

**PBGC**

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## PBGC PARTICIPANT & PLAN SPONSOR ADVOCATE

Pension Counseling and Information Program  
National Training Conference

May 9, 2018



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## HISTORY & STATUTE

PBGC Participant and Plan Sponsor Advocate

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### History

- PBGC Advocate role long under consideration by Congress.
- Concerns by Congress over persistent contacts by sponsors/participants regarding PBGC interactions.
- MAP-21, 2012, ERISA amended, sec. 4004, "Participant and Plan Sponsor Advocate."
- Nov. 2013 PBGC Board appointed first Advocate.
- Inaugural Annual Report issued Dec. 2014.
- Reorganization of the "Office of the Advocate" in Oct. 2015.

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**Advocate Statutory Duties**

1. Act as a liaison between PBGC, DB plan sponsors, and participants...;
2. Advocate for the full attainment of the rights of participants...;
3. Assist plan sponsors and participants in resolving disputes...;
4. Identify persistent problems...;
5. Propose changes in administrative practices...;
6. Identify potential legislative changes; and
7. Refer instances of fraud, waste, and abuse... to Office of the Inspector General.

ERISA § 4004(b)

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**Advocate Annual Report**

**Content:**

- Submit by Dec. 31.
- Summarize requests for assistance...
- Identifies significant problems and legislative changes...

**Submission:**

- Concurrently: PBGC committees of jurisdiction, Secretary of Labor, PBGC Director...

ERISA § 4004(e)

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**Advocate 2017 Annual Report – Notable Themes**

- Ease of doing business with PBGC
- Lack of transparency and certainty
- Lack of timeliness
- Need for substantive discussion to facilitate prompt settlement
- Cohesion/coordination among and between PBGC departments

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## PLAN SPONSOR ISSUES

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### PBGC Program Areas – Case Examples

- Plan Terminations (distress, standard, involuntary) & liability collection
- Early Warning Program
- Coverage questions
- ERISA 4010 filings
- ERISA 4062(e)

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### PBGC Positive Steps

- Pilot Mediation Program.
- Voluntary pre-filing consultation for distress terminations.

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# PARTICIPANT ISSUES

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## Participant Issues – Case Examples

- Potentially Omitted Participants (POPs)
  - Standard Terminations
  - Effects of corporate events
- Complex benefit entitlements
- Requests for information from PBGC

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## PBGC Positive Steps

- Missing participants final rule.\*
- Inter-agency coordination to locate missing participants.
- PBGC to review rule for administrative review of agency determinations.

\*82 FR 60800 (Dec. 22, 2017)

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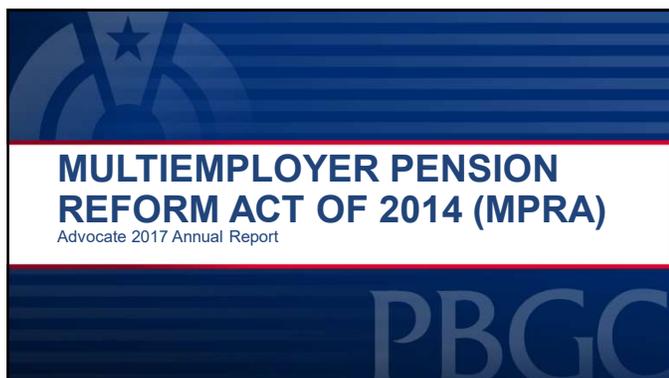
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**MULTIEMPLOYER PENSION REFORM ACT OF 2014 (MPRA)**  
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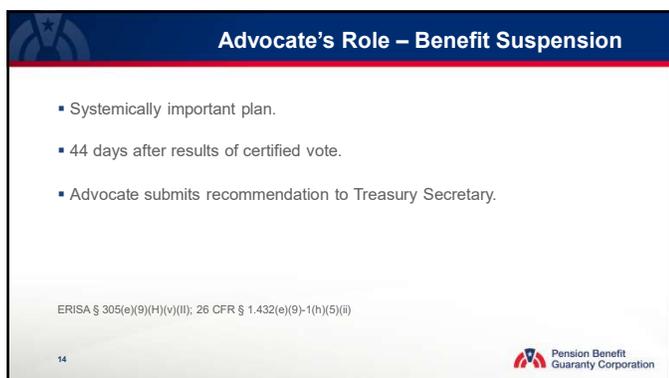
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**Advocate's Role – Benefit Suspension**

- Systemically important plan.
- 44 days after results of certified vote.
- Advocate submits recommendation to Treasury Secretary.

ERISA § 305(e)(9)(H)(v)(II); 26 CFR § 1.432(e)(9)-1(h)(5)(ii)

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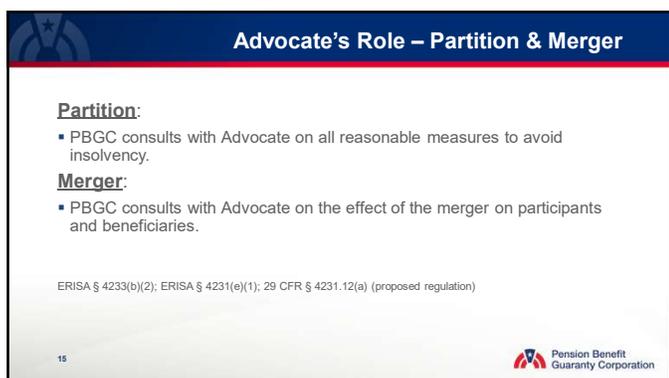
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**Advocate's Role – Partition & Merger**

**Partition:**

- PBGC consults with Advocate on all reasonable measures to avoid insolvency.

**Merger:**

- PBGC consults with Advocate on the effect of the merger on participants and beneficiaries.

ERISA § 4233(b)(2); ERISA § 4231(e)(1); 29 CFR § 4231.12(a) (proposed regulation)

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**De-risking Study – Notable Findings**

**Top Factors Influencing De-risking Activity:**

- Accounting/earnings/funding volatility
- Balance sheet liability management
- PBGC premiums

**Risk transfer is visibly on the rise with no sign of slowing down**

- Reducing PBGC premium levels or stemming their rapid growth is likely to decrease de-risking activity
- Effect of de-risking activities on single-employer defined benefit system

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**Office of the Advocate Contact Information**

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## **PBGC Expanded Missing Participant Program - DRAFT**

The Pension Benefit Guaranty Corporation (PBGC) issued a final rule on December 22, 2017 to expand its Missing Participants Program to include participants and beneficiaries in terminating defined contribution plans, such as 401(k)s, PBGC-insured multiemployer plans and small professional service defined benefit (pension) plans. The new rule applies to 401(k)-type plans and small professional service plans that terminate on or after January 1, 2018. The program will be available to PBGC-insured multiemployer plans that terminate after 2018.

The Missing Participants Program for terminated single-employer pension plans has helped countless participants locate their benefits by providing a searchable database of participants who could not be located by their former employers at the time of plan termination. Employers terminating plans are required to pay out all benefits owed to participants and beneficiaries. Participants who cannot be found are listed on the PBGC online database which includes the information necessary for participants to locate their benefits.

The success of the single-employer Missing Participants Program prompted Congress to expand the program to include additional types of plans. The Pension Protection Act of 2006 (PPA) authorized the expansion to include most defined contribution plans, such as 401(k) plans, PBGC-insured multiemployer plans and professional service plans with 25 or fewer participants, such as plans of medical or dental practices.

In the expanded Missing Participants Program employer participation varies by plan type. Participation is required for PBGC-insured plans, namely single-employer pension plans and multiemployer plans. The final rule makes employer participation voluntary for 401(k)-type plans and small professional service plans.

The expanded program presents two ways for employers with terminating defined contribution plans (401(k)s) and small professional plans to participate in the program.<sup>1</sup> Following a diligent search an employer may transfer missing participant accounts to the PBGC for future payment. The names of these missing participants will be included automatically in the PBGC's searchable online data base. Alternatively, an employer may notify PBGC of the names and account information for missing participants whose accounts were transferred to IRA providers, federally insured bank accounts or state unclaimed property funds according to Labor Department rules.<sup>2</sup> The names and account locations will be posted on the missing participant data base.

The Pension Protection Act gave PBGC the option of requiring employers terminating 401(k)-type plans and small professional service plans to report missing participant names and account locations when the participant accounts are not transferred to the PBGC. However, the PBGC chose to make this reporting of missing participant information voluntary. The PBGC states in the preamble to the rule that in the future they will reevaluate whether the reporting of missing participants should remain voluntary.

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<sup>1</sup> The Missing Participant Program for defined contribution plans includes 403(b) plans.

<sup>2</sup> See Employee Benefits Security Administration, Field Assistance Bulletin 2014-01. <https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/fab2014-1.pdf>

A missing participant is someone who was not found after a diligent search. The final rule specifies criteria for a diligent search that differ by plan type. Employers terminating defined benefit plans, either single-employer, multiemployer or small professional service plans, must use a commercial locator service. For small benefit amounts of \$50 or less employers may use a records search method. The records search method includes, to the extent feasible and reasonable, searching plan and sponsor records, searching welfare plans, contacting each beneficiary, and using a free internet search tool.

Employers terminating defined contribution plans, such as 401(k)s, must follow the search steps in Labor Department guidance before listing participants as missing with the PBGC. This applies to employers transferring accounts to the PBGC and to employers who are reporting missing participants to be listed on the PBGC website. The required Labor Department search steps include sending a certified letter to the last known address, checking related plan and employer records, contacting designated beneficiaries, and using free electronic search tools.<sup>3</sup>

Other highlights of the proposed rule include:

- The online database for missing participants will include missing participants from all plans, both defined benefit and 401(k)-type plans.
- Employers transferring accounts to the PBGC must transfer the accounts of all the plan's missing participants. On the other hand, employers simply notifying the PBGC of missing participants, and not transferring account balances, are not required to notify the PBGC of all missing participants.
- The PBGC program will accept small account balances.
- There is a fee of \$35 per missing participant for accounts transferred to the PBGC with an exception for small accounts under \$250. No fee will be charged to employers who just report the names and account locations of missing participants.
- The default pay-out option for accounts, other than small accounts of \$5000 or less, will be an annuity, and for married participants, a joint and survivor annuity. A lump sum distribution may be elected instead of an annuity in 401(k)-type plans. Elective lump sums will be available for defined benefit plans where they were permitted by plan rules.
- Lump-sum distributions to 401(k)-type plan participants will include interest calculated at the Federal mid-term rate.

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<sup>3</sup> Ibid.