

Pension Benefit Guaranty Corporation

94-7

September 30, 1994

REFERENCE:

>4041(b)(3)>
>29 CFR 2617.6>
>29 CFR 2617.28(c)>

OPINION:

I write in response to your request for the opinion of the Pension Benefit Guaranty Corporation ("PBGC") regarding alternatives available for distributing plan assets in satisfaction of benefit liabilities attributable to participants who, despite reasonable efforts, cannot be located ("missing participants") by the administrator of a terminating single-employer defined benefit pension plan. In particular, you inquire whether the PBGC would permit the transfer of such assets to an interest-bearing account under a defined contribution plan sponsored by the same employer.

The methods for making a distribution for missing participants under section 4041(b)(3)(A) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1341(b)(3)(A), are set forth in the preamble to the PBGC's Final Rule for Distress and Standard Terminations of Single-Employer Plans. See "Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans; Final Rule," 57 Fed. Reg. 59,206, 59,214-215 (1992) (codified at 29 C.F.R. § § 2616 and 2617). Generally, the [*2] plan administrator must purchase an irrevocable commitment from an insurer for each missing participant. However, if a participant's benefit is valued at \$ 3,500 or less and would otherwise be distributed in a lump sum, or if an irrevocable commitment cannot be purchased, the plan administrator should deposit those funds in an individual interest-bearing account in the participant's name at a federally insured institution. If the plan administrator is unable to locate an institution willing to open individual interest-bearing accounts, the use of a pooled interest-bearing account maintained by a fiduciary designated by the plan administrator would be allowed. See 57 Fed. Reg. at 59,214-215.

You correctly point out that transferring assets attributable to the benefits of missing participants to an interest-bearing account under a defined contribution plan may be permitted in the case of a terminating multiemployer plan, under section 4041A(f) of ERISA, 29 U.S.C. § 1341A(f). See PBGC Opinion Ltr. 91-8. The opinion expressed there was limited to section 4041A(f), and was subject to a number of conditions, including compliance with the Internal Revenue Code ("IRC"). See [*3] *id.* In the single-employer plan context, the agency's position remains as stated in the preamble to the Termination Rule discussed above. You also correctly point out that such a transfer to a single-employer defined contribution plan may also implicate, among other provisions of the IRC, the accrued benefit protection rules. See IRC § 411(d)(6). You should contact the Internal Revenue Service for advice on how the IRC may apply in such cases.

If you have any further questions about this matter, you may call David W. Kemps of my staff at 202-326-4124.

Carol Connor Flowe
General Counsel