

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Parts 2606, 2616, 2617, and 2629**

RIN 1212-AA81

**Missing Participants****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation is amending its regulations 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.

**EFFECTIVE DATE:** January 1, 1996. The missing participants program is effective for distributions in plan years beginning on or after January 1, 1996.

**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:** On August 24, 1995, the PBGC published in the Federal Register (60 FR 44158) a proposed rule to implement section 4050 of ERISA.

When a participant or beneficiary cannot be located in a standard termination a plan administrator can either purchase an annuity or pay funds to the PBGC. If funds are paid to the PBGC, the PBGC will search for the participant or beneficiary and pay benefits to those who are located.

The missing participants regulation describes the "diligent search" that must be made for a missing participant before funds are paid to the PBGC. (The term "missing participant" includes beneficiaries as well as participants, and thus may include alternate payees under qualified domestic relations orders.) It also sets forth rules on how to determine the amount to be paid to the PBGC (the "designated benefit"), how to pay funds and submit information to the PBGC, and how the PBGC will pay benefits when missing participants (or their survivors) are found.

There were five statements commenting on the rule.

**Diligent Search**

A plan administrator must conduct a diligent search before paying a missing

participant's benefit to the PBGC. Commenters suggested that the PBGC should not require plan administrators to use a commercial locator service. They suggested that it should be sufficient if the plan administrator uses the Internal Revenue Service or Social Security Administration letter-forwarding programs, or simply uses the search methods required by the prudence requirements of Title I of ERISA. One commenter suggested that the PBGC should allow searches to be conducted by persons other than the plan administrator and to start before the plan begins the termination process.

The PBGC searches for participants in plans that the PBGC trustees. It is the PBGC's experience that commercial locator services are cost-effective, timely, and thorough. The IRS and SSA programs simply forward letters, and a missing participant who receives a letter may or may not contact the plan. Furthermore, IRS and SSA letter forwarding times may vary, and the forwarding area may in some cases be limited to one region of the country.

The diligent search requirement is independent of the prudence requirement of ERISA. The diligent search requirement is intended to ensure that plan administrators make every effort to search out a missing participant before turning the effort over to the government.

The PBGC is changing the regulation to allow a search by someone other than the plan administrator, as long as the plan administrator certifies on the missing participant forms that a diligent search was made, and to allow searches to commence up to six months before the termination process begins. The final regulation also makes clear that missing participants cannot be charged, nor their benefits reduced, to pay search costs.

**Payments to the PBGC (Designated Benefit)**

One commenter questioned the assumptions used for calculating the designated benefit. The commenter felt that the \$300 administrative load was inappropriate, especially for small benefits, that the designated benefit should not be based on the "most valuable" benefit, and that, in most cases, the plan administrator should be able to use plan assumptions.

The regulations include an explicit \$300 per participant administrative load that the plan administrator must pay when valuing the participant's benefit using the missing participant annuity assumptions. This load is a simplified version of the administrative load that must be paid under the PBGC's single-

employer annuity valuation regulation. (The "missing participant lump sum assumptions" include an implicit load; insurance company annuity rates include similar loads.) The final regulation provides that the \$300 load will not apply to benefits whose value is \$3,500 or less.

The final regulation retains the proposed structure of the designated benefit determination rules. Use of the most valuable benefit is consistent with insurance company annuity pricing practices. Use of the PBGC annuity assumptions is consistent with section 4050(b)(2)(C), which makes the designated benefit equal to the greater of the lump sum (under plan assumptions) or the value of the annuity (under PBGC assumptions).

**Benefit Payments by the PBGC**

The PBGC received no comments on provisions regarding its payment of benefits, but is making clarifications in those provisions.

**Procedural Requirements**

One commenter stated that the PBGC's standard termination process already had sufficient procedural deadlines and that the PBGC should not add additional deadlines for the missing participants program. The commenter also felt that the six-year recordkeeping requirement was too long.

The regulation coordinates the missing participant filing requirements with the termination requirements. The proposed regulation's changes from the standard termination deadlines provide relief from situations where, late in the termination process, the plan administrator located a missing participant ("late-discovered participant") or discovered that a participant was missing ("recently-missing participant"). The final regulation provides further relief for these situations by allowing the PBGC in its sole discretion, where there are unusual circumstances, to grant additional extensions.

The final regulation leaves the recordkeeping requirement as six years. This parallels the recordkeeping period for the rest of the termination program and also the recordkeeping provisions of section 107 of ERISA.

Finally, in response to a commenter's question, the PBGC reminds plan administrators that ERISA section 4071 prescribes penalties for failure to provide certain material information timely, including information under the missing participants regulation.

## Forms and Instructions

One commenter claimed that the PBGC does not need the information in items 3, 4, and 5 of Attachment B to Schedule MP. This is minimal and simple information that tells the PBGC what benefit to pay and when to pay it. The information is essential to the proper functioning of the missing participants program.

In response to a comment, the PBGC has revised the instructions for Schedule MP to clarify that unavailable or inapplicable information need not be submitted. The PBGC has also made other minor modifications to the missing participant forms and instructions.

The PBGC has implemented the revisions to Forms 501 and 602 and their instructions that were published with the proposed missing participants regulation. The termination forms booklets, which will include Schedule MP (with attachments and instructions), can be obtained from the PBGC's Standard Termination Compliance Division, 1200 K Street, N.W., Suite 930, Washington, DC 20005-4026, or by calling 202-326-4000 (202-326-4179 for hearing-impaired persons).

## Compliance With Rulemaking and Paperwork Guidelines

The PBGC has determined that this action is not a "significant regulatory action" under the criteria 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 additional economic impact on a substantial number of small entities, given existing procedures. 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.

The collections of information contained in this part, and the forms and instructions to be used under the missing participants program, have been approved by the Office of Management

and Budget under OMB control number 1212-0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## 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, 29 CFR chapter XXVI is amended 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—beneficiary of deceased missing participant.
- 2629.11 Limitations.
- 2629.12 Special rules.
- 2629.13 OMB control number.

Appendix A to Part 2629—Examples of designated benefit determinations for missing participants under § 2629.5.

Appendix B to Part 2629—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 for 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 a payment made in accordance with § 2629.12) is in a plan year beginning on or after January 1, 1996.

### § 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 (determined without regard to the provisions of this part) 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, 1995-1 C.B. 80 (Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402);

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

(4) Without making the adjustment for expenses provided for in § 2619.49(a)(4) of this chapter; and

(5) By adding \$300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than \$3,500.

(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 under a plan, that the plan administrator has made or (except for administrative delay or a waiting period) would have made one or more benefit payments.

(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 whom the plan administrator discovers to be a missing participant on or after the 90th day before the deemed distribution date.

(p) Unloaded designated benefit means the designated benefit reduced by \$300; except that the reduction shall not apply in the case of a designated benefit determined using the missing participant annuity assumptions

without adding the \$300 load described in paragraph (i)(5) of this section.

#### **§ 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 from an insurer an irrevocable commitment that satisfies the requirements of § 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 diligent search shall be made for each missing participant whose designated benefit (or voluntary employee contributions under § 2629.12(d)(2)) 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 search—

(1) Begins not more than 6 months before notices of intent to terminate are issued and is carried on 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) Includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and

(3) Includes use of a commercial locator service to search for the missing participant (without charge to the missing participant or reduction of the missing participant's plan benefit).

#### **§ 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 maximum 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 as of the deemed distribution date 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 as of the deemed distribution date, the most valuable benefit is the pay status benefit. For a missing participant whose benefit is not in pay status as of the deemed distribution date, 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 as of the deemed distribution date, 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 not in pay status as of the deemed distribution date, the form and beneficiary of the participant's benefit are the form of benefit and beneficiary of the pay status benefit.

(3) Beneficiary. A missing participant who is a beneficiary, and whose benefit is not in pay status as of the deemed distribution date, 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 as of the deemed distribution date, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the pay status benefit.

(4) Examples. See Appendix A to this Part 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 so indicate in that filing and submit an amended filing (including an amended post-distribution certification) within 120 days after the deemed distribution date (subject to extension under § 2629.12(h)) in accordance with the missing participant forms and instructions.

(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 (subject to extension under § 2629.12(h)) 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. Interest assessed under this paragraph shall be deemed paid in full if payment of the amount assessed is received by the PBGC within 30 days after the date of a PBGC bill for such amount.

(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, determining benefits to be paid by the PBGC under this part, and substantiating diligent searches.

(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 (or his or her beneficiary or estate) for whom a plan administrator paid a designated benefit to the PBGC, 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 to this part 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 elected by the missing participant (or the beneficiary), which shall not be 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 benefit paid will be actuarially equivalent to the designated benefit, i.e., each monthly (or other periodic) 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 the PBGC begins paying benefits.

(a) Missing participant whose benefit was not in pay status as of the deemed distribution date. The PBGC will pay the benefit of a missing participant whose benefit was not in pay status as of the deemed distribution date 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 (which shall not be 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 benefit that is actuarially equivalent to the unloaded designated benefit, i.e., each monthly (or other periodic) 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 was in pay status as of the deemed distribution date. The PBGC will pay the benefit of a missing participant whose benefit was in pay status as of the deemed distribution date as follows:

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

(2) Amount of benefit. The PBGC will pay the monthly (or other periodic) amount of the pay status benefit, 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—beneficiary of 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 deceased missing participant's benefit was not in pay status as of the deemed distribution date. The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was not in pay status as of the deemed distribution date as follows:

(1) General rule—(i) Beneficiary. The PBGC will pay a benefit to the surviving spouse of a missing participant who was a participant (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 monthly (or other periodic) 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 (which shall not be 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 deceased missing participant's benefit was in pay status as of the deemed distribution date. The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) Beneficiary. The PBGC will pay a benefit to the beneficiary (if any) of the benefit that was in pay status as of the deemed distribution date.

(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 when the lump sum is paid. 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 beginning when the beneficiary is located.

(5) Spouse deceased. If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC shall pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

#### **§ 2629.11 Limitations.**

(a) Exclusive benefit. The benefits provided for under this part 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 trusteed 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 notified of his or her right to a benefit.

#### **§ 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 (determined without regard to the provisions of this part) 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 (subject to extension under § 2629.12(h)).

(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 or section 414(p) of the Code 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 made mandatory contributions (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. Unless the PBGC otherwise determines, 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 of 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) plus any benefit to which funds under section 4022(c) of the Act have been allocated.

(g) Similar rules for later payments. If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (e.g., upon audit of the termination), 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.

(h) Discretionary extensions. The PBGC may in its sole discretion extend the 120-day amended filing periods in § 2629.6(a) (2)(ii) and (3) and the 90-day distribution period in paragraph (a) of this section—

(1) Where a recently-missing participant becomes a late-discovered participant,

(2) Where the PBGC returns the designated benefit of a missing participant who is located quickly to the plan administrator under § 2629.12(b), or

(3) In other unusual circumstances.

(i) Payments beginning after age 70½. If the PBGC begins paying an annuity under § 2629.9(a) or 2629.10(a) to a participant or a participant's spouse after the January 1 following the date when the participant attained or would have attained age 70½, the PBGC shall pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on such January 1. The PBGC shall also pay lump sum equivalents under this paragraph (i) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (i) shall increase the total value of the benefits payable with respect to a missing participant.)

#### § 2629.13 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of

Management under OMB Control Number 1212-0036.

#### Appendix A to Part 2629—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 ( $12 \times \$630 \times 5.4307$ ). The designated benefit is equal to this value plus an expense adjustment of \$300, or a total of \$41,356.

#### Appendix B to Part 2629—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 on or 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 (as permitted by the plan). 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 x 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)."

**§ 2617.3 [Amended]**

7. In § 2617.3, paragraph (b)(5) is amended by removing the words "and (f), in satisfaction" and adding in their place the words "and (f) (or, where applicable, within the time prescribed in part 2629 of this chapter), in satisfaction".

**§ 2616.6 [Amended]**

**§ 2617.6 [Amended]**

8. In §§ 2616.6 and 2617.6, paragraph (a) is amended by removing the words "this section, when a plan" and adding in their place the words "this section (or, where applicable, in part 2629 of this chapter), when a plan".

**§§ 2616.7, 2617.8 [Amended]**

9. 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"; and by removing the words "Case Operations and Compliance Department" and adding in their place the words "Standard Termination Compliance Division, Insurance Operations Department".

**§ 2617.25 [Amended]**

10. In § 2617.25, paragraph (b)(2)(i) is amended by removing the words "Case Operations and Compliance Department" and adding in their place the words "Standard Termination Compliance Division, Insurance Operations Department".

**§ 2616.29 [Amended]**

11. Paragraph (a)(1) of § 2616.29 is amended by adding before the period at the end of the first sentence the words "or, where applicable, within the time prescribed in part 2629 of this chapter".

**§ 2617.28 [Amended]**

12. Paragraph (a)(1) of § 2617.28 is amended by adding parentheses around the words "or, if applicable, the date on which the PBGC revokes the notice of noncompliance" and by adding before the period at the end of the paragraph the words "or, where applicable, within the time prescribed in part 2629 of this chapter".

**§§ 2616.29, 2617.28 [Amended]**

13. 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 § 2629.6(a) of this chapter, the plan administrator timely files an amended post-distribution certification that otherwise satisfies all applicable requirements."

14. 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, D.C., this 22nd day of November, 1995.

Robert B. Reich,  
*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,  
*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

[FR Doc. 95-29120 Filed 11-30-95; 8:45 am]

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