



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

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RIN: 1212-AB13

via email: reg.comments@pbgc.gov

Dear Sir or Madam,

PenChecks Trust Company of America ("PenChecks") appreciates the opportunity to comment on the Pension Benefit Guaranty Corporation's ("PBGC") proposed rule expanding its Missing Participant Program to Multiemployer Plans covered by Title IV, certain Defined Benefit ("DB") Plans not covered by Title IV, and most Defined Contribution ("DC") Plans.

PenChecks has been in business since 1994 and has been providing "missing participant" services for over 18 years. Starting in 1998, we created what we believe to be the first missing participant IRA program in the U.S., 3 years before the passage of The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). We provide retirement plan providers, third party administrators ("TPA"), plan sponsors and participants with efficient and compliant benefit distributions solutions, Auto Rollover and Missing Participant IRAs and missing participant search, location and benefit election services. We also provide Abandoned Plan/Qualified Termination Administrator services under the auspices of the Dept. of Labor's Abandoned Plan Program.

In 2005 we launched the National Registry of Unclaimed Retirement Benefits ("NRURB"), a secure, searchable database dedicated to helping participants/former employees connect with plan sponsors so they can be reunited with their retirement benefits. A public service company, the NRURB is offered free of charge. There is no charge for a plan sponsor to register the names and related information for employees that have left the company and left behind their retirement benefits. And there is no charge for individuals (participants) who search the NRURB to see if a former employer is holding retirement benefits for them.

PenChecks commends the PBGC in its efforts. However, we are compelled to mention some factors that must be taken into consideration as the PBGC expands its Missing Participant Program.

First, the issue of missing participants is a complex one. There are a multitude of scenarios, some more routine than others, some are very complex with rather bizarre facts and often very inadequate records available. This is illustrated by the various scenarios and approaches to the issue in the U.S. Dept. of Labor's ("DOL") Field Assistance Bulletins 2004-02 and 2014-01.

Secondly, the DOL's approach follows and is entirely consistent with the guidance of the Internal Revenue Service ("IRS") with respect to auto or default rollovers. See Rev. Ruling 2000-36, stating that the selection of an IRA trustee, custodian or issuer of an IRA for default rollover purposes would constitute a fiduciary act under ERISA. PenChecks feels the DOL approach in FAB 2014-01 and IRS approach of addressing the issue from the perspective of plan sponsors' and plan administrators' fiduciary responsibilities under 404(a) of ERISA provides not only sound guidance but also provides consistency in application since the DOL administers and enforces ERISA for the purposes of most DC plan types. The DOL and IRS guidance is also consistent in that both types of IRAs (auto rollover and



missing participant) must be maintained in an investment designed to preserve principle, which is insured or guaranteed and, is consistent with liquidity. PenChecks advocates that if there is any additional regulatory activity in this area that such activity be consistent with the guidance that already exists.

Thirdly, the DC plan universe is very different from the DB plan universe. Although Congress gave the PBGC authority to extend its Missing Participant Program to DC plans via the Pension Protection Act of 2006 ("PPA"), the reporting and filing requirements for terminating and abandoned DC plans occurs entirely with the DOL/EBSA, not the PBGC. This would seem to result in a large data gap that would be difficult and, we expect, expensive to close. At a minimum it would seem to require significant IT resources, an entirely new system for the PBGC as indicated in the proposed rule Overview with respect to a new unified pension database. There will also be the additional cost of maintaining such a massive database, searching for participants (or would the database be passive?) and performing this work.

Other issues of importance:

Required Minimum Distributions ("RMDs") – Will the PBGC process RMDs and if so how? Or will the PBGC not process RMDs resulting in the IRS assessing a penalty of 50% of the RMD against the participant/taxpayer? This penalty could seriously erode a participant's retirement benefit.

Escheatment – Will the PBGC, after a certain period of time (e.g., RMDs), escheat as unclaimed property a participant's accounts to the state of a participant's last known address? If so this will cause negative tax consequences to the participant as illustrated in the DOL's FAB 2014-01. Or will the PBGC claim under preemption that state unclaimed property laws do not apply in this context? Since the program is voluntary for DC plans, if a plan sponsor uses a private service provider, like PenChecks, will private service providers also be able to claim preemption with respect to qualified retirement plan/account benefits?

On-going Search Process – Once the PBGC receives a participant's account, what if any on-going search(es) will PBGC perform? Or will no additional searches be performed?

Form 5498 – Will the PBGC, for the funds it's holding on behalf of participants, prepare and file Form 5498?

Again, we appreciate the opportunity to address these issues and welcome any additional questions the PBGC may have.

Respectfully submitted,

Peter E. Prevolos by MM/perm

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PenChecks Trust