

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606, 2616, 2617, and 2629

RIN 1212-AA81

Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation is proposing a regulation to implement the new missing participants program under section 4050 of the Employee Retirement Income Security Act of 1974. Section 4050 applies to single-employer defined benefit plans distributing benefits in accordance with the standard termination procedures of Title IV.

DATES: Comments must be received by October 10, 1995.

ADDRESSES: Comments should be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026, or delivered to suite 340 at that address. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: When a fully-funded single-employer defined benefit pension plan terminates, the plan administrator must provide each participant and beneficiary with his or her benefit by purchasing an annuity from an insurer or paying a lump sum. Although in most cases the plan administrator can find all participants and beneficiaries, the plan administrator sometimes cannot do so.

Plan administrators provide benefits to persons who cannot be located by purchasing annuities from insurers or, in some limited cases, depositing funds in financial institutions. In certain instances, an insurer may not provide an annuity, or a financial institution may decline to accept the funds. A person who later comes forward may have difficulty locating his or her benefit.

Section 4050, which applies after final regulations go into effect, requires

the plan administrator to distribute the benefits of a person who cannot be located by purchasing an annuity from an insurance company or paying funds to the PBGC. The PBGC will search for participants and beneficiaries for whom funds are paid to the PBGC, and pay benefits to those who are located (or their survivors). Participants and beneficiaries may also contact the PBGC to get the name of the insurance company from which an annuity was purchased or to obtain their benefits from the PBGC.

This proposed rule implementing section 4050 applies to plans undergoing standard terminations and to plans undergoing distress terminations that are sufficient for guaranteed benefits and close out under the standard termination rules.

The Administration has proposed extending the missing participants program to terminating defined contribution plans and to terminating defined benefit plans not covered by Title IV. This proposed rule addresses only the enacted program for terminating defined benefit plans covered by Title IV.

Diligent Search

A plan administrator must conduct a "diligent search" for a missing participant before paying the benefit to the PBGC. (The term "missing participant" includes beneficiaries as well as participants, and may include alternate payees under a qualified domestic relations order.)

A search is a diligent search only if:

- The plan administrator asks any known beneficiaries of the missing participant for the missing participant's address; and
- The plan administrator uses a commercial locator service.

The plan administrator must undertake the search at or after the beginning of the plan termination process, and in a manner reasonably expected to permit timely distributions to located participants and beneficiaries. A plan administrator may use additional search methods, such as the Internal Revenue Service's letter forwarding program for those attempting to locate missing individuals, or mailing correspondence to the missing participant's last known address with a request to the post office for an address correction.

Payments to the PBGC (Designated Benefit)

Amount

A plan administrator that does not purchase an annuity for a missing

participant must pay to the PBGC an amount (the "designated benefit") representing the value of the missing participant's plan benefit. The method for determining the amount to be paid depends mainly on the plan's provisions.

If under the plan the missing participant would be paid a mandatory lump sum distribution—*e.g.*, because the single sum value does not exceed \$3,500—the plan administrator pays the amount of the mandatory lump sum to the PBGC.

If the missing participant would not receive a mandatory lump sum under the plan, but the value of the missing participant's benefit is *de minimis* (*i.e.*, the benefit has a value of \$3,500 or less) under the "missing participant lump sum assumptions", the plan administrator pays that value.

For the remaining missing participants, the plan administrator determines whether the missing participant can elect an immediate lump sum under the plan as of the "deemed distribution date" selected by the plan administrator (generally between the distribution date for non-missing participants and the end of the permitted distribution period). If not, the plan administrator pays the value of the missing participant's benefit calculated under the "missing participant annuity assumptions."

If the missing participant can elect a lump sum, the plan administrator pays an amount equal to the greater of the lump sum using plan assumptions or the value of the benefit using the missing participant annuity assumptions.

PBGC Assumptions and Calculation Methods

Certain relevant information, such as the future marital status of a missing participant or whether the missing participant is still alive, is not available to the plan administrator. The PBGC has developed a number of simplifying assumptions to deal with these and other issues under the missing participants program. These assumptions take into account the value of the various benefits the missing participant (or his or her beneficiary) could receive under the plan. The PBGC invites public comment on these assumptions.

The actuarial assumptions used under the missing participants program are based on the lump sum and annuity assumptions in the PBGC's single-employer valuation regulation (29 CFR Part 2619). (The PBGC intends to propose new assumptions for valuing lump sums and the final missing

participant regulations may reflect those changes.) However, the mortality tables and loading charges in the valuation regulation are modified and the "most valuable benefit" is used instead of the benefit at the expected retirement age.

For a missing participant whose benefit is in pay status, the most valuable benefit is the benefit in pay status. For a participant whose benefit is not in pay status, the plan administrator assumes the participant is married to a spouse the same age, and the participant's qualified joint and survivor annuity under the plan is valued at each age between the participant's earliest early retirement age and the participant's normal retirement age to find the most valuable benefit. For a beneficiary whose benefit is not in pay status, the plan administrator assumes the beneficiary is not married, and the beneficiary's automatic form of benefit under the plan is valued at each age between the deceased participant's earliest early retirement age and the participant's normal retirement age to find the most valuable benefit.

Several special rules apply, including rules for when there are employee contributions to the plan or distributions of residual assets to missing participants.

Benefit Payments by the PBGC

If a plan administrator pays an amount to the PBGC for a missing participant, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC or is located through the PBGC search process, the PBGC provides benefits as described below. (If a plan administrator purchases an annuity for a missing participant, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC advises the person of the identity of the insurance company that issued the annuity.)

Automatic Lump Sums

The PBGC pays a lump sum to a located missing participant if the plan would have paid the missing participant a mandatory lump sum. The lump sum equals the amount paid to the PBGC plus interest.

If, unknown to the plan administrator, the missing participant died before the deemed distribution date, and if the plan so provides, the PBGC pays the lump sum to the missing participant's beneficiary or estate. If the missing participant dies on or after the deemed distribution date, the PBGC pays the lump sum to the missing participant's estate.

Similar rules apply when, although a mandatory lump sum would not be paid

to the missing participant under the plan, the PBGC could pay a *de minimis* lump sum under the guaranteed benefit program because the value of the benefit was \$3,500 or less under the missing participant lump sum assumptions. In this case, however, the participant or beneficiary may decline the *de minimis* lump sum and elect to receive an equivalent annuity to the extent that participants and beneficiaries in the PBGC's guaranteed benefits program have that option.

Annuities

In other cases the PBGC pays the benefit in the forms available under the guaranteed benefits program. If the missing participant is a participant and is alive, the form is typically a qualified joint and survivor annuity or, for unmarried participants, a single life annuity. A living missing participant's annuity equals the annuity that can be purchased with the amount the plan administrator paid to the PBGC (minus the loading charge) using the missing participant annuity assumptions in effect at the deemed distribution date. A missing participant whose benefit was in pay status before becoming missing receives back payments and continuation of the original benefit.

A missing participant who could have received an immediate lump sum as of the deemed distribution date under the plan may elect a lump sum payment from the PBGC (after obtaining any required spousal consent). The lump sum equals the amount paid to the PBGC plus interest.

If the missing participant is a participant and dies before receiving benefits from the PBGC, the PBGC pays the missing participant's surviving spouse (unless the spouse has properly waived the benefit) a preretirement survivor annuity, based on a joint and 50 percent survivor annuity that is the actuarial equivalent of the amount paid to the PBGC (minus the loading charge). A beneficiary of such a deceased missing participant who was in pay status receives the benefit the beneficiary would have received under the plan, including, where appropriate, back payments.

A beneficiary of a missing participant who died before the deemed distribution date may establish that he or she is the proper beneficiary under the plan, or that he or she would have received benefits in a different form, at a different time, or in a different amount. If the beneficiary establishes this to the PBGC's satisfaction, the beneficiary will receive the revised benefit. However, the total actuarial value as of the deemed distribution date

of all benefits payable will be limited to the designated benefit.

A spouse or other beneficiary of a deceased missing participant may elect a lump sum equivalent of the survivor annuity if the missing participant could have elected a lump sum under the plan.

Guaranteed Benefit

If a missing participant or his or her beneficiary establishes, to the PBGC's satisfaction, that the designated benefit paid to the PBGC was less than the amount that should have been paid as a designated benefit, the PBGC will increase the benefit to reflect the correct designated benefit or, if less, the value of the guaranteed benefit.

Procedural Requirements

The plan administrator pays the designated benefits to the PBGC by the time the post-distribution certification (PDC) required under the PBGC's plan termination regulation is due. (Interest is assessed if the payment is late.) At the same time, the plan administrator must give the PBGC certifications and information about all missing participants, as required by new Schedule MP and its instructions, which are set forth as an addendum to this proposed rule document.

Special rules are provided for missing participants who are discovered to be missing shortly before the deemed distribution date ("recently-missing participants") and for participants who are located late in the process ("late-discovered participants").

The PBGC has discretion to return to the plan administrator the designated benefit of a missing participant found within 30 days after the PBGC receives the designated benefit. The plan administrator will then distribute the benefit under the plan to that individual.

The PBGC will review compliance with the missing participant program as part of its standard termination audits. The six-year recordkeeping requirement that applies generally to plan records associated with the termination process (§§ 2616.9 and 2617.10) applies to missing participant records.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation on missing participants, and the forms and instructions to be used under the missing participants program, have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. The PBGC needs the information submitted by plan

administrators of terminating single-employer plans to identify, for missing participants whose benefits are annuitized, the insurance companies that are to provide their benefits; to attempt to locate missing participants for whom benefits are paid to the PBGC and to pay their benefits; and to monitor and audit compliance with all applicable requirements.

The PBGC estimates that it will take an average of 2.46 hours to comply with the collection of information requirements under the proposed regulation and, based on its experience with trustee plans, that about 500 plans will be required to comply each year. Accordingly, the estimated burden of the collection of information is 1,230 hours.

Copies of the proposed forms and instructions are set forth as an addendum to this proposed rule document. Comments on the paperwork provisions of the proposed rule and on the forms and instructions should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on respondents through the use of automated collection techniques (or other forms of information technology) or in other ways.

In particular, the PBGC invites suggestions regarding procedures for submitting some or all of the required information electronically.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because the rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Plan administrators of terminating plans of all sizes already have a duty to determine the amounts of all benefits, to attempt to locate all persons entitled to benefits, and to annuitize or provide cash accounts for those who cannot be found. The primary effect of this regulation is to substitute a formal procedure involving the PBGC for the informal procedures already being followed. The PBGC does not expect the standardization of these procedures to have a significant effect on plan administrators' burdens. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 2606

Employee benefit plans, Pension insurance, Pensions, Administrative practice and procedure.

29 CFR Parts 2616, 2617, and 2629

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, the PBGC proposes to amend 29 CFR chapter XXVI as follows.

1. Part 2629 is added to subchapter C to read as follows:

PART 2629—MISSING PARTICIPANTS

Sec.

- 2629.1 Purpose and scope.
- 2629.2 Definitions.
- 2629.3 Method of distribution for missing participants.
- 2629.4 Diligent search.
- 2629.5 Designated benefit.
- 2629.6 Payment and required documentation.
- 2629.7 Benefits of missing participants—in general.
- 2629.8 Automatic lump sum.
- 2629.9 Annuity or elective lump sum—living missing participant.
- 2629.10 Annuity or elective lump sum—deceased missing participant.
- 2629.11 Limitations.
- 2629.12 Special rules.

Appendix A—Examples of designated benefit determinations for missing participants under § 2629.5.

Appendix B—Examples of benefit payments for missing participants under § 2629.8 through § 2629.10.

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 2629.1 Purpose and scope.

(a) *Purpose.* This part prescribes rules for distributing benefits under a terminating plan to any individual whom the plan administrator has not located when distributing benefits under § 2617.28(c) of this chapter.

(b) *Scope.* This part applies to a plan if the plan's deemed distribution date (or the date of other payments made in accordance with § 2629.12) is in a plan year beginning on or after the effective date of this part.

§ 2629.2 Definitions.

For purposes of this part:

(a) *Act* means the Employee Retirement Income Security Act of 1974, as amended.

(b) *Code* means the Internal Revenue Code of 1986, as amended.

(c) *Deemed distribution date* means the date selected by the plan administrator of a terminating plan that is on or after the date when all benefit distributions have been made under the plan except for distributions to missing participants whose designated benefits are paid to the PBGC, but not later than the last day of the period in which distribution may be made under § 2616.29(a) or 2617.28(a) of this chapter (whichever applies).

(d) *Designated benefit* means the amount payable to the PBGC for a missing participant pursuant to § 2629.5.

(e) *Designated benefit interest rate* means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 2623.11(d) of this chapter.

(f) *Guaranteed benefit form* means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trustee plans under parts 2613 and 2621 of this chapter (treating the deemed distribution date as the date of plan termination for this purpose).

(g) *Late-discovered participant* means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator locates before the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer) and not more than 90 days before the deemed distribution date.

(h) *Missing participant* means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

(i) *Missing participant annuity assumptions* means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuation in Appendix B to part 2619 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under part 2619 of this chapter, applied—

(1) As if the deemed distribution date were the date of plan termination;

(2) Using unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95-6, 1995-4 IRB 22, January 23, 1995 (Internal Revenue Bulletins are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402);

(3) Without using the expected retirement age assumptions in Subpart D to part 2619 of this chapter; and

(4) By adding \$300 for each missing participant as an adjustment (loading) for expenses (instead of the adjustment for expenses provided for in § 2619.49(a)(4) of this chapter).

(j) *Missing participant forms and instructions* means PBGC Forms 501 and 602, Schedule MP thereto, and related forms, and their instructions.

(k) *Missing participant lump sum assumptions* means the interest rate assumptions and actuarial methods (using the interest rates for lump sum valuations in Appendix B to part 2619 of this chapter) for valuing a benefit to be paid by the PBGC as a lump sum under part 2619 of this chapter, applied—

(1) As if the deemed distribution date were the date of plan termination;

(2) Using mortality assumptions for healthy lives only (from Table I of Appendix A to part 2619 of this chapter, substituting $x+1$ for x); and

(3) Without using the expected retirement age assumptions in Subpart D to part 2619 of this chapter.

(l) *Pay status* means, with respect to a benefit, that, as of the deemed distribution date, one or more benefit payments have been made or would have been made except for

administrative delay or a waiting period.

(m) *Post-distribution certification* means the post-distribution certification required by § 2616.29(b) or 2617.28(h) of this chapter.

(n) *Plan administrator* means the administrator as defined in section 4001(a)(1) of the Act.

(o) *Recently-missing participant* means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator discovers to be missing on or after the 90th day before the deemed distribution date.

(p) *Unloaded designated benefit* means the designated benefit reduced by \$300.

§ 2629.3 Method of distribution for missing participants.

The plan administrator of a terminating plan shall distribute benefits for each missing participant by—

(a) Purchasing an irrevocable commitment from an insurer in accordance with § 2617.28(c) or § 2616.29(a)(1) of this chapter (whichever is applicable); or

(b) Paying the PBGC a designated benefit in accordance with §§ 2629.4 through 2629.6 (subject to the special rules in § 2629.12).

§ 2629.4 Diligent search.

(a) *Search required.* A plan administrator shall make a diligent search for each missing participant whose designated benefit is paid to the PBGC. The search shall be made before the payment is made.

(b) *Diligence.* A search is a diligent search only if the plan administrator—

(1) Begins the search at or after the time when notices of intent to terminate are issued and carries on the search in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made on or before the deemed distribution date (or, in the case of a recently-missing participant, on or before the 90th day after the deemed distribution date);

(2) Makes inquiry of any plan beneficiaries and alternate payees of the missing participant whose names and addresses are known to the plan administrator; and

(3) Engages a commercial locator service to search for the missing participant.

§ 2629.5 Designated benefit.

(a) *Amount of designated benefit.* The amount of the designated benefit shall be the amount determined under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of

this section (whichever is applicable) or, if less, the amount that could be provided under the plan to the missing participant in the form of a single sum in accordance with section 415 of the Code.

(1) *Mandatory lump sum.* The designated benefit of a missing participant required under a plan to receive a mandatory lump sum as of the deemed distribution date shall be the lump sum payment that the plan administrator would have distributed to the missing participant as of the deemed distribution date.

(2) *De minimis lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) of this section whose benefit is not in pay status and whose benefit has a *de minimis* actuarial present value (\$3,500 or less) as of the deemed distribution date under the missing participant lump sum assumptions shall be such value.

(3) *No lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) or (a)(2) of this section who, as of the deemed distribution date, cannot elect an immediate lump sum under the plan shall be the actuarial present value of the missing participant's benefit as of the deemed distribution date under the missing participant annuity assumptions.

(4) *Elective lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1), (a)(2), or (a)(3) of this section shall be the greater of the amounts determined under the methodologies of paragraph (a)(1) or (a)(3) of this section.

(b) *Assumptions.* When the plan administrator uses the missing participant annuity assumptions or the missing participant lump sum assumptions for purposes of determining the designated benefit under paragraph (a) of this section, the plan administrator shall value the most valuable benefit, as determined under paragraph (b)(1) of this section, using the assumptions described in paragraph (b)(2) or (b)(3) of this section (whichever is applicable).

(1) *Most valuable benefit.* For a missing participant whose benefit is in pay status, the most valuable benefit is the benefit in pay status. For a missing participant whose benefit is not in pay status, the most valuable benefit is the benefit payable at the age on or after the deemed distribution date (beginning with the participant's earliest early retirement age and ending with the participant's normal retirement age) for which the present value as of the deemed distribution date is the greatest. The present value as of the deemed

distribution date with respect to any age is determined by multiplying:

(i) The monthly (or other periodic) benefit payable under the plan; by

(ii) The present value (determined as of the deemed distribution date using the missing participant annuity assumptions) of a \$1 monthly (or other periodic) annuity beginning at the applicable age.

(2) *Participant.* A missing participant who is a participant, and whose benefit is not in pay status, is assumed to be married to a spouse the same age, and the form of benefit that must be valued is the qualified joint and survivor annuity benefit that would be payable under the plan. If the participant's benefit is in pay status, the form and beneficiary of the participant's benefit are the form of benefit and beneficiary of the benefit in pay status.

(3) *Beneficiary.* A missing participant who is a beneficiary, and whose benefit is not in pay status, is assumed not to be married, and the form of benefit that must be valued is the survivor benefit that would be payable under the plan. If the beneficiary's benefit is in pay status, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the benefit in pay status.

(4) *Examples.* See Appendix A for examples illustrating the provisions of this section.

(c) *Missed payments.* In determining the designated benefit, the plan administrator shall include the value of any payments that were due before the deemed distribution date but that were not made.

(d) *Payment of designated benefits.* Payment of designated benefits shall be made in accordance with § 2629.6 and shall be deemed made on the deemed distribution date.

§ 2629.6 Payment and required documentation.

(a) *Time of payment and filing.*

(1) *General rule.* The plan administrator shall pay designated benefits, and file the information and certifications (of the plan administrator and the plan's enrolled actuary) specified in the missing participant forms and instructions, by the time the post-distribution certification is due (determined in accordance with §§ 2616.7(a) and 2617.8(a) of this chapter). Except as otherwise provided in the missing participant forms and instructions, the plan administrator shall submit the designated benefits, information, and certifications with the post-distribution certification.

(2) *Recently-missing participants.* In the case of a recently-missing

participant, the plan administrator shall pay the designated benefit by the time the amended post-distribution certification is due under paragraph (a)(2)(ii) of this section. Except as otherwise provided in the missing participant forms and instructions—

(i) *Payment.* The plan administrator shall submit the designated benefit with the amended post-distribution certification described in paragraph (a)(2)(ii) of this section; and

(ii) *Filing.* If the diligent search is not complete when the plan administrator submits the filing described in paragraph (a)(1) of this section, the plan administrator shall indicate this in that filing and submit an amended filing (including an amended post-distribution certification) within 120 days after the deemed distribution date.

(3) *Late-discovered participants.* When it is impracticable for the plan administrator to include complete and accurate final information on a late-discovered participant in a timely post-distribution certification, the plan administrator shall submit an amended post-distribution certification within 120 days after the deemed distribution date in accordance with the missing participant forms and instructions.

(b) *Interest on late payments.* If the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator shall pay interest as assessed by the PBGC for the period beginning on the deemed distribution date and ending on the date when the payment is received by the PBGC. Interest will be assessed at the rate provided for late premium payments in § 2610.7 of this chapter.

(c) *Supplemental information.* Within 30 days after the date of a written request from the PBGC, a plan administrator required to provide the information and certifications described in paragraph (a) of this section shall file supplemental information, as requested, for the purpose of verifying designated benefits and determining benefits to be paid by the PBGC under this part.

(1) *Information mailed.* Supplemental information filed under this paragraph (c) is considered filed on the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The information was mailed postage prepaid, properly addressed to the PBGC.

(2) *Information delivered.* When the plan administrator sends or transmits the information to the PBGC by means other than the United States Postal

Service, the information is considered filed on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

§ 2629.7 Benefits of missing participants—in general.

(a) *If annuity purchased.* If a plan administrator distributes a missing participant's benefit by purchasing an irrevocable commitment from an insurer, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC will inform the person of the identity of the insurer and the relevant policy number.

(b) *If designated benefit paid.* If the PBGC locates or is contacted by a missing participant for whom a plan administrator paid a designated benefit to the PBGC (or his or her beneficiary or estate), the PBGC will pay benefits in accordance with §§ 2629.8 through 2629.10 (subject to the limitations and special rules in §§ 2629.11 and 2629.12).

(c) *Examples.* See Appendix B for examples illustrating the provisions of §§ 2629.8 through 2629.10.

§ 2629.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under § 2629.5(a)(1) (mandatory lump sum) or § 2629.5(a)(2) (de minimis lump sum).

(a) *General rule.*

(1) *Benefit paid.* The PBGC will pay a single sum benefit equal to the designated benefit plus interest at the designated benefit interest rate from the deemed distribution date to the date on which the PBGC pays the benefit.

(2) *Payee.* Payment shall be made—

(i) To the missing participant, if located;

(ii) If the missing participant died before the deemed distribution date, and if the plan so provides, to the missing participant's beneficiary or estate; or

(iii) If the missing participant dies on or after the deemed distribution date, to the missing participant's estate.

(b) *De minimis annuity alternative.* If the guaranteed benefit form for a missing participant whose designated benefit was determined under § 2629.5(a)(2) (de minimis lump sum) (or the guaranteed benefit form for a beneficiary of such a missing participant) would provide for the election of an annuity, the missing participant (or the beneficiary) may elect to receive an annuity. If such an election is made—

(1) The PBGC will pay the benefit in the elected guaranteed benefit form, beginning on the annuity starting date

ected by the missing participant (or the beneficiary), but not before the later of the date of the election or the earliest date on which the missing participant (or the beneficiary) could have begun receiving benefits under the plan; and

(2) The monthly (or other periodic) benefit paid will be actuarially equivalent to the designated benefit, i.e., each benefit payment will equal the designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant lump sum assumptions) of a \$1 monthly (or other periodic) annuity beginning on the annuity starting date.

§ 2629.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 2629.5(a)(3) (no lump sum) or § 2629.5(a)(4) (elective lump sum) and who is living on the date as of which benefits commence.

(a) *Missing participant whose benefit is not in pay status.* The PBGC will pay the benefit of a missing participant whose benefit is not in pay status as follows.

(1) *Time and form of benefit.* The PBGC will pay the missing participant's benefit in the guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (but not before the later of the date of the election or the earliest date on which the missing participant could have begun receiving benefits under the plan).

(2) *Amount of benefit.* The PBGC will pay a monthly (or other periodic) benefit that is actuarially equivalent to the unloaded designated benefit, i.e., each benefit payment will equal the unloaded designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of a \$1 monthly (or other periodic) annuity beginning on the annuity starting date.

(b) *Missing participant whose benefit is in pay status.* The PBGC will pay the benefit of a missing participant whose benefit is in pay status as follows.

(1) *Time and form of benefit.* The PBGC will pay the benefit in the form that was in effect, beginning when the missing participant is located.

(2) *Amount of benefit.* The PBGC will pay the monthly (or other periodic) amount of the benefit that was in pay status, plus a lump sum equal to the payments the missing participant would have received under the plan, plus interest on the missed payments (at the plan rate up to the deemed distribution

date and thereafter at the designated benefit interest rate) to the date as of which the PBGC pays the lump sum.

(c) *Payment of lump sum.* If a missing participant whose designated benefit was determined under § 2629.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. This election is not effective unless the missing participant's spouse consents (if such consent would be required under section 205 of the Act). The single sum equals the designated benefit plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

§ 2629.10 Annuity or elective lump sum—deceased missing participant.

This section applies to a beneficiary of a deceased missing participant whose designated benefit was determined under § 2629.5(a)(3) (no lump sum) or § 2629.5(a)(4) (elective lump sum) and whose benefit is not payable under § 2629.9.

(a) *If missing participant died with benefit not in pay status.*

(1) *General rule.*

(i) *Beneficiary.* The PBGC will pay a benefit to the surviving spouse of a missing participant who is a participant and whose benefit is not in pay status (unless the surviving spouse has properly waived a benefit in accordance with section 205 of the Act).

(ii) *Form and amount of benefit.* The PBGC will pay the survivor benefit in the form of a single life annuity. Each benefit payment will equal 50% of the quotient that results when the unloaded designated benefit is divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions, and assuming that the missing participant survived to the deemed distribution date) of a \$1 monthly (or other periodic) joint and 50% survivor annuity in the form described in § 2619.49(f)(1) of this chapter beginning on the annuity starting date.

(iii) *Time of benefit.* The PBGC will pay the survivor benefit beginning at the time elected by the surviving spouse (but not before the later of the date of the election or the earliest date on which the surviving spouse could have begun receiving benefits under the plan).

(2) *If missing participant died before deemed distribution date.*

Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary of a missing participant who died before the deemed distribution

date establishes to the PBGC's satisfaction that he or she is the proper beneficiary or would have received benefits under the plan in a form, at a time, or in an amount different from the benefit paid under paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the PBGC will make payments in accordance with the facts so established, but only in the guaranteed benefit form.

(3) *Elective lump sum.*

Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the beneficiary of a missing participant whose designated benefit was determined under § 2629.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. The single sum will be equal to the actuarial present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of the death benefit payable on the annuity starting date, plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

(b) *If missing participant died with benefit in pay status.*

(1) *Beneficiary.* The PBGC will pay benefits to the beneficiary (if any) of the benefit that was in pay status.

(2) *Form and amount of benefit.* The PBGC will pay a monthly (or other periodic) amount equal to the monthly (or other periodic) amount, if any, that the beneficiary would have received under the form of payment in effect, plus a lump sum payment equal to the payments the beneficiary would have received under the plan subsequent to the missing participant's death and prior to the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) *Lump sum payment to estate.* The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period prior to the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the

lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) *Time of benefit.* The PBGC will pay the survivor benefit when the beneficiary is located.

§ 2629.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under §§ 2629.8 through 2629.10 shall be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) *Limitation on benefit value.* The total actuarial present value of all benefits paid with respect to a missing participant under §§ 2629.8 through 2629.10, determined as of the deemed distribution date, shall not exceed the missing participant's designated benefit.

(c) *Guaranteed benefit.* If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 2629.8 through 2629.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC shall instead pay the minimum benefit. The minimum benefit shall be the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trustee plans under parts 2613 and 2621 of this chapter (treating the deemed distribution date as the date of plan termination for this purpose); or
(2) The benefit based on the designated benefit that should have been paid under § 2629.5.

(d) *Limitation on annuity starting date.* A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) The required beginning date under section 401(a)(9) of the Code; or
(2) The date when the missing participant (or the survivor) is located.

§ 2629.12 Special rules.

(a) *Late-discovered participants.* The plan administrator of a plan that terminates with one or more late-discovered participants shall (after issuing notices to each such participant in accordance with §§ 2616.22 and 2616.27 or 2617.22 and 2617.23 of this chapter (whichever apply)), distribute each such late-discovered participant's benefit within the period described in § 2616.29(a) or 2617.28(a) of this chapter (whichever applies) if practicable or (if not) as soon thereafter as practicable, but not more than 90 days after the deemed distribution date.

(b) *Missing participants located quickly.* Notwithstanding the provisions of §§ 2629.8 through 2629.10, if the PBGC or the plan administrator locates

a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator shall treat the missing participant like a late-discovered participant.

(c) *Qualified domestic relations orders.* Plan administrators and the PBGC shall take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of the Act into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO. For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator shall use the assumptions for a missing participant who is a beneficiary under § 2629.5(b).

(d) *Employee contributions.*

(1) *Mandatory employee contributions.* Notwithstanding the provisions of § 2629.5, if a missing participant's contributions were mandatory (within the meaning of section 4044(a)(2) of the Act), the missing participant's designated benefit shall not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of the Act (whichever produces the greater amount).

(2) *Voluntary employee contributions.*

(i) *Applicability.* This paragraph (d)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of the Act) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) *Payment to PBGC.* A plan administrator, in accordance with the missing participant forms and instructions, shall pay the employee contributions described in paragraph (d)(2)(i) of this section (together with any earnings thereon) to the PBGC, and shall file Schedule MP with the PBGC, by the time the designated benefit is due under § 2629.6. Any such amount shall be in addition to the designated benefit and shall be separately identified.

(iii) *Payment by PBGC.* In addition to any other amounts paid by the PBGC under §§ 2629.8 through 2629.10, the PBGC shall pay any amount paid to it under paragraph (d)(2)(ii) of this section, with interest at the designated

benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 2629.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment shall be made to the missing participant's estate.

(e) *Residual assets.* The PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of the Act, how the provisions of this part shall apply to any distribution, to participants and beneficiaries who cannot be located, of residual assets remaining after the satisfaction of benefit liabilities in connection with the termination of a defined benefit plan. The deadline for payment of residual assets for a missing participant and for submission to the PBGC of a Schedule MP (or an amended Schedule MP) is the 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than missing participants for whom payment for residual assets is made to the PBGC.

(f) *Sufficient distress terminations.* In the case of a plan undergoing a distress termination (under section 4041(c) of the Act) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of the Act, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 2629.5 shall be limited to the Title IV benefit (as defined in § 2616.2 of this chapter).

(g) *Similar rules for later payments.* If the PBGC determines, upon audit of a plan termination, that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a termination to be valid, and one or more of such individuals cannot be located, the PBGC shall determine, in a manner consistent with the purposes of this part and section 4050 of the Act, how the provisions of this part shall apply to such benefits.

Appendix A—Examples of Designated Benefit Determinations for Missing Participants Under § 2629.5

The calculation of the designated benefit under § 2629.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of \$1,750 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is \$1,700 under plan A's assumptions. Under § 2629.5(a)(1), the plan

administrator pays the PBGC \$1,700 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is \$3,700 under plan A's assumptions and \$3,200 under the missing participant lump sum assumptions. Under § 2629.5(a)(2), the plan administrator pays the PBGC \$3,200 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is \$3,400 under plan A's assumptions, \$3,600 under the missing participant lump sum assumptions, and \$3,450 under the missing participant annuity assumptions. Under § 2629.5(a)(3), the plan administrator pays the PBGC \$3,450 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of \$1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than \$3,500 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 2629.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from \$840 at age 65 (the normal retirement age) ($\$1,000 \times (1 - .16)$) to \$630 at age 60 (the earliest retirement age) ($\$1,000 \times (1 - 5 \times (.05)) \times (1 - .16)$).

(3) Under § 2629.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in the definition of "missing participant annuity assumptions" in § 2629.2(i)(2), the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (i.e., the benefit at age 60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is \$5.4307 if the benefit begins at age 60. (In accordance with § 2619.49(d)(5), the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is \$41,056 ($12 \times \630×5.4307). The designated benefit is equal to this value plus an expense adjustment of \$300, or a total of \$41,356.

Appendix B—Examples of Benefit Payments for Missing Participants Under §§ 2629.8 Through 2629.10

The provisions of §§ 2629.8 through 2629.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was \$41,356. The unloaded designated benefit was \$41,056. As of Plan B's deemed distribution date (and using the missing participant annuity assumptions), the present value per dollar of monthly benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the actual age of M's spouse) is \$4,7405. Thus, the monthly benefit to M at age 62 is \$722 ($\$41,056 / (4.7405 \times 12)$). M's spouse will receive \$361 (50 percent of \$722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of \$361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of \$10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55. S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to \$9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in § 2629.2(i)(2), the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is \$2.4048 if the benefit begins when S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is \$168 (50 percent of $\$9,700 / (2.4048 \times 12)$). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of \$168, accumulated with interest at the designated benefit interest rate to the date paid.

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

2. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

3. In § 2606.1, paragraph (b)(8) is amended by removing the word "and"; paragraph (b)(9) is amended by removing the period at the end of the paragraph and adding in its place "; and"; and a new paragraph (b)(10) is added to read as follows:

§ 2606.1 Purpose and scope.

* * * * *

(b) Scope. * * *

* * * * *

(10) Determinations—

(i) That the amount of a participant's or beneficiary's benefit under section 4050(a)(3) of the Act has been correctly computed based on the designated benefit paid to the PBGC under section 4050(b)(2) of the Act, or

(ii) That the designated benefit is correct, but only to the extent that the benefit to be paid does not exceed the participant's or beneficiary's guaranteed benefit.

* * * * *

§ 2606.51 [Amended]

4. Section 2606.51 is amended by removing the words "\$ 2606.1(b)(5) through (9)" and adding in their place the words "\$ 2606.1(b)(5) through (10)".

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

5. The authority citations for parts 2616 and 2617 are revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

§ 2616.2, § 2617.2 [Amended]

6. In §§ 2616.2 and 2617.2, the definition of date of distribution is amended by removing the period at the end of paragraph (2); adding in its place a semicolon; and adding after the semicolon the words "except that date of distribution means the deemed distribution date in the case of a designated benefit paid to the PBGC, or a benefit provided after the deemed distribution date to a late-discovered participant, in accordance with part 2629 of this chapter (dealing with missing participants)."

§ 2616.7, § 2617.8 [Amended]

7. In §§ 2616.7 and 2617.8, paragraph (b) is amended by removing the words "Any document" and adding in their place the words "Except as may otherwise be provided in applicable forms and instructions, any document".

§ 2616.29, § 2617.28 [Amended]

8. Paragraph (b) of § 2616.29 and paragraph (h) of § 2617.28 are amended by adding at the end of § 2616.29(b) and § 2617.28(h) the words "The plan administrator shall be considered to have satisfied this requirement if, in accordance with § 2629.11 of this chapter, the plan administrator timely files an amended post-distribution certification that otherwise satisfies all applicable requirements."

9. In § 2617.28, paragraph (c) is amended by adding at the end a new sentence to read as follows:

§ 2617.28 Closeout of plan.

* * * * *

(c) *Method of distribution.* * * * The plan administrator shall comply with part 2629 of this chapter (dealing with missing participants), if applicable.

* * * * *

Issued in Washington, DC, this 21st day of August, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

Addendum (Draft forms and instructions for Part 2629)

(Note: A draft of the missing participant forms and instructions follows. These forms and instructions will not appear in the Code of Federal Regulations.)

BILLING CODE 7708-01-P

DRAFT

DRAFT

FILING INSTRUCTIONS FOR SCHEDULE MP MISSING PARTICIPANTS PACKAGE

PAPERWORK REDUCTION ACT NOTICE

The PBGC needs the information required by Schedule MP to administer the Missing Participants Program. Section 4050 of the Employee Retirement Income Security Act of 1974, as added by the Retirement Protection Act of 1994, established the Missing Participants Program to assist plan administrators in closing out plans and to help participants in these plans secure their benefits. The PBGC will use the information to direct missing participants to the appropriate insurance company; to locate and pay missing participants for whom benefits were paid to the PBGC; and to monitor and audit compliance. You are required to provide this information pursuant to section 4050 and 29 CFR Part 2629.

The PBGC estimates that it will take an average of 2.46 hours per plan to complete and file Schedule MP (including attachments). The actual time will vary depending on the circumstances in a given case.

Comments concerning the accuracy of this time estimate or suggestions pertaining to the forms should be addressed to Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005-4026, and Office of Management and Budget, OIRA, Attention Desk Officer -- PBGC, New Executive Office Building, (1212-___), Washington, DC 20503.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. GENERAL INSTRUCTIONS FOR SCHEDULE MP	2
A. Plans Required to File	2
B. What and When to File and Pay	2
C. Where to File and Pay	4
D. Questions, Problems, Copies of Forms	4
E. Recordkeeping Requirements	4
III. LINE-BY-LINE INSTRUCTIONS FOR SCHEDULE MP	4
IV. INSTRUCTIONS FOR ATTACHMENT B (INDIVIDUAL INFORMATION)	5
V. CHANGES TO POST-DISTRIBUTION CERTIFICATION (Forms 501 and 602)	7
A. Changes to Line-by-Line Instructions	7
B. Amended Filings	8

DRAFT**DRAFT****I. INTRODUCTION**

Pursuant to the Retirement Protection Act of 1994, the PBGC has established a Missing Participants Program for single-employer defined benefit pension plans subject to Title IV of ERISA. This program will help terminating plans distribute missing participants' benefits and help missing participants receive their benefits. A *missing participant* is a participant, beneficiary or alternate payee entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

The new rules generally apply to plans that make a final distribution of assets in plan years beginning on or after [effective date of 29 CFR Part 2629].

A plan administrator must distribute the benefits of a missing participant by purchasing an irrevocable commitment from an insurance company or paying the value of the missing participant's benefit to the PBGC after making a diligent search for the participant. The new program applies to distributions in a standard plan termination, and to distributions in a distress plan termination in which assets are sufficient to provide all guaranteed benefits.

The new Missing Participants Program requires a few changes in the way that plans with missing participants complete the Post-Distribution Certification (Form 501 or 602). (See Part V of these instructions for changes to the Post-Distribution Certification.) These changes do not affect plans without missing participants.

The plan administrator of a plan with a

missing participant must file a Schedule MP with the Post-Distribution Certification and pay the PBGC the value of benefits payable to any missing participant for whom the plan administrator did not purchase an irrevocable commitment. The Schedule MP includes the information the PBGC needs to identify and locate missing participants; to compute and pay benefits; and to direct individuals for whom the plan purchased annuities to the appropriate insurance company.

II. GENERAL INSTRUCTIONS FOR SCHEDULE MP**A. Plans Required to File**

The plan administrator of a single-employer plan covered by Title IV that is terminating in a standard termination or in a distress termination in which plan assets are sufficient to provide all guaranteed benefits must file Schedule MP if the plan has any missing participants. The requirement applies to plans with a "deemed distribution date" (or a distribution of residual assets to missing participants or a distribution pursuant to a PBGC audit of a plan termination) in a plan year beginning on or after [effective date of 29 CFR Part 2629]. (See definition of "deemed distribution date" in instructions for line 2a below.)

B. What and When to File and Pay

1. **What to File and Pay.** You must file Schedule MP, including Attachment A (Annuity Purchase Information) and Attachment B (Individual Information), as applicable. You must file Attachment A (or provide the specified information on a separate page) if the plan purchased an irrevocable commitment for one or more missing participants. You must file a separate Attachment B for each missing participant for whom you pay amounts to the PBGC. You must send the PBGC payment for these amounts, together with a payment

DRAFT**DRAFT**

voucher. Write the plan's EIN/PN and the PBGC Case Number on your check. You may use photocopies or other facsimiles of the forms, but signatures must be original.

2. When to File and Pay.

a. In general. The filing due date for the Schedule MP (including attachments) is the same as for the Post-Distribution Certification. The Schedule MP is considered filed on the date received by the PBGC. A payment to the PBGC (including the payment voucher) is considered filed on the date the PBGC receives it at the lockbox address in C.2 below.

b. Due Dates for Later Filings. You must file a Schedule MP (including applicable attachment(s) or payment), marked as amended if a Schedule MP was previously filed, in the following cases shown in the table below.

(If a later Schedule MP reports payment of designated benefits to the PBGC or purchase of annuities for benefit liabilities, it must be accompanied by an amended Post-Distribution Certification reflecting these additional distributions.)

Table of Due Dates for Later Filings of Schedule MP

Reason for Later Filing:	The Schedule MP must be filed no later than --
(1) Residual assets owed after the deemed distribution date for a person who is a missing participant at the time residual assets are payable.	30 days after the plan administrator has distributed residual assets to all participants and beneficiaries entitled to them (other than missing participants for whom payment of residual assets is made to PBGC).
(2) Payment to the PBGC or purchase of annuities for a recently-missing participant.	120 days after the deemed distribution date.
(3) Payment to the PBGC or purchase of annuities for participants and beneficiaries who cannot be located, pursuant to an audit of the plan termination.	The date specified by the PBGC in connection with the audit.

DRAFT**DRAFT****C. Where to File and Pay**

1. Where to File. You must file the Schedule MP (including any required attachments) with the Post-Distribution Certification. You should mail them to:

Pension Benefit Guaranty Corporation
Standard Processing and Control Branch
1200 K Street, NW Suite 930
Washington, DC 20005-4026

2. Where to Pay. Send payment for designated benefits, voluntary employee contributions in a separate account, or residual assets, with a completed payment voucher to the lockbox address below. (Send one check for the plan, not separate checks for each participant.)

[LOCKBOX ADDRESS]

D. Questions, Problems, Copies of Forms

If you have questions about this form, the revised instructions for the Post-Distribution Certification, or other questions about the Missing Participants Program, please contact:

Pension Benefit Guaranty Corporation
Administrative Review and Technical
Assistance Branch
1200 K Street, NW Suite 930
Washington, DC 20005-4026
Telephone: (202) 326-4000
Hearing impaired persons may telephone
(202) 326-4179.

These phone numbers are not toll-free, and the PBGC cannot accept collect calls.

You can receive copies of the forms by contacting the Pension Benefit Guaranty Corporation's Case Operations and Compliance Division at the same address and telephone numbers above.

E. Recordkeeping Requirements

The plan administrator is required to retain records supporting the calculation of designated benefits or other amounts paid to PBGC for six years after the date a Post-Distribution Certification or amended Post-Distribution Certification is filed.

III. LINE-BY-LINE INSTRUCTIONS FOR SCHEDULE MP

NOTE: When filing an amended Schedule MP, enter only the plan identification information (Lines 1a-1c) and the additional information being reported.

2. Missing Participant Information

- b. Number of missing participants for whom amounts are paid to the PBGC. Enter the total number of missing participants for whom amounts are being paid to the PBGC concurrent with this filing. If the Schedule MP is an amended filing, enter only the number of participants for whom you are paying amounts to the PBGC concurrent with the amended filing. Enter zero if you are paying no amounts to the PBGC.
- c. Deemed distribution date. The deemed distribution date is a date the plan administrator of a terminating plan selects. You may select any date on or after the date when all benefit distributions have been made (except for distributions to missing participants whose designated benefits are to be paid to the PBGC), provided the date is not later than the last day of the period in which distribution may be made under the PBGC's standard termination regulation (29 CFR § 2617.28(a)) or the PBGC's distress termination regulation

DRAFT

DRAFT

(29 CFR § 2616.29(a)), whichever applies.

Note: If you are distributing residual assets and have made no other distributions to missing participants, enter "00/00/00."

3. Amounts Paid to the PBGC

Note: The amounts entered in each of lines 3a, 3b, and 3c should be the sum of the amounts on lines 2a, 2b, and 2c, respectively, of Attachment B (Individual Information).

IV. INSTRUCTIONS FOR ATTACHMENT B (INDIVIDUAL INFORMATION)

General Instructions

File Attachment B (Individual Information) with the Schedule MP (or amended Schedule MP) for each missing participant (participant, spouse or other beneficiary, or alternate payee) for whom you send payment to the PBGC.

LINE-BY-LINE INSTRUCTIONS FOR ATTACHMENT B

NOTE: When filing an amended Attachment B, enter only the plan name and case number, the individual's name and Social Security number, and the additional information being reported.

2. Amount Paid to the PBGC

- a. Designated benefit. The amount and category of the designated benefit are determined under 29 CFR §§ 2629.5 and 2629.12. (If you are not paying a designated benefit to the PBGC, enter zero and do not check a category.)
- b. Other amounts. Other amounts you are paying to the PBGC are determined under 29 CFR § 2629.12. (If you are not paying other amounts to the PBGC, enter zero.)

Note for lines 3 - 5: A missing participant had entered *pay status* as of the deemed distribution date if, as of that date, one or more benefit payments had been made or would have been made except for administrative delay. A beneficiary is considered in pay status if the payments to the beneficiary would have commenced automatically without an election upon the participant's death.

3. Participant Who is Missing and Had Not Entered Pay Status

- a. Automatic form of benefit for participant not in pay status. Enter the benefit form that would be payable to the participant on retirement. Provide the forms for both married and unmarried participants, regardless of the participant's last-known marital status. Enter a code from the Table of Benefit Forms on page 6 below and fill in the relevant information.

4. Beneficiary or Alternate Payee Who is Missing and Had Not Entered Pay Status

- a. Form of benefit for a beneficiary or alternate payee not in pay status. Enter the benefit form payable to the beneficiary or alternate payee (as applicable). Enter a code from the Table

DRAFT**DRAFT**

of Benefit Forms on page 6 below and fill in the relevant information.

5. Missing Participant Who Is In Pay Status

Line 5 applies to a participant, beneficiary, or alternate payee who entered pay status before the deemed distribution date.

- a. Form of benefit for a missing participant in pay status. Enter the benefit form that was in pay status as of the first missed payment. Enter a code from the Table of Benefit Forms on page 6 below and fill in the relevant information.

Table of Benefit Forms

Benefit Form Code	Benefit Form Applicable to Missing Participant See 29 CFR Part 2619 for definitions of benefit forms 1 - 8 listed below.
1	Life annuity payable periodically 29 CFR § 2619.44(c)
2	Annuity certain payable periodically 29 CFR § 2619.44(d)
3	Annuity certain and continuous 29 CFR § 2619.44(e)
4	Temporary life annuity 29 CFR § 2619.44(f)
5	Joint and survivor annuity (contingent basis) 29 CFR § 2619.44(i)
6	Annuity certain and joint and survivor (contingent basis) thereafter 29 CFR § 2619.44(l)
7	Single life cash refund annuity 29 CFR § 2619.44(m)
8	Installment refund annuity 29 CFR § 2619.44(n)
9	Single sum
10	Other benefit form Use the space provided on Attachment B to describe the benefit form that is payable with respect to the missing participant. Include, as applicable, the percentage of the missing participant's monthly benefit amount that is payable to each beneficiary on the missing participant's death, the period during which the missing participant's benefit is payable, the period during which each beneficiary's benefit is payable, and any other provisions that distinguish the benefit form. For example, in the case of a step-down benefit, state when and by how much the benefit is reduced.

DRAFT

DRAFT

6. Employee Contributions

- a-c. **Mandatory Employee Contributions.** Report mandatory employee contributions that fund a portion of the missing participant's accrued benefit under the plan and interest thereon to the deemed distribution date.

Note: The designated benefit amount reported on line 2a must be no less than the amount of mandatory employee contributions plus interest to the deemed distribution date (line 6c).

7. Residual Assets

- a. **Residual Assets.** Enter the amount of any residual assets allocable to the participant in accordance with section 4044(d) of ERISA and the PBGC's regulation on Allocation of Assets (29 CFR Part 2618) (and earnings thereon to the date you pay PBGC). If no residual assets are being paid concurrent with this filing, enter \$0. If residual assets will be paid later, see instructions for amended filings under "What and When to File" on page 2 above.

V. CHANGES TO POST-DISTRIBUTION CERTIFICATION (Forms 501 and 602)**A. Changes to Line-by-Line Instructions**

Note: Line references are to Form 501. Line numbers are the same on Form 602, except where noted.

4. Date of Distribution

Substitute the following for the existing instruction:

Enter the date on which the distribution of assets was completed for participants other than (1) missing participants for whom designated benefits are paid to the PBGC, (2) late-discovered participants for whom distribution has not been made, and (3) recently missing participants for whom distribution has not been made.

- 5b. **Were participants and beneficiaries provided with the name and address of the insurer(s) no later than 45 days before the date of distribution? (Line 6b on Form 602)**

Add the following at the end of the existing instruction:

Check "Yes" if you provided the name and address of the insurer(s) no later than 45 days before the date of distribution to each individual (other than a missing participant) for whom an annuity was purchased.

6. **Were you able to locate all participants? (Line 7 on Form 602)**

Substitute the following for the existing instruction:

For benefit distributions in plan years beginning on or after [effective date of 29 CFR Part 2629], if you are not able to locate a participant or beneficiary, you must either purchase an irrevocable commitment from an insurer for that participant or beneficiary or pay the missing participant's benefit to the PBGC.

DRAFT

DRAFT

If the plan has a missing participant, check "Yes" on line 6a (line 7a on Form 602), skip line 6b (line 7b on Form 602), and submit a Schedule MP with the Post-Distribution Certification.

- 7a. **Has a copy of the annuity contract, certificate, or written notice been provided to each participant and beneficiary receiving benefits in the form of irrevocable commitments? (Line 8a on Form 602)**

Add the following at the end of the existing instruction:

Enter "Yes" if you provided a copy of the annuity contract, certificate, or written notice to each individual (other than a missing participant) for whom an annuity was purchased.

10. **Summary of distribution of benefit liabilities**

Add the following at the end of the existing instruction:

Include annuities purchased for missing participants in "Annuities"; designated benefits paid to the PBGC in "Rollovers"; and recently-missing participants and late-discovered participants for whom distributions are not complete when the Post-Distribution Certification is sent in "No distribution."

If there are any recently-missing participants or late-discovered participants in the "No distribution" category, mark the top of the first page of the Post-Distribution Certification: "PRELIMINARY - Recently-Missing Participant," "PRELIMINARY - Late-Discovered Participant," or both, as applicable.

The plan administrator will have to file an amended Post-Distribution Certification to report distributions for these individuals.

- B. Amended Filings.** The plan administrator must file an amended Post-Distribution Certification to report distributions to participants and beneficiaries or payments to the PBGC not included in the original Post-Distribution Certification. The amended Post-Distribution Certification must be filed no later than 120 days after the deemed distribution date.

If you file an amended Post-Distribution Certification, mark "Amended" at the top. Complete lines 1 - 4 and report on the form only information about the distributions made since the original Post-Distribution Certification was filed.

If you report any payment to the PBGC or purchase of annuities for a missing participant, you must file with the amended Post-Distribution Certification a Schedule MP (including any applicable attachments). If you are making a payment to the PBGC, send the payment and payment voucher to:

[LOCKBOX ADDRESS]

DRAFT

DRAFT

SCHEDULE MP (to PBGC Forms 501 and 602)

Plan Administrators must file the Schedule MP with Form 501 or 602 if a plan has purchased irrevocable commitments for one or more missing participants or is paying amounts to PBGC for one or more missing participants. (See page 2 of instructions for plans required to file Schedule MP.)

Check here if you previously filed a Schedule MP for this plan

1. Plan Identification Information

a. Plan Name _____
 b. EIN/PN _____ c. PBGC Case No. _____

2. Missing Participant Information

a. Number of missing participants for whom irrevocable commitments purchased _____
 b. Number of missing participants for whom amounts are paid to PBGC _____
 c. Deemed distribution date ____/____/____

3. Amounts Paid to PBGC

a. \$ _____ Total designated benefits
 b. \$ _____ Other amounts payable for missing participants (see instructions)
 c. \$ _____ Total amount paid to PBGC (line 3a + line 3b)

-- DO NOT SEND PAYMENT WITH THIS FORM. SEND PAYMENT TO PBGC'S LOCKBOX WITH MISSING PARTICIPANT PAYMENT VOUCHER --

Certifications

Plan Administrator Certification

I, the Plan Administrator, certify that:

I have conducted a diligent search for all missing participants for whom I am paying amounts to PBGC (see definition of "diligent search" in 29 CFR § 2629.4).

To the best of my knowledge and belief, the information contained in this filing is true, correct, and complete.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Plan administrator name/title _____

Company _____

Address _____

Phone number _____

Plan administrator signature and date _____

Enrolled Actuary Certification

(Not required if all benefits for all missing participants are distributed through the purchase of irrevocable commitments from an insurer)

I, the Enrolled Actuary, certify that:

To the best of my knowledge and belief, the actuarial information contained in this filing is true, correct, and complete and the designated benefits and/or other amounts payable for missing participants have been calculated in accordance with applicable provisions of ERISA and the regulations thereunder.

In making this certification, I recognize that knowingly and willfully making false, fictitious, or fraudulent statements to the PBGC is punishable under 18 U.S.C. 1001.

Enrolled actuary name _____

Enrolled actuary ID# _____

Company _____

Address _____

Phone number _____

Enrolled Actuary signature and date _____

DRAFT

ATTACHMENT A

DRAFT

Annuity Purchase Information

Complete Attachment A (or submit the required information on a separate page) and attach to Schedule MP if the plan purchased irrevocable commitments from an insurer for one or more missing participants. If any missing participant's annuity certificate number is not available, report it to the PBGC when it becomes available. If irrevocable commitments were purchased from more than one insurer, please complete a separate sheet for each insurer.

Plan Name _____ PBGC Case No. _____

Check here if you previously filed an Attachment A for this plan ___

Insurance Company Information

Name of insurer _____
 (Name must be the full official name of record)

Address of insurer _____

Insurance company contact name _____ Phone No. _____

Policy number _____

List of Annuitized Missing Participants

	<u>Name</u>	<u>Social Security No.</u>	<u>Date of Birth</u>
1.	Missing Participant _____ Spouse or other beneficiary _____ Certificate Number _____	_____	__/__/__
2.	Missing Participant _____ Spouse or other beneficiary _____ Certificate Number _____	_____	__/__/__
3.	Missing Participant _____ Spouse or other beneficiary _____ Certificate Number _____	_____	__/__/__
4.	Missing Participant _____ Spouse or other beneficiary _____ Certificate Number _____	_____	__/__/__
5.	Missing Participant _____ Spouse or other beneficiary _____ Certificate Number _____	_____	__/__/__

(Continue on a separate page, if necessary, and identify plan name, PBGC case no. and insurer at the top of the page.)

DRAFT

ATTACHMENT B

DRAFT

Individual Information

Complete Attachment B and attach to Schedule MP for each missing participant for whom an amount is paid to PBGC.

Plan Name _____ PBGC Case No. _____

Check here if you previously filed an Attachment B for this individual

1. Identification of Missing Participant

- a. Name _____ b. Social Security No. _____
- c. Last-known address _____
- d. Maiden name (if different) _____ Other name(s) ever used _____
- e. Date of birth ___/___/___ f. Sex: Male Female
- g. Status (check one) (1) Participant (2) Spouse or other beneficiary (3) Alternate payee
 Spouse Other (Attach copy of QDRO)

2. Amounts Paid to PBGC

- a. \$ _____ Designated Benefit
 Missing participant's designated benefit category:
 (check no more than one from items (1) - (4))
 _____ (1) Mandatory lump sum _____ (2) De minimis lump sum
 _____ (3) No lump sum _____ (4) Elective lump sum
- b. \$ _____ Other amounts paid, if any (line 6f + line 7a)
- c. \$ _____ Total (line 2a + line 2b)

3. For a participant who is missing and had not entered pay status as of the deemed distribution date, complete the following:

- a. Automatic form of retirement benefit payable with respect to the participant under the plan.

Married participant:

Code from table on page 6 in instructions: <div style="border: 1px solid black; width: 80px; height: 20px; margin: 5px auto;"></div>	% Survivor percentage
If you entered code 10, "Other benefit form," describe the form below:	# of Monthly payments in period certain
Other:	\$ _____ Fixed sum (use only for codes 7 & 8)

Unmarried participant:

Code from table on page 6 in instructions: <div style="border: 1px solid black; width: 80px; height: 20px; margin: 5px auto;"></div>	% Survivor percentage
If you entered code 10, "Other benefit form," describe the form below:	# of Monthly payments in period certain
Other:	\$ _____ Fixed sum (use only for codes 7 & 8)

- b. Participant's earliest early retirement date (or the deemed distribution date, if later). ___/___/___
- c. Did the participant and last-known spouse waive the QPSA provided under the plan? Yes No N/A
 (If yes, attach a copy of the waiver and skip questions 4d and 4e below.)
- d. Last-known spouse's name _____ Social Security No. _____
 (if applicable)
- e. Spouse's earliest possible QPSA annuity starting date under the plan (or deemed distribution date, if later). ___/___/___
 (If the QPSA is payable immediately upon the participant's death, enter the deemed distribution date.)

DRAFT

Page 2

DRAFT

4. For a beneficiary or alternate payee who is missing and had not entered pay status as of the deemed distribution date, complete the following:

a. Form of benefit to which the beneficiary or alternate payee is entitled.

Code from table on page 6 in instructions: <input type="text"/>	% Survivor percentage
If you entered code 10, "Other benefit form," describe the form below:	# of Monthly payments in period certain
	\$ <input type="text"/> Fixed sum (use only for codes 7 & 8)
Other:	

b. Earliest date the beneficiary or alternate payee could commence receiving benefits (or the deemed distribution date, if later). / /

5. For a participant, beneficiary, or alternate payee who is missing and had entered pay status as of the deemed distribution date, complete the following:

a. Form of benefit that was in pay status. (Attach a copy of form election, if any.)

Code from table on page 6 in instructions: <input type="text"/> If you entered code 10, "Other benefit form," describe the form below:	% Survivor percentage
	# of Monthly payments in period certain
	\$ <input type="text"/> Fixed sum (use only for codes 7 & 8)
	/ / <input type="text"/> Date of first missed monthly payment
	\$ <input type="text"/> Amount of first missed monthly payment
Other:	
% Plan interest rate for missed payments	

b. Name of missing participant's beneficiary or beneficiaries, if any. (Attach a copy of designation form, if any.)

1. Name Relationship to missing participant (e.g., spouse, daughter, estate, etc.)
2. Name Relationship to missing participant

6. Employee Contributions

Complete lines a, b and c if part of the missing participant's designated benefit is attributable to mandatory employee contributions.

- a. \$ Mandatory employee contributions
- b. \$ Interest credited to the deemed distribution date
- c. \$ Total (line 6a + 6b)

Complete lines d, e and f if any additional amount is being paid to PBGC for voluntary employee contributions held in a separate account.

- d. \$ Voluntary employee contributions
- e. \$ Earnings credited to the date sent to PBGC
- f. \$ Total (line 6d + 6e)

7. Residual Assets

- a. Residual plan assets \$
- b. Date residual assets are sent to PBGC / /

8. Attached Documents

Check and attach the following documents as applicable:

- (a) Waiver of Qualified Pre-retirement Survivor Annuity (QPSA)
- (b) Election of optional benefit form
- (c) Designation(s) of beneficiary
- (d) Qualified Domestic Relations Order (QDRO)

DRAFT

DRAFT

MISSING PARTICIPANTS PAYMENT VOUCHER

PAYMENT OF DESIGNATED BENEFITS,
VOLUNTARY EMPLOYEE CONTRIBUTIONS IN SEPARATE ACCOUNT,
OR RESIDUAL ASSETS

Plan Administrator Contact:

Name _____ Telephone _____

Plan Name _____
(as it appears on the Post-Distribution Certification)

EIN/PN _____ PBGC Case Number _____

Amount Enclosed \$ _____ Check No. _____
(Enter the plan's EIN/PN and PBGC Case No. on the check)

Date Schedule MP was sent to the PBGC ___/___/___

SEND TO: Pension Benefit Guaranty Corporation
[LOCKBOX ADDRESS]