



November 18, 2016

Submitted via email to [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov) and via the Federal eRulemaking Portal:  
[www.regulations.gov](http://www.regulations.gov)

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

Dear Sir or Madam,

Subject: RIN 1212–AB13—Aon Hewitt Comments on Proposed Regulations Under ERISA Section 4050 Missing Participants

Aon Hewitt welcomes the opportunity to submit comments on the proposed rules regarding missing participants under ERISA Section 4050. The proposed regulations were published in the *Federal Register* on September 20, 2016.

## Who We Are

Aon plc (NYSE:AON) is a leading global provider of risk management, insurance brokerage and reinsurance brokerage, and human resources solutions and outsourcing services. Through its more than 72,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative risk and people solutions.

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with nearly 34,000 professionals across six continents serving more than 20,000 clients worldwide.

## Summary Comments

We believe the changes proposed by the Pension Benefit Guaranty Corporation (PBGC) will be beneficial to terminating single-employer plans insured by the PBGC as well as to the expanded groups of plans including terminated multi-employer plans, terminated professional service plans with 25 or fewer participants, and terminated defined contribution plans. We suggest that the PBGC modify the final rules in the following areas:

- Change the required timing of the diligent search.
- Provide a regulatory waiver of the use of a free internet search method if a locator service was used.
- Provide a regulatory waiver of the use of a locator service for small plans.
- Remove the requirement to inquire for information from prior employers.
- Change the determination of the lump sum amount at the benefit transfer date to be based on the amount payable at the plan termination close-out date, credited with interest.

## Diligent Search Criteria for Defined Benefit Plans

### Timing of Diligent Search

Currently, a diligent search for missing participants must begin not earlier than six months prior to the date the Notice of Intent to Terminate (NOIT) is issued. The PBGC proposes to change this rule to require that a diligent search be made within six months before the last distribution (if distributing to an insurer) or before the benefit transfer date to the PBGC (ERISA Section 4050.104(c)). We believe the proposed timing is too short to perform an effective search.

Typically, plan sponsors begin a search of participant addresses prior to sending the NOIT in order to identify bad addresses early in the process and begin the work necessary to locate and confirm new addresses. If a new address is identified, a confirmation of this address must be received from the participant. Or, if a participant is identified as deceased via this process, additional information may need to be gathered to confirm the death. Starting this process in conjunction with the NOIT can lead to the best information being available when benefit election information is provided (if applicable), which leads to better participant responses. If the process to locate participants and confirm addresses was not started until no earlier than six months prior to transfer of a missing participant's benefit, it would leave little time for the necessary confirmations and solicitation of an election if found.

For example, a typical election for a lump sum upon a plan termination is provided approximately three months prior to the payment date. After lump sums are paid, an annuity is purchased within the following month or two, and the determination of which missing participants will be transferred to the PBGC is made. If a missing participant search must be performed no more than six months prior to the transfer of payments to the PBGC, it would start at approximately the same time as elections are mailed to participants. Many participants would not be confirmed to be located for several months, at which point the election window would have expired.

We recommend maintaining the current timing to allow plan sponsors the best chance to find participants over the entire plan termination process. If a participant cannot be located after a diligent search is performed when the NOIT is mailed, it is unlikely a later diligent search would locate a valid address for the participant. However, starting the process early gives the plan sponsor a much greater chance of identifying an address, contacting the participant for confirmation, and providing election material. In addition, if the diligent search identifies a participant as deceased, additional time is necessary to identify and/or search records to locate a potential beneficiary. Six months prior to transfer to the PBGC is not nearly enough time to accomplish both tasks.

### Use of Free Internet Search Method

The PBGC proposes (ERISA Section 4050.106(b)(4)) that a diligent search must include a search using a free internet search method (e.g., a search engine, a network database, a public record database or a “social media” website). We believe this method should only be required for terminating single-employer plans insured by the PBGC in situations where use of a locator service is waived.

While a website may be free, researching a missing participant on various websites takes time and effort. Simply identifying free websites that furnish valid data may be difficult since not all websites provide free information after performing a search, nor is it easy to confirm the validity of search results. Also, some large plan terminations may have hundreds of missing participants to research, in which case a manual search on the internet may be unwieldy. The PBGC proposes to continue to require a single-employer plan insured by the PBGC to use a locator service that also has costs associated with using such services. If a locator service cannot find participants, using a free website is unlikely to provide any better information. These plans should not be required to take on the costs associated with having to use both of these search methods.

### Use of a Locator Service

For some small plans, the use of a locator service may not be cost-effective to search for a small number of missing participants. We recommend the PBGC provide a regulatory waiver of this requirement for small plans such as those with fewer than 500 participants.

### Former Employer Records

The PBGC proposes the diligent search for terminating single-employer plans insured by the PBGC include a search of records of the most recent employer that maintained the plan and employed the distributee (ERISA Section 4050.104(b)(2)). We believe this method should be optional. In a situation where a company acquired a plan from another plan sponsor, it is unlikely a former employer will maintain address records of previous terminated vested participants who no longer have a tie to the company. In addition, an unrelated employer may not wish to expend the time and resources to search their records for addresses of former employees for a separate, unrelated business. In many situations, this requirement will only lead to plans performing a process due to a regulatory requirement without resulting in any better data.

## Calculation of Benefit Transfer Amount

For terminating single-employer plans insured by the PBGC, the PBGC proposes changing the current calculation of the amount payable to the PBGC and eliminate the existing comparison calculation required to calculate lump-sums payable (ERISA Section 4050.106). We agree that a change to the current lump sum calculation method is warranted. However, the proposed method may cause an inconsistency in the determination of whether a lump sum value is above or below the mandatory cashout threshold and could change the value of the lump sum payable, in some cases reducing it below the amount the participant was previously offered as part of the plan “close out” (as defined in the proposed regulation under ERISA Section 1050.102). We recommend modifying the calculation of the benefit transfer amount to be more consistent with the calculation of the lump sum as of the plan close-out date (the annuity starting date for the lump sum distributions). Specifically:

- The PBGC should calculate all lump sums as of the close-out date and credit interest at the required missing participant interest rate to the benefit transfer date.
- The determination of whether a participant is above or below the cashout threshold should be made based on the value as of the close-out date, even if the benefit transfer amount ends up exceeding the threshold.
- Once determined to be under the cashout threshold as of the close-out date, the calculation of the benefit transfer amount should not be subject to the PBGC missing participant assumptions even if the amount with credited interest exceeds the cashout threshold on the benefit transfer date.

These changes will ensure that the participants who received an election related to an automatic cashout are the same participants automatically deemed to be missing. It will also result in only one calculation of a lump sum for participants under the cashout threshold. Finally, the benefit will be consistent with the manner in which the PBGC will pay a lump sum if the participant is located.

The following illustrate some of the problems with calculating lump sums as of the benefit transfer date as proposed by the PBGC.

### Determination of Participants Subject to Mandatory Cashout

The PBGC proposes requiring any participant who is subject to a mandatory cashout (a benefit of \$5,000 or less) who does not make an election upon the “close out” of the plan termination be treated as a missing participant, regardless of whether or not the participant is determined to be missing (ERISA Section 4050.012). We agree that this change will simplify the process for mandatory cashouts and will also eliminate problems with small uncashed checks.

However, the benefit transfer amount to the PBGC is proposed to be determined as of the date of the transfer, which can be much later than the intended lump sum payment date at the plan termination close out. This would require a recalculation of a lump sum cashout previously determined and may change the value such that a participant's lump sum may increase above the \$5,000 threshold or decrease below the threshold. Thus, the determination of who is subject to be automatically deemed missing (by no return of an election) may not match the actual election process at the close-out date. In addition, the amount of the lump sum payable to such missing participants will change from information provided in the plan close-out election information.

For example, assume that a participant is provided a rollover election for a cashout due to the plan termination of \$4,900 payable as of November 1, 2016, and the participant does not return an election form. Under the proposed rules, the plan sponsor will deem the participant missing and must either purchase an annuity from an insurer or transfer the benefit to the PBGC. Further, assume that the plan sponsor transfers the missing participant to the PBGC on April 10, 2017. The proposed PBGC rules require that the lump sum be the "single sum actuarial equivalent of the distributee's future benefits as of the benefit transfer date under the plan lump sum assumptions." Thus, the lump sum must be recalculated using a new set of lump sum interest and mortality assumptions (assume an annual stability period). If the change in the interest rate and mortality table combine to increase the lump sum above \$5,000, the participant is no longer under the cashout threshold and can only be transferred to the PBGC if a diligent search was performed and the participant cannot be located. And, the lump sum amount requires consent of the participant (though no consent was requested as of the close-out date). Conversely, if the lump sum value of a participant's benefit was \$5,100 at the close-out date and is provided to the PBGC, the lump sum at the benefit transfer date may decrease below the mandatory cashout threshold.

The requirement to recalculate the lump sum at the benefit transfer date (ERISA Section 4050.102) could result in a change in which participants are deemed to be missing due to lack of an election and in a lump sum amount payable that does not relate to the actual information provided to a participant.

### **Inconsistency in Lump Sum Interest Crediting**

If a participant is found after transfer to the PBGC, the PBGC proposes calculating the participant's lump sum payment to be the value of the benefit transfer amount credited with interest at the federal mid-term rate to the date of payment (ERISA Section 4050.106(d)(3)). Thus, after transfer to the PBGC, the value of the lump sum is not later recalculated using the plan or Section 417(e) assumptions or the PBGC cashout assumptions. This method essentially treats the lump sum that was payable as a starting account balance with the PBGC to be paid with interest when found. This is a reasonable approach to pay benefits that would have been paid as a lump sum had the participant not been missing. However, due to the recalculation at the benefit transfer date, the period from the close-out date to the benefit transfer date is not treated simply as interest on an unpaid amount and can result in a lump sum that is not comparable to the lump sum offered to the participant.

## Large Amount Lump Sum

If a participant can receive a lump sum in excess of the \$5,000 cashout threshold, the PBGC proposes to determine the amount of the benefit transferred to the PBGC to be the greater of the lump sum payable under plan lump sum assumptions or the value based on assumptions under ERISA Section 4044 with certain simplifications (ERISA Section 4050.106(d)). This comparison is reasonable since a participant, when found, can elect an annuity. However, the comparison calculation should be determined using the lump sum payable at the close-out date, credited with interest to the benefit transfer date using the missing participant interest rate, rather than calculating an entirely new lump sum amount as of the benefit transfer date. This will ensure the lump sum does not fall below the \$5,000 cashout threshold and will protect the lump sum offered at the close-out date. And, it will be consistent with the manner in which the PBGC proposes to credit interest to determine a lump sum payable after the PBGC takes over the benefit.

For example, assume that a participant is missing as of the close-out date of November 1, 2016, but had a lump sum of \$25,000 available at that time. If the benefit transfer date is April 10, 2017, the PBGC proposed rule would require a calculation of a benefit transfer amount as the greater of an actuarial present value using modified PBGC assumptions under ERISA Section 4044 effective April 10, 2017, and a newly calculated lump sum payment as of that date. If the ERISA Section 4044 calculation results in a benefit transfer amount of \$23,500 and a newly calculated lump sum is \$24,500, the amount transferred to the PBGC would be lowered from \$25,000 payable at the close-out date to \$24,500, to be credited with interest at the federal mid-term rate for payment after April 10, 2017. Not only would the plan sponsor need to perform a second lump sum calculation, but the participant would be paid less. We suggest that the PBGC compare the amount determined using the missing participant assumptions (those modified under ERISA Section 4044) as of the benefit transfer date to the lump sum determined on the close-out date, (e.g., \$25,000) increased with the federal mid-term rate to the benefit transfer date of April 10, 2017. This would provide a fair amount to the participant, require one less present value calculation, and be consistent with the determination of the \$5,000 cashout threshold determination as of the close-out date.

## Closing

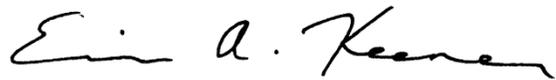
Aon Hewitt appreciates the opportunity to submit our comments and recommendations regarding the proposed rules. Please contact the undersigned at the telephone number or email address provided below with any questions.

Sincerely,

Hewitt Associates, LLC, an Aon Hewitt company



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