

November 21, 2016

**Submitted via <http://www.regulations.gov>**

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

RE: RIN 1212-AB13

Ladies and Gentlemen:

Millennium Trust Company appreciates the opportunity to comment on the PBGC's proposed rulemaking concerning missing participants published in the Federal Register on September 20, 2016 (81 FR 64699).

Millennium Trust Company is a leading IRA provider to plan sponsors seeking to avail themselves of the Department of Labor's "safe harbor" for automatic rollovers of account balances of \$5,000 or less, and for rollovers of accounts of missing participants of terminating defined contribution plans. We also provide specialized custody solutions for advisors, financial institutions and individual investors.

We will limit our comments to the proposed rule's provisions governing missing participants of terminating defined contribution plans.

#### EXISTING PRIVATE SECTOR SOLUTIONS

We applaud the PBGC's efforts to offer options to plan fiduciaries that help to relieve them from expending time and resources on administering missing participants' accounts. In addition, we believe the proposed unified pension search database will be a valuable tool for former plan participants. We would like to take this opportunity to make clear, however, that there are effective private sector solutions available today, which many plan fiduciaries, record keepers, TPAs and consultants currently utilize, and Millennium is a leading provider of such solutions.

Millennium is proud of our record of providing an end-to-end solution that benefits both active and missing participants, and helps plan sponsors to comply with their fiduciary duties to participants. We compete in an active marketplace for selection as the rollover provider for both active and terminating defined contribution plans by providing a robust solution with plan participants' best interests in mind. Our solution includes:

- Ease of transfer of missing participants' account balances to Millennium through an established and integrated technology solution.
- Multiple investment options for plan fiduciaries' selection designed to meet the safe harbor.
- Willingness to accept small participant balances.
- Effective search efforts on an initial and annual basis, using a commercial locator service for all participants, regardless of account balance.
- Modest fees to cover costs of repeated commercial locator search.

- Free, secure database to allow participants to search for unclaimed retirement funds held at Millennium.
- Excellent service for participants, once found, including:
  - Multi-lingual client service telephone support.
  - Multiple options for participants including investment, transfer, roll-in and distribution.
  - State-of-the-art information security.

As an experienced provider of services to plans and to missing participants, including the development of our own search database, Millennium believes that the private sector is – and will continue to be – an important player in reuniting missing participants with their retirement funds.

#### NEED FOR CLARITY ON CERTAIN ASPECTS OF PROPOSED RULE

Since the PBGC's proposed program will be competing with a robust private sector solution offered by Millennium Trust Company and others, it is incumbent on PBGC to ensure its rules provide full transparency to plan fiduciaries so that they can make an informed choice consistent with their fiduciary obligations. Plan fiduciaries will need additional clarity in order to determine if the PBGC option will meet the fiduciary duties they owe to participants. For example:

- Will the PBGC conduct repeated searches for missing participants of transferring plans, as the private sector does? Will plan fiduciaries meet their fiduciary obligation if they transfer to the PBGC without clarity on the robustness of the PBGC search process?
- Will the PBGC provide information about its success rate in locating participants whose accounts have been transferred, and the average time frame to do so? If the PBGC's success rate is lower than private sector solutions, a plan fiduciary should consider that before choosing the PBGC's program over a private sector solution.
- Since the account that PBGC holds is not an IRA, will the participant be eligible to rollover the balance to an IRA, or roll-in to a 401(k) plan? For the current missing participant program, which pays annuity benefits, this is not an issue. But unless a distribution, when the participant is found, is eligible for a tax-free rollover or roll-in, PBGC's program may be significantly disadvantageous.<sup>1</sup>

#### SUGGESTION FOR MODIFICATION TO "CHERRY-PICKING" RULE

As proposed, the program requires that a transferring plan turn over *all* of its missing participant accounts to the PBGC. PBGC asked for comments on the validity of its concerns and its proposal for dealing with these concerns. While we understand the thinking behind this requirement, we believe it is neither required for the success of the program nor consistent with the PBGC's statutory mandate, which is to provide a solution where terminating plans are not being serviced by the market.

We believe this requirement should be reconsidered. First, PBGC assumes that commercial providers would require plan sponsors to transfer the smallest accounts to PBGC. This is not how the market works. Commercial providers like Millennium Trust Company routinely accept small accounts under the automatic rollover rule; the business model depends on servicing these small accounts at reasonable cost. Second, the Obama Administration already recognizes that larger account IRA balances can be adequately serviced by the private market: this is why the myRA program is viewed as a *starter* IRA savings vehicle and is capped at \$15,000. Third, we believe that there may be very good reasons that a plan fiduciary may choose to send some accounts to

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<sup>1</sup> Since PBGC's program is neither a qualified retirement plan nor an IRA, it is not clear that the Internal Revenue Code would allow a tax-free rollover or transfer to an IRA.

PBGC and others to a commercial provider. Participants with small balances may benefit more from a transfer to PBGC, which will not charge a fee to participants. Conversely, participants with larger balances may benefit more from a transfer to a private sector provider, where the potential for growth could offset fees and participants would have access to more diverse investment options. Finally, based on our experience, we think the PBGC will find that most accounts of missing participants in a terminated plan *are* small, so that this requirement will have little practical effect.

Accordingly, we **recommend** that PBGC modify the proposal so that a plan need not transfer all accounts of missing participants to the PBGC. We agree, however, that to protect participants the plan sponsor should certify in the application that any accounts that are not transferred to the PBGC have or will be transferred to an individual retirement account meeting the Department of Labor's guidance in Field Assistance Bulletin 2014-01.

#### CONCLUSION

Like the PBGC, Millennium Trust Company is committed to improving the ability of plan fiduciaries to administer plans in all participants' best interest. We appreciate the PBGC's proposals in this regard, and hope that our information on the solutions we and other private sector actors offer, as well as the areas of the rule that may require clarification, will help inform the PBGC's deliberations as it moves to finalize the rule.

Sincerely,



Gary A. Anetsberger  
Chief Executive Officer