC anticipates that its new pension search database would provide a comprehensive, nationwide, authoritative, reliable, easy-to-use source of information about missing participants and the benefits being held for them.

Terminology

The proposed rule would introduce some changes from the terminology used in the statute and the current regulation.

The existing regulation, following the statute, uses 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 proposed regulation would use the term “missing distributee” to refer to a missing participant or missing beneficiary.¹² However, some headings in the regulation and some discussion in this preamble refer to missing participants, the more familiar phrase.

“Missing” would be defined more specifically than in the current regulation. As explained below, a distributee would be missing if—

(1) For a DB plan, the plan did not know where the distributee was (*e.g.*, a notice from the plan was returned as undeliverable), unless the distributee’s benefit was subject to mandatory “cash-out” under the terms of the plan,¹³ or

(2) For a DC plan, or a distributee whose benefit was subject to a mandatory cash-out under the terms of a DB plan, the distributee failed to elect a form or manner of distribution.

In most cases,¹⁴ a distributee who did not make an effective election of a form of distribution would be “missing.” Department of Labor regulations¹⁵ 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.¹⁶ PBGC has observed that some terminating DB plans treat distributees with benefits subject to a mandatory “cash-out,” but who do not return election forms, as not missing and their benefits, therefore, as ineligible for transfer to PBGC under its missing participants program. The benefits of these non-responsive distributees instead are placed in IRAs that may be difficult to find years later. Such distributees appear to be just the sort that the missing participants program was meant to serve. The new definition of “missing” will allow DB plans to deliver such non-responsive

¹² Where a plan knows a participant is deceased and has no known beneficiary, the unknown beneficiary is a distributee.

¹³ 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.

¹⁴ PBGC expects that most plans using the missing participants program will be terminated DC plans and that most benefits under terminated DB plans using the program will have been mandatory cash-outs pursuant to plan provisions.

¹⁵ See 29 CFR 2550.404a–3 and 2578.1.

¹⁶ Under the proposal, 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.

distributees into PBGC’s fold, featuring a centralized governmental repository and pension search capability.

However, distributees with benefits that are not subject to a mandatory cash-out provision under DB plans generally enjoy plan rights and features not available to those whose benefits may be cashed-out. Unless a distributee chooses to start receiving payment immediately, no benefit election is generally expected of the distributee. Absent an election, the distributee’s benefit would be annuitized, preserving the distributee’s rights and options under the plan. And for title IV plans the identity of the insurer that issued the annuity would have to be provided to PBGC if the distributee were missing. Accordingly, distributees whose benefits are not subject to a mandatory cash-out provision under DB plans would be missing only if the plan did not know where they were.

Regardless of the size of a missing distributee’s benefit, a diligent search would be required. The kind of diligent search required would be more specifically prescribed for DB plans than DC plans, and no diligent search would be required if the plan knew where the distributee was located. See Diligent search, below.

The term “designated benefit,” which is also used in the statute and the existing regulation, does not refer to a benefit but to an amount transferred to PBGC by a plan. Under the regulation, the designated benefit includes missed payments of pay-status benefits, but currently it is not clear how plans are to value missed payments or how PBGC is to identify which portion of a designated benefit represents missed payments. PBGC is proposing new terminology to clarify these matters. The present value of future payments of an annuity would be called the “benefit transfer amount.” Missed payments would be valued by accumulating interest at a specified rate and would be separately identified when submitted to PBGC; the amount so submitted would be called the “plan make-up amount.” (PBGC also plans to charge fees for participation in the missing participants programs. Thus, the amount that a plan would be required to remit to PBGC with respect to a missing distributee could comprise three amounts: the benefit transfer amount, the plan make-up amount, and the fee.)

The “deemed distribution date” for a plan (a defined term in the current regulation) depends on an election of the plan administrator based on the timeline for standard termination of a single-employer plan covered by title IV. In the interests of simplicity and

⁹ PBGC would interpolate where necessary to obtain figures for fractional ages.

¹⁰ See 29 CFR 2578.1.

¹¹ PBGC anticipates providing flexibility in filing requirements to enable participation in the missing participants program by abandoned plans and other plans that might not have full sets of records.

uniformity for all plan types, the deemed distribution date would be replaced by other concepts, notably the “benefit transfer date,” which would be the date as of which amounts to be transferred from a plan to PBGC would be determined and on which they would be paid.

The “designated benefit interest rate,” used by PBGC for crediting interest under the current regulation, would be renamed the “missing participants interest rate,” and would be used by plans as well as by PBGC.

The current regulation’s “missing participant lump sum assumptions” would be eliminated, and the “missing participant annuity assumptions” would be modified and renamed “PBGC missing participant assumptions.” These changes are discussed below under Amounts to be transferred.

Organization

The new missing participants regulation would describe four programs, each of which would be set forth in a separate subpart of the regulation:

- A revised version of the existing program for single-employer plans covered by title IV of ERISA (subpart A),
- A new program for DC plans (subpart B),¹⁷
- A new program for small professional service DB plans (subpart C),¹⁸ and
- A new program for multiemployer plans covered by the title IV insurance program (subpart D).

Each subpart would contain seven sections, dealing with:

- Purpose and scope (section number ending in 1),
- Definitions (section number ending in 2),
- Options and Duties (section number ending in 3),
- Diligent search (section number ending in 4),
- Filing with PBGC (including fees) (section number ending in 5),

¹⁷ 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.

¹⁸ These are plans that would be described in section 4021 of ERISA but for section 4021(b)(13) of ERISA.

- Missing participant benefits from PBGC (section number ending in 6), and
- PBGC discretion (section number ending in 7).

Options and Duties

In each subpart, the options and duties (or just duties) section under the missing participants program serves as a “road map” to the more specific provisions that plans would need to know about. In many ways, each subpart’s section would be similar to the others, but there would be differences reflecting the differences in the various missing participants programs.

Mandatory vs. Voluntary Functions

The most prominent difference would lie in the mandatory or voluntary nature of the programs. Section 4050(a)(1) requires title IV plans to use the missing participants program, but by statute they have the choice—for each missing participant—of transferring the benefit to PBGC or purchasing an annuity contract and giving PBGC the information that the missing participant would need to get access to the benefit. For title IV plans, therefore, participation in the missing participants program is mandatory, but a plan may choose the missing participants for which it will transfer benefits and those for which it will report annuitization details.

New section 4050(d)(1) of ERISA permits but does not require non-title IV plans to turn missing participants’ benefits over to PBGC. New section 4050(d)(2) of ERISA, on the other hand, says that (to the extent provided in PBGC regulations) non-title IV 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 flagged this reporting provision for public comment, and as noted above (in Background), there were some differences of opinion on this point. In general, employer advocates considered mandatory reporting unnecessarily burdensome, while participant advocates considered it an essential part of an effective pension search program.

PBGC has decided not to impose a mandatory reporting requirement for non-title IV plans at this time and is thus proposing to begin by making participation in the missing participants program voluntary for such plans. After PBGC has gained experience with a voluntary reporting requirement and the clearinghouse of lost retirement benefits that the requirement supports, PBGC will be in a better position to weigh the additional costs of mandatory reporting

against the additional benefits of a more fully supported lost-benefits registry.

Non-title IV plans that elected to send benefit transfer amounts to PBGC would be referred to as “transferring” plans; those that made other dispositions of the benefits of missing distributees and elected to send PBGC information about the dispositions would be called “notifying” plans. A notifying plan would have to identify the missing distributee(s) covered by the election.

Notifying plans could provide information for fewer than all of their missing distributees. PBGC is concerned, however, 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 is proposing that if a non-title IV 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. A transferring plan would be required to turn over to PBGC benefits for *all* missing distributees. Transferring benefits for fewer than all missing distributees would not be allowed. PBGC invites public comment on the validity of its concerns about cherry-picking and on its proposal for dealing with those concerns.

The options and duties sections for non-title IV plans would describe these options. Plan elections would have to be made in accordance with PBGC’s missing participants forms and instructions.

Search and Filing Functions

In addition to dealing with options for non-title IV plans, the options and duties sections would mention the two major duties of plans under each subpart of the regulation: Diligently searching for missing participants and filing with PBGC. Cross-references would lead the reader to the sections where these two duties are described more specifically.

Compliance and Audit

Title IV gives PBGC tools for dealing with non-compliance by covered plans. Although the proposed regulation would not delineate any authority for PBGC to impose sanctions on non-covered plans, PBGC could audit relevant plan and employer records if it reasonably suspected substantial non-

compliance. Audit findings could form the basis for a referral to EBSA or IRS for appropriate action.

Diligent Search

The next section of each subpart of the proposed missing participants regulation would deal with diligent searches. Again, there would be different provisions for different types of plans, but here the distinction would be between DB plans (that is, single-employer and multiemployer plans covered by title IV and professional service DB plans not covered by title IV) and DC plans. For DC plans, PBGC proposes to specify simply that a diligent search is one conducted in accordance with DOL guidance (including regulations) under section 404 of ERISA. This proposed standard is intended to harmonize PBGC's missing participants program for terminated DC plans with DOL's guidance for terminated DC plans so that compliance with that guidance would satisfy PBGC's "diligent search" standards.¹⁹

The search standards for DB plans would be based on the requirements in the existing regulation with modifications inspired by the guidelines in the FAB. PBGC's current diligent search rules for single-employer DB plans covered by title IV impose three requirements: timeliness, seeking information from beneficiaries of a missing participant, and use of a commercial locator service. The timeliness requirement is cast in terms of milestones in the standard termination process under title IV. 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.

PBGC proposes to make the other two existing search requirements for DB plans more specific. The first of the two

currently calls for seeking the missing individual through the individual's plan beneficiaries. PBGC proposes to replace this with a more detailed and specific series of requirements to seek information from records not just of the plan that is closing out, but of the employer and other plans of the employer as well (including health plans), and to mine these sources for information to locate the missing individual as well as leads to beneficiaries.²⁰ The records search requirements include an explicit "do your best" rule for situations where employers, plans, beneficiaries, or records may not be readily identifiable or obtainable (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information).

The last of the current search requirements for DB plans is the use of a commercial locator service. The existing regulation does not expand on the meaning of the term "commercial locator service." 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 (as defined in 15 U.S.C. 1681a(f)). 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.

PBGC is also proposing to add a requirement for DB plans to use a no-fee internet search engine or method regardless of benefit size. For situations where the commercial locator service requirement might be waived, this new search provision would round out the records search requirement without imposing the cost of a commercial locator service.

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. A plan that uses PBGC's missing

participants program to provide for the benefits of a person whose whereabouts are unknown must have followed all of the search requirements.²¹

PBGC's proposal attempts to bring its existing diligent search rules for DB plans into closer alignment with the search guidance in the FAB. PBGC believes that DB plans will welcome a more explicit and concrete "checklist" of search steps. PBGC has attempted to strike a balance between thoroughness on the one hand and, on the other hand, ease of plan compliance and PBGC administration (including PBGC review and audit of plans' missing participants submissions). PBGC specifically seeks comment on whether DB plans would be better served by a different or less prescriptive search standard.

Amounts To Be Transferred

As explained above (in Terminology), the amount paid to PBGC for a missing distributee could be composed of as many as three amounts: A fee, a benefit transfer amount, and (for some DB plan missing distributees) a plan make-up amount. The latter two amounts would be described in the definitions section of each subpart (except that there would be no definition of "plan make-up amount" for DC plans). These "pay-in" rules would be significantly different from those under the current regulation.²²

Current Rules (DB Plans)

For single-employer plans covered by title IV insurance, ERISA section 4050 prescribes rules to follow in valuing a missing distributee's benefits to determine the amount to pay²³ PBGC for the distributee. The rules for valuing benefits under the missing participants program are different for different categories of benefits. The statute 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 cash-out is elective. Under section 4050, a plan is to use its own lump sum assumptions to value benefits in the first category; PBGC

¹⁹ 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 the FAB for guidance on search steps.

²⁰ The new procedures are consistent with corresponding guidance in the FAB.

²¹ The unknown beneficiary of a known deceased participant is clearly missing, but 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.

²² The benefit transfer amount and plan make-up amount (if any) for a distributee who is the unknown beneficiary of a known deceased participant would be calculated in the same way as for any other distributee, but reasonable assumptions about unknown data such as age could be used.

²³ The term "pay" in connection with the benefit transfer amount or plan make-up amount is not used in a compensatory sense.

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.

Expanding on the statutory requirements, the current missing participants regulation describes four categories of benefits and prescribes a different valuation method for each category. The four benefit categories are 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 four valuation methods are arrived at by prescribing two sets of PBGC missing participant assumptions (rather than one)—“missing participant lump sum assumptions” and “missing participant annuity assumptions.”²⁴

While the “missing participant lump sum assumptions” and “missing participant annuity assumptions” under the current regulation differ from each other, they are both based to some degree on the plan termination assumptions in PBGC’s regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044), which are designed to reflect annuity market conditions and are based on data reported by commercial annuity providers. The “missing participant annuity assumptions” are much closer to matching the “4044 assumptions” in the asset allocation regulation, but both the “missing participant lump sum assumptions” and “missing participant annuity assumptions” omit the expected retirement age (XRA) assumptions that are part of the 4044 assumptions. The “missing participant annuity assumptions,” which do not include the adjustment for expenses under the 4044 assumptions, do include an “adjustment (loading) for expenses” of \$300 for each benefit with a value over \$5,000.

Whichever assumptions are used, the current regulation specifies that they are

²⁴ Under the current 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.

to be applied to the most valuable benefit. Thus the plan must value each benefit separately for a starting date in each year out into the future in order to find the one that is most valuable.

Proposal—DB Plans

For DB plans, PBGC is proposing to simplify the existing rules. The proposal would abandon the four-category approach in the current regulation in favor of a three-category approach consistent with that of the statute. PBGC is further proposing to abandon the “missing participant lump sum assumptions” and to modify the “missing participant annuity assumptions,” which would be called “PBGC missing participant assumptions.”

The PBGC missing participant assumptions would include no adjustment for expenses²⁵—neither the adjustment that is part of the 4044 assumptions nor the load that is part of the missing participant annuity assumptions in the current regulation. Mortality and interest under the new assumptions would be the same as under the old assumptions, except that the interest assumption in effect for valuations in January would be used for the entire calendar year.

Pre-retirement death benefits would be disregarded; the benefit to be valued would be a straight life annuity beginning at XRA.²⁶ Using XRA would replace the requirement to value the benefit at every age to determine the most valuable benefit and make the new assumptions more like the 4044 assumptions.

PBGC plans to create an on-line spreadsheet to enable a plan to value a missing participant’s benefits with the new “PBGC missing participant assumptions.” A plan 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.

A plan that pays no lump sums (even for *de minimis* amounts) would have no “plan assumptions” for lump sums. Under the current regulation, such plans use “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,

²⁵ See *Fees* below for a discussion of fees.

²⁶ Special “XRA” rules would apply to pay-status distributees and non-participant distributees.

the proposed regulation provides 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 whether the present value of a benefit is *de minimis*).

Under the proposal, benefits would be valued as of the date the benefit transfer amount is paid to PBGC (the “benefit transfer date”).²⁷ 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.

As discussed above (under Terminology), plans would account separately for the value of benefits payable in the future (the “benefit transfer amount”) and the value of benefit payments missed in the past (the “plan make-up amount”). Under the proposal, 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 would 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.²⁸ PBGC would 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, which would be called the “missing participants interest rate,” is the same rate prescribed in the current missing participants regulation as the “designated benefit interest rate.”

The plan make-up amount would 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 Code section 401(a)(9)(C).

For single-employer DB pension plans that are not covered by the existing program, PBGC’s missing participants program is optional. Thus one concern is whether the new program would find

²⁷ PBGC anticipates that a plan will generally have a single benefit transfer date for all missing distributees, but in unusual circumstances (such as where benefit computation errors are corrected), multiple benefit transfer dates may be necessary.

²⁸ Interest calculations could be incorporated into the on-line spreadsheet discussed above.

favor among DB plans not covered by title IV. If it did not, PBGC expects that the impact on the program would be slight because there are few such plans. Nonetheless, PBGC invites comment reflecting the views of non-covered DB plans on how attractive participation in the proposed missing participants program would be for such plans.

Proposal—DC Plans

For DC plans, the benefit transfer amount would be the amount available for distribution to the missing distributee. For a missing distributee who was a participant, this 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.

PBGC recognizes that the benefit transfer amount—the account balance—for a DC plan missing distributee also might (but might not) reflect the deduction of expenses. DC plans may (but need not) pay administrative expenses from participants' accounts, consistent with applicable law and relevant plan provisions. Such administrative expenses might include, for example, the cost of conducting a diligent search or the cost of paying PBGC fees for participating in the missing participants program. PBGC will not inquire into whether an account balance has been reduced for administrative expenses before it was transferred to PBGC. Whether or not plan termination expenses were properly allocated among all plan participants by the plan's fiduciary before the transfer is beyond the scope of this proposal.

Fees

PBGC proposes to charge fees for participation in the missing participants programs. Consonant with 31 U.S.C. 9701 (dealing with fees and charges for Government services and things of value), fees for participation in PBGC's missing participants programs would be fair and be based on PBGC's costs, the value of the programs to plans and participants, policy considerations (such as the interests of participants and beneficiaries, encouraging plan participation in the programs, and due regard for private-sector providers' concerns), and other relevant concerns. PBGC contemplates that fees would cover the costs of essential services such as periodic searches for missing distributees, tracking distributees' accounts, and processing benefit payments.

Fees would be set forth in the missing participants forms and instructions and thus, like information submission requirements and similar matters, would be subject to public notice and comment under the Paperwork Reduction Act. PBGC is proposing to charge a one-time \$35 fee per missing distributee, payable when benefit transfer amounts are paid to PBGC, without any obligation to pay PBGC continuing "maintenance" fees or a distribution fee. There would be no charge for amounts transferred to PBGC of \$250 or less. There would be no charge for plans that only send information about missing participant benefits to PBGC. Setting fees is necessarily a forward-looking exercise. Fees set today are collected tomorrow, in tomorrow's environment of costs and usage. PBGC therefore would adopt a fee structure that would make sense in light of circumstances that would exist when the fees were paid. To do this, PBGC would from time to time estimate its projected costs and the projected usage of the missing participants programs—much as must be done for purposes of the Paperwork Reduction Act. Patterns of past experience inform predictions of future experience and changes in methodology may be appropriate as PBGC's experience and views of the future program change. PBGC intends to provide public notice of all proposals to set and adjust fees, in accordance with the Paperwork Reduction Act.

PBGC's proposed methodology for setting future fees under the missing participants program incorporates the following elements and principles:

(1) PBGC will set fees in a manner consistent with the requirements of 31 U.S.C. 9701 and relevant guidance of the Office of Management and Budget²⁹ and the Government Accountability Office.³⁰

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

(3) For purposes of projecting estimated contractor costs, PBGC will use cost-smoothing methods and will

²⁹ See OMB Circular A-25, User Charges, https://www.whitehouse.gov/omb/circulars_a025.

³⁰ 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>.

break such costs down into two categories:

(i) System costs—that is, costs of establishing, maintaining, modifying, updating, and replacing hardware, software, and other infrastructure items—but only to the extent used in support of the missing participants program—will be amortized over five years.

(ii) Processing costs—that is, costs for labor, office supplies, utilities, and other ephemeral items charged PBGC by its contractor—will be treated as incurred and satisfied currently.

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

Concurrently with publication of this proposed rule, PBGC is submitting to the Office of Management and Budget, and posting on its Web site (www.pbgc.gov), an initial proposal for forms and instructions for the missing participants programs, including fees. The proposal includes instructions for submitting public comments on the fee schedule and other aspects of the proposal.

Filing With PBGC

Basic filing rules would be the same under the proposal as under the existing regulation.

The filing deadline for title IV single-employer plans would be similar to that under the current regulation: 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, the filing deadline would be 90 days after completion of all distributions not subject to the missing participants program.

Pay-Out Rules

Common Features

Although (as discussed below) the DB and DC pay-out rules would differ significantly, they would share some basic principles. One principle that would carry over from the existing regulation is that PBGC would receive money for the benefits of some missing distributees but only information about the benefits of others. As under the current program, therefore, there would be two ways PBGC might connect claimants with their benefits. PBGC

might pay benefits itself (where PBGC has received a benefit transfer amount from the claimant's plan) or might 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 or bank account). The proposed regulation would modify 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 second principle the DB and DC programs would share is that the pay-out rules are organized based on the circumstances of the missing distributee. The current regulation's pay-out rules are grouped according to the type of annuity benefit valued by the plan, an organizational principle that would not work for DC plans and that PBGC has found potentially confusing. Under the new organization, DB and DC pay-out rules would begin by describing what would happen if a missing participant showed up to claim benefits. The form and amount of the participant's benefit would be determined based on the size of the benefit and the participant's marital status. The rules then describe the form and amount if the missing participant died and a survivor claimed benefits (again depending on size of benefit and marital status).

PBGC is not proposing any pay-out rules for situations involving participants whose benefits went into pay status under the plan before they became missing. Nor is PBGC proposing 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 invites public comment about whether the regulation should address such circumstances and if so, how.

Another new concept common to both DB and DC plans would be 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. PBGC would identify qualified survivors by looking first to provisions of any applicable QDRO; then (for DC plans), PBGC would 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 would refer to a list of relatives that would echo § 4022.93 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, but would include just four categories³¹: spouses, children, parents, and siblings.³² As a practical matter, qualified survivors under DC plans would generally be those identified by the plan by reference to plan rules and related beneficiary designations, spousal waivers, etc.; only in unusual cases would DC qualified survivors be identified by reference to the list of relatives that would typically govern in DB cases.

Finally, for both DB and DC plans, the proposed regulation would not deal (as the current regulation does) with details such as election of annuity starting dates, which would be left to policies and procedures and be reflected in PBGC's missing participants forms and instructions.

Although PBGC has achieved some measure of uniformity in details surrounding the pay-out rules, the substantive rules themselves would differ significantly between DC and DB plans: for DC plans, a simple approach that steers away from the details of plan provisions, and for DB plans a more detail-oriented approach that imports some plan rules into the missing participants program with a view to preserving some significant rights of participants under DB plans.

New DB Plan Pay-Out Rules—at a Glance

The proposed DB plan payout rules would preserve two material features if available under a participant's plan: Early retirement subsidies and elective lump sums. In other respects, PBGC would apply benefit determination

principles that would be uniform for all missing participants, regardless of their individual plan provisions. The main features of the proposed new DB pay-out rules may be summarized as follows:

- Mandatory lump sums paid if the amount transferred to PBGC is \$5,000 or less.
- A variety of annuity payment forms available if the amount transferred to PBGC is over \$5,000.
- Elective lump sums available if available under the plan and the amount transferred to PBGC is over \$5,000.
- Amount of a lump sum equal to the amount transferred to PBGC plus interest.
- Spousal consent required for payment forms other than a joint and 50 percent survivor annuity if the amount transferred to PBGC is over \$5,000.
- Annuity starting dates limited to the period from participant's age 55 to participant's required beginning date if the amount transferred to PBGC is over \$5,000.
- Amount of a straight life annuity starting at an exact age equal to the amount reported by the plan; linear interpolation used for starting dates other than exact ages; amounts of other annuity forms determined using PBGC conversion methodology.
- Annuity payments starting after the required beginning date calculated as if the annuity began at the required beginning date, with missed payments received as a lump sum with interest.
- Pre-retirement death benefits available if a married missing participant dies before the required beginning date; but not if the participant is unmarried.
- Post-retirement death benefits available if a missing participant dies after the required beginning date (whether married or not).

New DB Plan Pay-Out Rules—in More Detail

One notable new rule for DB pay-outs—flowing from the principle of preserving certain material rights under plans—would be that PBGC would no longer compute annuity benefits for a participant as the actuarial equivalent of the benefit transfer amount, but rather would provide annuity benefits based on what the plan would have provided, including in particular any early retirement subsidies to which participants would have been entitled had they not been missing. This would be made possible by requiring a plan to report the straight life annuity payable to the participant commencing at each exact age from age 55 to age 70 and at

³¹ The proposal 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.

³² 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”).

the participant's required beginning date.

PBGC would use linear interpolation to calculate straight life annuities commencing between exact ages.³³ To deal with situations where a benefit entitlement might increase non-linearly, PBGC would inform benefit applicants what the benefit level at the next exact age would be.

If the annuity PBGC paid a participant was 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. If, on the other hand, PBGC paid a lump sum, it would be equal to the amount transferred to PBGC plus interest. Non-

de minimis lump sums would be available where plans provided for them (as most plans do). PBGC would pay *de minimis* benefits as lump sums.

Plan features of lesser significance, which PBGC does not consider it administratively feasible to preserve, would include annuity conversion factors, eligibility for pre-retirement death benefits, and earliest retirement age. As to these features, PBGC proposes to treat all distributees the same, regardless of plan terms.

For example, to convert from the straight life annuity form to any other of the variety of annuity forms PBGC would make available, PBGC would use the actuarial assumptions under its regulation dealing with optional forms

of benefit in trusteed plans (29 CFR 4022.8(c)(7)). While lump sums—where available—would be payable at any age, annuities would not be paid before a participant's age 55. Spousal consent would apply if a participant wanted 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, PBGC would provide the spouse with information on all available payment options for his or her consideration, including annuity benefits available from age 55 through 65.

The following table summarizes the DB pay-out rules under the proposed regulation.³⁴

| Circumstances | Proposed regulation |
|--|---|
| Living participant with <i>de minimis</i> benefit | PBGC pays participant a lump sum. |
| Living participant with non- <i>de minimis</i> benefit; no living spouse | PBGC pays participant an annuity in form elected by participant or, if plan so provided and participant so elects, a lump sum. |
| Living participant with non- <i>de minimis</i> benefit; living spouse | PBGC pays participant a joint and 50 percent survivor annuity (or at participant's election with spousal consent, another form of annuity) or, if plan so provided and participant so elects with spousal consent, a lump sum. |
| Deceased participant; no surviving spouse | If participant died before required beginning date, PBGC pays no benefit; if participant died after required beginning date, PBGC pays qualified survivor(s) missed payments from required beginning date with interest. |
| Deceased participant with <i>de minimis</i> benefit; living spouse | PBGC pays spouse a lump sum equal to value of survivor portion of joint and 50 percent survivor annuity (including missed payments). |
| Deceased participant with non- <i>de minimis</i> benefit; living spouse | PBGC pays spouse survivor portion of joint and 50 percent survivor annuity (including missed payments); except that if value of spouse's benefit is small (<i>i.e.</i> , less than \$5K), PBGC pays spouse an equivalent lump sum. |
| Deceased participant; deceased surviving spouse | PBGC pays qualified survivor(s) of participant and spouse the missed payments participant and spouse would have received under a joint and 50 percent survivor annuity. |

Some other details about the proposed new DB rules: Annuities would generally be deemed to begin no later than the required beginning date under Code section 401(a)(9)(C); if payment began later, missed payments with interest (make-up amount) would be paid in a lump sum. If the participant died before the required beginning date,

the survivor annuity would be deemed to begin on the later of the participant's 55th birthday or date of death. If the participant died on or after the required beginning date, the survivor annuity would be deemed to begin at the required beginning date. For missing participants under contributory plans, PBGC would pay benefits (including

pre-retirement death benefits) at least equal to the accumulated mandatory employee contributions.

DC Plan Pay-Out Rules

The DC pay-out rules would be relatively simple. The following table shows the DC pay-out rules under the proposed regulation.³⁵

| Circumstances | Proposed regulation |
|---|---|
| Living participant with <i>de minimis</i> benefit | PBGC pays participant a lump sum. |
| Living participant with non- <i>de minimis</i> benefit; no living spouse | PBGC pays participant an annuity in form elected by participant or, if participant so elects, a lump sum. |
| Living participant with non- <i>de minimis</i> benefit; living spouse | PBGC pays participant a joint and 50 percent survivor annuity (or at participant's election with spousal consent, another form of annuity) or, if participant so elects with spousal consent, a lump sum. |
| Deceased participant with <i>de minimis</i> benefit | PBGC pays qualified survivor(s) a lump sum. |
| Deceased participant with non- <i>de minimis</i> benefit; no surviving spouse | PBGC pays qualified survivor(s) a lump sum. |

³³ 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.

³⁴ A *de minimis* benefit is the sum of the participant's benefit transfer amount and the plan

make-up amount (if any) that does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, currently \$5,000.

³⁵ A *de minimis* benefit is the missing distributee's benefit transfer amount that does not

exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, currently \$5,000.

| Circumstances | Proposed regulation |
|---|---|
| Deceased participant with non- <i>de minimis</i> benefit; living spouse | PBGC pays spouse a straight life annuity or, if spouse so elects, a lump sum. |

Lump sums would include interest at the federal mid-term rate. Conversions to annuities would 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 would provide information on all available payment options for the individual's consideration, including annuity benefits.

Limitations and Special Rules; 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, PBGC proposes to incorporate in each subpart of the missing participants regulation a section authorizing it 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 would take the place of current § 4050.12(g).

However, most of the special provisions in §§ 4050.11 and 4050.12 of the current regulation would be omitted 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 would plan 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)).

- 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 proposes to provide 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.

The current regulation provides that PBGC will determine the treatment of residual assets (assets not needed to satisfy plan benefits). The proposal does not deal expressly with this issue (which arises under subparts A and C). PBGC solicits public comment on the appropriate way to deal with excess assets.

Related Regulatory Amendments

In General

PBGC proposes to make 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).

The proposal would change § 4003.1(b)(11) by revising the content of paragraph (b)(1)(i) and eliminating paragraph (b)(1)(ii). Therefore section 4003.1(b)(11), as proposed, no longer has two subparagraphs. Proposed § 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 programs would 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 proposed § 4003.1(b)(11) would relate 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 current regulation § 4003.1(b)(11)(ii)—that the right amount was paid to PBGC—would no longer be permitted under the proposal. 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).

Applicability

PBGC proposes to make the amendments in this proposed rule applicable to termination of a plan other than a multiemployer plan covered by title IV where the date of plan termination is after calendar year 2017. PBGC proposes to make the amendments in this proposed rule applicable to the close-out of a multiemployer plan covered by title IV where the close-out is completed after calendar year 2017.

The amendments in the proposed rule would not apply to PBGC's payment of missing participant benefits attributable to prior terminations. Thus the provisions of the existing regulation

would continue to have vitality indefinitely for a dwindling group of missing distributees whose plans terminated before the proposed rule became applicable.

Executive Orders 12866 and 13563

PBGC has determined that this rulemaking is a “significant regulatory action” under Executive Order 12866. The Office of Management and Budget has therefore reviewed this proposed rule under Executive Order 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, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 12866 and 13563 require 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. PBGC has determined that this proposed rule does not cross the \$100 million threshold for economic significance and is not otherwise economically significant. However in accordance with section 6(a)(3)(B) of Executive Order 12866, PBGC has examined the economic and policy implications of this proposed rule and has concluded that the action’s benefits justify its costs.

PBGC’s economic analysis of the proposed rule focuses on single-employer title IV DB plans and on DC plans. There are just a handful of multiemployer plans that might make use of the expanded scope of section 4050, and PBGC expects that few DB plans not covered by title IV will participate in the new program.

As discussed in more detail in the Paperwork Reduction Act section below, PBGC is projecting that this rule would increase program participation from 200 to 3,300 plans. Thus, about 94 percent of the paperwork burden would be attributable to this rule. The dollar burden of the information collection associated with the rule is about \$829,000. The dollar equivalent of the 1,320-hour time burden is estimated at about \$32,000. This estimate is based on the following assumptions:

- Wage rates account for approximately 70 percent of total labor costs, with the remaining 30 percent attributable to benefits costs.³⁶

- The hours will be primarily performed by office and administrative support staff (occupational code 43–0000), at a mean hourly cost of \$24.40 (an hourly wage rate of \$17.08 plus \$7.32 in benefits).³⁷

Thus the monetized burden of the paperwork associated with the missing participants programs under the proposed rule would be about \$861,000, and the portion attributable to changes made by the rule would be about \$809,000 (94 percent of \$861,000).

There would be no other additional costs for DC plans. The diligent search requirements for DC plans would be the same requirements that already apply to these plans without regard to their participation in the missing participants program. Unlike DB plans, DC plans would be subject to no special benefit valuation rules.

The proposed rule would, however, change the requirements for diligent searches and benefit valuation for DB plans. But the marginal cost of complying with the new valuation rules would be negligible because of the on-line spreadsheet that PBGC plans to make available. For diligent searches, PBGC is assuming an additional cost of \$500 per plan, primarily to cover the expense of commercial locator services. While use of such services has been required under the current regulation, the absence of a definition of “commercial locator service” has meant that plans had latitude to use services that charged little or nothing. The proposed rule would set a standard for such services that PBGC assumes would come with a price tag. DB plans might also have to do more record-searching than they do now, although PBGC expects that most records will be electronic and relatively easy to search. The assumed additional search cost was arrived at by assuming that a basic commercial locator service would charge \$40 per search for the assumed average of ten missing participants per plan (total \$400) and adding \$100 per plan for record searches. Multiplying this additional \$500 per-plan search cost by 200 plans yields a total additional search cost attributable to the proposed rule of \$100,000.

³⁶ Employer Costs for Employee Compensation news release text, <http://www.bls.gov/news.release/ceec.nr0.htm> (see first paragraph).

³⁷ Occupational Employment and Wages, May 2014, 43–0000 Office and Administrative Support Occupations (Major Group), http://www.bls.gov/oes/current/oes_nat.htm (see “Office and Administrative Support Occupations”).

Beyond this \$909,000 in additional costs attributable to the proposed rule (\$809,000 in additional reporting costs and \$100,000 in additional search costs), the rule would provide for fees to be paid to PBGC to cover contractor costs of running the missing participants programs, *i.e.*, collecting, accounting for and entering data from missing participant forms, searching for missing distributees, paying benefits, etc. PBGC would set fees at levels not exceeding its costs. After considering various fee structures, PBGC has proposed a flat fee that would be simple to understand and easy for plans to administer. Based on preliminary data, PBGC estimates that fees would be a one-time \$35 charge per missing distributee for amounts transferred to PBGC, with no charge for amounts transferred of \$250 or less. (See the earlier discussion in this preamble under “Fees”.) Based on a combined DB and DC count, PBGC estimates 10,955 missing participants per year. Fourteen percent of such participants (approximately 1,533 out of the 10,955) are estimated to have cash benefits of \$250 or less, and therefore no fee would be charged for transferring amounts of these missing participants. That leaves 9,422 accounts charged a one-time \$35 fee, amounting to an estimated total of \$329,770 in fees. Combined with the \$909,000 in additional costs to DB plans attributable to the proposed rule, total burden would equal \$1.2 million.

To compare the total burden of the proposed rule to the benefits that would be gained, for fiscal years 2013 to 2015, PBGC paid out about \$2.27 million a year in missing participant benefits. This dollar amount would presumably be much higher in the future because of the vast (about 16-fold) increase in the number of plans expected to participate in the missing participants programs. If PBGC paid out merely ten times in benefits what it did for fiscal years 2013–2015, the benefits recovered by missing participants and their beneficiaries would be over \$22 million. This is more than \$20 million higher than the additional burden that would be placed on plans by the proposed rule. PBGC believes that although it cannot more precisely quantify the cost-benefit comparison in this proposed rule, it is clear that benefits would far exceed costs.

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 proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on 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 proposed 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 ERISA³⁸ and the Internal Revenue Code,³⁹ as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.⁴⁰

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 proposal 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 requests comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities.

Certification

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed 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 proposed amendments on any entity would be insignificant. PBGC believes that the expanded missing participants program will be particularly helpful to small DC plans and that the improvements to the existing program will be helpful to small DB plans. PBGC invites public comment on this assessment.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. The collection of information under the missing participants regulation 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 regulation under a new control number.

Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, 202-326-4040. 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; to attempt to find missing distributees whose benefits are transferred to PBGC and to pay their benefits; and to monitor and audit compliance with applicable requirements.

PBGC believes that the proposed changes in the existing missing participants program will not significantly affect the time for a plan to comply with the collection of information for that program, currently estimated at 2 hours. Although the time needed to comply with the collection of information for the DC program will likely be less, PBGC assumes for simplicity that it will be the same.

As discussed above under Executive Orders 12866 and 13563, PBGC expects few filings by single-employer DB plans not covered by title IV of ERISA or by covered multiemployer plans—so few that they are disregarded for purposes of estimating the burden associated with

the proposed amendment of part 4050. But PBGC does expect that many DC plans will elect to use the new missing participants program designed for them—many more than the number of single-employer plans covered by title IV that now make use of part 4050.

PBGC estimates that about 3,100 DC plans per year terminate with missing distributees. Since about 200 DB plans per year use the existing missing participants program, PBGC estimates that about 3,300 plans per year may file under the new programs. This assumes that all eligible DC plans will elect to participate, and thus almost certainly overstates the number of filers.

Accordingly, PBGC estimates the time to file under part 4050 is 6,600 hours. 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 1,320 hours (20 percent of 6,600 hours). The dollar burden of the 5,280 hours contracted out (80 percent of 6,600 hours) is estimated at about \$829,000, based on an hourly rate of \$157 (5,280 hours at \$157 per hour). This estimated cost of \$157 per hour is based on the following assumptions:

- Wage rates account for approximately 70 percent of total labor costs, with the remaining 30 percent attributable to benefits costs.⁴¹
- Consulting is performed by compensation and benefits managers (occupational code 11-3111) at a mean hourly cost of \$81.50 (an hourly wage rate of \$57.05 plus \$24.45 in benefits) and actuaries (occupational code 15-2011) at a mean hourly cost of \$75.61 (an hourly wage rate of \$52.93 plus \$15.88 in benefits).⁴² Weighting these two rates equally results in a blended rate for professional consulting services of approximately \$78.50.
- The hourly rate is doubled to provide for overhead and other costs, for a total hourly cost of approximately \$157.

Thus the burden of the information collection is estimated at 1,320 hours and \$829,000.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension

³⁸ 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.

³⁹ 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.

⁴⁰ See, e.g., DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

⁴¹ Employer Costs for Employee Compensation news release text, <http://www.bls.gov/news.release/ecec.nr0.htm> (December 9, 2015).

⁴² Occupational Employment and Wages, May 2014, 11-3111 Compensation and Benefits Managers <http://www.bls.gov/oes/current/oes113111.htm>, and Occupational Employment and Wages, May 2014, 15-2011 Actuaries, <http://www.bls.gov/oes/current/oes152011.htm>.

Benefit Guaranty Corporation, via electronic mail at OIRA_DOCKET@omb.eop.gov or by fax to 202-395-6974. Although comments may be submitted through November 21, 2016, the Office of Management and Budget requests that comments be received on or before October 20, 2016 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhancement of the quality, utility, and clarity of the information to be collected; and
 - Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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 proposes to amend 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 is revised 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” and add in its place “(premium payments) and”.

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.*”
- 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 of the amount of benefit 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 and plan make-up amount (if any) for the missing distributee are 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.*”
- 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. This subpart applies only to "subpart A plans" and describes what a subpart A plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. A subpart A plan 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:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee means the amount determined as follows:

(1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.

(2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.

(3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart A plan means the date when the subpart A plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

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 subpart A plan.

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

Missing means, with respect to a distributee under a subpart A plan, that the distributee has not elected a form of distribution upon close-out of the subpart A plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan

lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart A plan.

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.

Pay-status or pay status means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

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

(1) The benefit transfer date is used instead of the 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 transfer 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) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart A plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is 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 transfer date, assuming that the distributee survived to the benefit transfer date.

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 person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

- (1) The person's living spouse, or if none,
- (2) The person's living child, or if none,
- (3) The person's living parent, or if none,
- (4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

Subpart A 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 purchase of an irrevocable commitment from an insurer, or

(2) By transferring assets to PBGC as described in this subpart A.

(b) *Diligent search.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must have conducted a diligent search as described in § 4050.104. No diligent search is required for a distributee if the plan administrator knows where the distributee is upon close-out of the subpart A plan.

(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.

§ 4050.104 Diligent search.

(a) *In general.* For each distributee of a subpart A plan who is missing upon close-out, the plan administrator must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan administrator cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan administrator may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan administrator must search the records of the subpart A plan for information to locate the distributee.

(2) The plan administrator must search the records of the most recent employer that maintained the subpart A plan and employed the distributee, and the records of each retirement or welfare plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan administrator must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan administrator must search for information to locate the distributee 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” Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan administrator must search for information to locate the distributee using a commercial locator service. For this purpose, 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) *Time frame.* A search for a missing distributee must be made within six months before —

(1) If § 4050.103(a)(i) applies, the last distribution that is not subject to this subpart, or

(2) If § 4050.103(a)(ii) applies, the distributee's benefit transfer date.

§ 4050.105 Filing with PBGC.

(a) *What to file.* For each missing distributee of a subpart A plan, the plan administrator must file with PBGC, in accordance with the missing participants forms and instructions,—

(1) Either—

(i) Information about an irrevocable commitment for the missing distributee, or

(ii) Payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each) and information about the missing distributee and the missing distributee's benefits and beneficiaries;

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the distribution deadline (including extensions) under § 4041.28(a) of this chapter. Payments under paragraph (a)(1)(ii) of this section 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 filing requirement.* A subpart A plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 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 that information 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 (j) 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 same date that PBGC payments start (or, if earlier, at the participant's required beginning 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 exact 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 as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, 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 beginning on the required beginning date, 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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, as of the date that PBGC payments start (or, if earlier, as of the participant's required

beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; 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 as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, 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 required beginning date, 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), and (j) 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) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section, —

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, 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 required beginning date 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).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section 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 (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under 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 required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(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 (h)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (h)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date,

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 (h)(1) of this section plus the make-up amounts described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section 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 (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(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 (i)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (i)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, 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).

(j) *Benefits under contributory plans.* If a subpart A plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) 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 to the missing participant, the missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart A plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

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

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 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. This subpart applies only to "subpart B plans" and describes what a subpart B plan must do upon plan termination if the subpart B plan elects to use the missing participants program for missing participants and beneficiaries of the subpart B plan who are entitled to distributions. A subpart B plan 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—

(i) 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 aggregate value of the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit transfer date 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, net of administrative expenses (such as a fee paid to PBGC).

Benefit transfer date for a missing distributee under a subpart B plan means the date when the subpart B plan pays PBGC the benefit transfer amount for the missing distributee.

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.

Distributee means, with respect to a subpart B plan, a participant or beneficiary entitled to a distribution under the subpart B plan pursuant to the close-out of the subpart B 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 means, with respect to a distributee under a subpart B plan, that the distributee has not elected a form of distribution upon close-out of the subpart B plan.

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 person means an individual who survives the person and is entitled under applicable provisions of a QDRO, or a person that is identified by the plan in a submission to PBGC by a subpart B plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions), to receive a benefit with respect to the person or, if no such person is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Subpart B 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 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 subpart B 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 one or more distributees identified in the election who are missing upon close-out of the subpart B 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) *Elections.* An election under paragraph (a) of this section must be made in accordance with PBGC's missing participants forms and instructions and, in the case of a notifying plan, must identify the missing distributees to which it applies.

(c) *Duties—(1) Diligent search—(i) Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the subpart B plan must have conducted a diligent search as described in § 4050.204.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart B plan, the subpart B plan must have conducted a diligent search as described in § 4050.204.

(iii) *Exception.* Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, no diligent search is required for a distributee if the subpart B plan knows where the distributee is upon close-out of the subpart B plan.

(2) *Filing with PBGC—(i) Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the subpart B plan must file with PBGC as described in § 4050.205.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart B plan, the subpart B plan must file with PBGC as described in § 4050.205.

(d) *Compliance; audits.* PBGC may audit relevant plan and plan sponsor records if there is reasonable cause to suspect substantial non-compliance and may refer its findings to the appropriate regulator.

§ 4050.204 Diligent search.

(a) *In general.* For each distributee of a subpart B plan who is described in § 4050.203(c)(1), the subpart B plan must have searched for the distributee in accordance with regulations and other applicable guidance issued by the Secretary of Labor under section 404 of ERISA.

(b) *Time frame.* A search for a missing distributee must be made within six months before—

- (1) In the case of a transferring plan, the distributee's benefit transfer date, or
- (2) In the case of a notifying plan, the last distribution that is not subject to this subpart.

§ 4050.205 Filing with PBGC.

(a) *What to file.* For each distributee of a subpart B plan who is described in § 4050.203(c)(1), the subpart B plan must file with PBGC, in accordance with the missing participants forms and instructions, information about the missing distributee and the missing distributee's benefits and beneficiaries and—

- (1) Either—
 - (i) If the subpart B plan is a notifying plan, information about the entity to which the subpart B plan transferred the missing distributee's benefits, or
 - (ii) If the subpart B plan is a transferring plan, payment of the benefit transfer amount for the missing distributee;
- (2) Diligent search documentation; and
- (3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart.

(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 filing requirement.* A subpart B plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.206 Missing participant benefits.

(a) *In general—(1) Benefit transfer amount not paid.* 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 that information to the distributee or another claimant that may be entitled to the benefits.

(2) *Benefit transfer amount paid.* 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 does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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) *Participant with de minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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) *Unmarried participant with non-de minimis benefit.* If the benefit transfer amount of an unmarried participant described in paragraph (f) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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.

(i) *Married participant with non-de minimis benefit.* If the benefit transfer amount of a married participant described in paragraph (f) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, and the participant's spouse survives the participant 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 person is married, and if so the identity of the spouse, is determined as of the earliest of—

- (1) The date the person receives or begins to receive a benefit,
- (2) The date the person dies, or
- (3) The person's required beginning date.

§ 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. This subpart applies only to "subpart C plans" and describes what a subpart C plan must do upon plan termination if the plan administrator elects to use the missing participants program for missing participants or beneficiaries of the subpart C plan who are entitled to distributions. A subpart C plan 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:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee in a transferring plan means the amount determined as follows:

- (1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.
- (2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.
- (3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart C plan means the date when the subpart C plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

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.

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 means, with respect to a distributee under a subpart C plan, that the distributee has not elected a form of distribution upon close-out of the subpart C plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart C plan.

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 C plan for which the plan administrator elects notifying plan status in accordance with § 4050.303.

Pay-status or pay status means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

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

- (1) The benefit transfer date is used instead of the 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 transfer 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) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart C plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is 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 transfer date, assuming that the distributee survived to the benefit transfer date.

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 person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

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

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) 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 one or more distributees identified in the election who are missing upon close-out of the subpart C 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) *Elections.* An election under paragraph (a) of this section must be made in accordance with PBGC's missing participants forms and instructions and, in the case of a notifying plan, must identify the missing distributees to which it applies.

(c) *Duties*—(1) *Diligent search*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart C plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(iii) *Exception.* Notwithstanding paragraphs (c)(1)(i) and (ii) of this

section, no diligent search is required for a distributee if the plan administrator knows where the distributee is upon close-out of the subpart C plan.

(2) *Filing with PBGC*—(i) *Transferring plan.* For each distributee who is missing upon close-out of a transferring plan, the plan administrator must file with PBGC as described in § 4050.305.

(ii) *Notifying plan.* For each distributee to whom an election to be a notifying plan applies and who is missing upon close-out of the subpart C plan, the plan administrator must file with PBGC as described in § 4050.305.

(d) *Compliance; audits.* PBGC may audit relevant plan and plan sponsor records if there is reasonable cause to suspect substantial non-compliance and may refer its findings to the appropriate regulator.

§ 4050.304 Diligent search.

(a) *In general.* For each distributee of a subpart C plan who is described in § 4050.303(c)(1), the plan administrator must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan administrator cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan administrator may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan administrator must search the records of the subpart C plan for information to locate the distributee.

(2) The plan administrator must search the records of the most recent employer that maintained the subpart C plan and employed the distributee, and the records of each retirement or welfare plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan administrator must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan administrator must search for information to locate the distributee 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” Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan administrator must search for information to locate the distributee using a commercial locator service. For this purpose, 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) *Time frame.* A search for a missing distributee must be made within six months before—

(1) In the case of a transferring plan, the distributee’s benefit transfer date, or

(2) In the case of a notifying plan, the last distribution that is not subject to this subpart.

§ 4050.305 Filing with PBGC.

(a) *What to file.* For each distributee of a subpart C plan who is described in § 4050.303(c)(1), the plan administrator must file with PBGC, in accordance with the missing participants forms and instructions, information about the missing distributee and the missing distributee’s benefits and beneficiaries and—

(1) Either—

(i) If the subpart C plan is a notifying plan, information about the entity to which the subpart C plan transferred the missing distributee’s benefits, or

(ii) If the subpart C plan is a transferring plan, payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each);

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart.

(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 filing requirement.* A subpart C plan required to file under

paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 4050.306 Missing participant benefits.

(a) *In general—(1) Benefit transfer amount not paid.* 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 that information to the distributee or another claimant that may be entitled to the benefits.

(2) *Benefit transfer amount paid.* 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 (j) 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 same date that PBGC payments start (or, if earlier, at the

participant’s required beginning 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 exact 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 as of the date that PBGC payments start (or, if earlier, as of the participant’s required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, 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 beginning on the required beginning date, 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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, as of the date that PBGC payments start (or, if earlier, as of the participant’s required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; 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 as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, 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 required beginning date, 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), and (j) 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) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section,—

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, 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) that would have been payable to the participant from the required beginning date 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).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section 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 (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under 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 required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(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 (h)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (h)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, 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 (h)(1) of this section plus the make-up amounts

described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section 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 (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(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 (i)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (i)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, 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).

(j) *Benefits under contributory plans.* If a subpart C plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) 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 to the missing participant, the

missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart C plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

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

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 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. This subpart applies only to "subpart D plans" and describes what a subpart D plan that is closing out must do if it has missing participants or beneficiaries who are entitled to distributions. A subpart D plan 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:

Accumulated single sum means, with respect to a missing distributee, the aggregate value of the distributee's benefit transfer amount and plan make-up amount (if any) accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit transfer amount for a missing distributee means the amount determined as follows:

(1) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is not required, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions.

(2) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under PBGC missing participant assumptions.

(3) If under section 203(e) of ERISA and section 411(a)(11) of the Code, participant or spousal consent to a distribution is required and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under plan lump sum assumptions or PBGC missing participant assumptions, whichever gives the higher value.

Benefit transfer date for a missing distributee under a subpart D plan means the date when the subpart D plan pays PBGC the benefit transfer amount and the plan make-up amount (if any) for the missing distributee.

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.

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 means, with respect to a distributee under a subpart D plan, that the distributee has not elected a form of distribution upon close-out of the subpart D plan; except that if the present value of the distributee's benefits under the plan, determined as of the benefit transfer date using plan lump sum assumptions, exceeds the amount subject to mandatory cash-out under the terms of the plan pursuant to section 203(e) of ERISA and section 411(a)(11) of the Code, the distributee must be treated as missing only if the plan administrator does not know where the distributee is upon close-out of the subpart D plan.

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.

Pay-status or pay status means being or having a benefit that has started before the benefit transfer date. A benefit that becomes payable to a participant at the participant's required beginning date under section 401(a)(9) of the Code before the benefit transfer date but is not in fact paid is not a pay-status benefit.

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

(1) The benefit transfer date is used instead of the 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 transfer 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) Benefit payments for a participant who is in pay status or is past the required beginning date are assumed to begin on the benefit transfer date,

(ii) Benefit payments for a beneficiary are assumed to begin on the benefit transfer date or (if later) the earliest date when the beneficiary could begin to receive benefits, and

(iii) Benefit payments for a participant who is not in pay status and is not past the required beginning date are assumed to begin on the XRA, determined using the high retirement rate category under Table II–C of Appendix D to part 4044 of this chapter.

Plan lump sum assumptions means the actuarial assumptions that would be used under the subpart D plan to calculate the present value of a benefit as of the benefit transfer date for purposes of section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code or, if no such assumptions can be identified, actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit transfer date.

Plan make-up amount means,—

(1) With respect to a missing distributee who is not in pay status and whose required beginning date precedes the benefit transfer date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the required beginning date, accumulated at the missing participants interest rate from the date each payment would have been made to the benefit transfer date, assuming that the distributee survived to the benefit transfer date; or

(2) With respect to a missing distributee who is 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 transfer date, assuming that the distributee survived to the benefit transfer date.

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 person means an individual who survives the person and is entitled under applicable provisions of a QDRO to receive a benefit with respect to the person or, if no such individual is identified, a survivor of the person who is—

(1) The person's living spouse, or if none,

(2) The person's living child, or if none,

(3) The person's living parent, or if none,

(4) The person's living sibling.

Required beginning date for a participant means the participant's required beginning date under section 401(a)(9)(C) of the Code.

Subpart D 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—

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

(ii) By transferring assets to PBGC as described in this subpart D.

(b) *Diligent search.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must have conducted a diligent search as described in § 4050.404. No diligent search is required for a distributee if the plan sponsor knows where the distributee is upon close-out of the subpart D plan.

(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.

§ 4050.404 Diligent search.

(a) *In general.* For each distributee of a subpart D plan who is missing upon close-out, the plan sponsor must have used the methods described in this section to locate the distributee.

(b) *Methods to use.* The methods for attempting to find information to locate a missing distributee are as set forth in paragraphs (b)(1) through (5) of this section. If the plan sponsor cannot readily identify or obtain access to a source of information described in paragraph (b)(2) or (3) of this section (such as where the Health Insurance Portability and Accountability Act of 1996 prevents the disclosure of information), the plan sponsor may resort to such sources of information as may be readily identifiable and accessible.

(1) The plan sponsor must search the records of the subpart D plan for information to locate the distributee.

(2) The plan sponsor must search the records of the most recent employer that maintained the subpart D plan and employed the distributee, and the records of each retirement or welfare

plan of that employer in which the distributee was a participant, for information to locate the distributee.

(3) The plan sponsor must request information to locate the distributee from each beneficiary of the distributee identified from the records referred to in paragraphs (b)(1) and (2) of this section.

(4) The plan sponsor must search for information to locate the distributee 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" Web site.

(5) Except as may otherwise be provided in the missing participants forms and instructions, the plan sponsor must search for information to locate the distributee using a commercial locator service. For this purpose, 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) *Time frame.* A search for a missing distributee must be made within six months before—

(1) If § 4050.403(a)(i) applies, the last distribution that is not subject to this subpart; or

(2) If § 4050.403(a)(ii) applies, the distributee's benefit transfer date.

§ 4050.405 Filing with PBGC.

(a) *What to file.* For each missing distributee of a subpart D plan, the plan sponsor must file with PBGC, in accordance with the missing participants forms and instructions,—

(1) Either—

(i) Information about an annuity contract for the missing distributee, or

(ii) Payment of the benefit transfer amount and the plan make-up amount (if any) for the missing distributee (stating the amount of each) and information about the missing distributee and the missing distributee's benefits and beneficiaries;

(2) Diligent search documentation; and

(3) Such other information, fees, and certifications as may be specified in the missing participants forms and instructions.

(b) *When to file.* The filing must be made within 90 days after the last distribution that is not subject to this subpart. Payments under paragraph (a)(1)(ii) of this section 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 filing requirement.* A subpart D plan required to file under paragraph (a) of this section must, within 30 days after a written request by PBGC (or such other time as may be specified in the request), file with PBGC supplemental information for verifying benefit transfer amounts and plan make-up amounts, for substantiating diligent searches, or for any other proper purpose under the missing participants program.

§ 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 that information 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 (j) 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a participant described in paragraph (b) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the sum of the benefit transfer amount and the plan make-up amount (if any) of an unmarried participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 same date that PBGC payments start (or, if earlier, at the participant's required beginning 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 exact 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 as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity in paragraph (d)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the required beginning date, 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 beginning on the required beginning date, 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 sum of the benefit transfer amount and the plan make-up amount (if any) of a married participant described in paragraph (b) of this section exceeds the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, 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 as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the straight life annuity under paragraph (d)(1)(i) of this section; 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, as of the date that PBGC payments start (or, if earlier, as of the participant's required beginning date), under the actuarial assumptions in § 4022.8(c)(7) of this chapter, to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the required beginning date, 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 required beginning date, 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), and (j) 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) *Unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section,—

(1) *Death before required beginning date.* If the participant dies before the required beginning date, PBGC will pay no benefits with respect to the participant; and

(2) *Death after required beginning date.* If the participant dies on or after the required beginning date, 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) that would have been payable to the participant from the required beginning date 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).

(h) *Married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section 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 (h)(1) of this section and the make-up amounts (if applicable) described in paragraph (h)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (h)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (h)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (under 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 required beginning date, or

(iii) The required beginning date, if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (h)(2) are the amounts described in paragraphs (h)(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 (h)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (h)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, 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 (h)(1) of this section plus the make-up amounts described in paragraph (h)(2) of this section does not exceed the amount under section 203(e) of ERISA and section 411(a)(11) of the Code, then the lump sum that PBGC will pay the spouse under this paragraph (h)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined under the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(i) *Married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section 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 (i)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (i)(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 (i)(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 (h)(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 required beginning date to participant's death.* The make-up amount described in this paragraph (i)(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 (h)(1) of this section that would have been payable to the participant from the required beginning date to the participant's date of death after the required beginning date, 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).

(j) *Benefits under contributory plans.* If a subpart D plan reports to PBGC that a portion of a missing participant's benefit transfer amount (and plan make-up amount, if any) 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 to the missing participant, the missing participant's spouse, or the missing participant's qualified survivor(s) at least the amount of accumulated contributions as reported by the subpart D plan, accumulated at the missing participants interest rate from the benefit transfer date to the date when PBGC makes payment.

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

(1) The date the person receives or begins to receive a benefit;

(2) The date the person dies; or

(3) The person's required beginning date.

§ 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 by

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

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