



November 21, 2016

VIA Electronic Mail

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

RE: (RIN 1212-AB13) Request for Comment - Proposed Revision of the Missing Participant Program

Ladies and Gentleman:

The Pension Benefit Guaranty Corporation (the "PBGC") published a proposed rule relating to the expansion of the PBGC program for missing participants and beneficiaries in terminated retirement plans (the "Proposal") in the Federal Register on September 20, 2016 (81 FR 64700). These comments are submitted on behalf of the group of financial service companies for which FMR LLC is the parent corporation and which is known as Fidelity Investments (collectively, "Fidelity"). Fidelity companies provide investment management, recordkeeping, communications and directed trustee and custodial services to thousands of Internal Revenue Code ("Code") Section 401(k), 403(b) and other retirement plans covering millions of participants.

The Proposal would respond to authorization under Section 410 of the Pension Protection Act of 2006 (the "Act") to expand the PBGC program for missing participants to terminated multiemployer plans covered by Title IV of ERISA as well several categories of plans not subject to Title IV, including most terminated defined contribution or individual account plans. The program expansion under PPA is contingent on the issuance of final regulations by the PBGC.

Fidelity is acutely aware of the administrative difficulties caused when plans are not able to locate plan participants and appreciates the proposed expansion of the missing participant program to include terminated defined contribution plans. While this proposed expansion is welcome, we believe that certain clarifications to the proposed rules will lead to a greater utilization of the PBGC's expanded missing participant and beneficiary program and serve to benefit a greater number of participants and beneficiaries. Our comments are divided into three sets of comments below.

(1) Abandoned Plans.

As it is currently constructed, the Department of Labor ("DOL") Abandoned Plan Program ("AP Program") contemplates the rollover of participant accounts to a third party IRA provider where the

participant does not respond to a request to initiate a distribution or rollover on their own. The PBGC's Proposal appears to provide an alternate solution for missing participants in abandoned plans, particularly where the intent is coordination with the DOL's AP Program. However, in the abandoned plan context, there remain additional administrative challenges related to the expanded program.

Under the Proposal, the expanded program would require that a qualified termination administrator ("QTA") who elects to transfer balances to the PBGC would need to submit documentation demonstrating that the required due diligence search efforts (as described in FAB 2014-01) have been completed. In the case of abandoned plans, the QTA will likely not have the benefit of certain employer records or related plan documentation that could prove useful in conducting a search for updated participant contact information as contemplated by the DOL and the Proposal program. Similarly, certain abandoned plans may not have previously contracted with the QTA to review and maintain beneficiary designations or provide Qualified Domestic Relations Order ("QDRO") review and servicing. As a result, the QTA may not have plan account QDRO or beneficiary information in its records. The PBGC should consider providing further clarification on specific participant search documentation requirements, as well as further detail related to instances where a beneficiary is not determinable based on available information.

(2) Other Administrative Issues

In describing the amounts that would be transferred to the PBGC from terminated DC plans, the Proposal indicates that this would generally be the participant's account balance. The proposal does not reference checks that have not been cashed by the missing participant. Fidelity would appreciate confirmation that amounts attributable to uncashed checks issued from terminated ERISA plans would be eligible for transfer to the PBGC.

The Proposal provides for qualified joint and survivor rules for payments to participants who are entitled to more than a de minimis benefit. [81 FR 64708] In our experience the great majority of DC plans do not include an annuity payout option and are designed to satisfy the statutory exception from the QJ&S annuity rules. We question the rationale of the PBGC for the approach taken in the Proposal, which would be contrary to the reasonable expectation of the participants in question.

In addition, under the proposed expansion of the program, sponsors or QTAs electing to transfer missing participant benefits to the PBGC would need to file within 90 days after the completion of distributions that are made to participants who are not "missing". Clarification on whether the assets need to be transferred at the same time as the required filings, or rather anytime within the 90 day window after assets are distributed to participants not "missing", would be useful.

Finally, the Proposal includes a fairly lengthy discussion of the "due diligence" search that must be conducted for missing participants, including additional search steps that may be required depending on the size of the participant's account balance and the cost of further search efforts. We agree that existing DOL guidance would be the standard for DC plans. We also agree that a more explicit and concrete "checklist approach" is appropriate for DB plans, as suggested in the regulatory preamble. [81 FR 64704]

(3) Missing Participants in Active Plans

The Proposal only contemplates an expansion of the missing participant program to terminating DC plans in accordance with the PPA authorization. As acknowledged in the discussion of the revisions to the annual reporting rules (Form 5500 series) proposed by the PBGC, DOL and the Treasury Department, however, missing participants are a serious problem in the active plan world as well. The agencies have proposed to require additional information in the annual report about transfers of assets and benefit obligations between plans. The purpose of such information is explained as follows:

“Although the question would not ask the filer to identify individual affected participants or beneficiaries, this requirement is designed to help missing participants locate information about their accounts, in some cases years after the plan termination when the plan or plan sponsor may no longer exist or have records of the accounts it established.” [81 FR 47547]

Unfortunately the quoted language illustrates a basic problem but not a solution. Business entities and the plans they sponsor often go through corporate changes that at some future date may obscure any attempt to identify where an individual’s account balance now resides. That is, due to corporate actions even an active plan may hold accounts for which the participant is unaware of the plan’s existence. The new information to be required for Form 5500 filings, as described in the language quoted above, would not help missing participants find their account.

On the other hand, expansion of the PBGC missing participant program to active DC plans (on a voluntary basis) would provide a common location or information database for all such “lost” accounts. We respectfully ask that the PBGC review its authority to expand the program beyond the authorization provided under PPA. In the event that the PBGC concludes that it lacks such authority, we ask that the PBGC consider supporting legislative efforts to obtain such authorization in the future.

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Thank you for your consideration of these comments. If you have questions or need further information, please contact the undersigned.

Sincerely,



Douglas O. Kant
SVP and Deputy General Counsel

cc: Ralph Derbyshire
Christine Hanna