

Missing Participants, Locators of Lost Funds

Issue Date

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A. Background and Introduction

PBGC pays pension benefits to participants, beneficiaries, and alternate payees in trusted plans. From time to time, a trusted plan participant may be unlocatable by PBGC if a current address is not on file with the agency. PBGC pays benefits to the missing participant, or beneficiaries, when they are located.

PBGC administers a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help those participants and beneficiaries find and receive the benefits being held for them. PBGC uses various methods, which currently include publishing the names of the participants in an online searchable database. The database allows individuals on their own to search for and identify a potential entitlement to a pension, when the individual suspects that there may be unpaid funds in a plan that terminated.

PBGC has long had a practice regarding unclaimed property locators (a/k/a “heir finders,” “assets locators,” “property locators”) and the payment of fees associated with these property locators. PBGC does not pay a finder’s fee or otherwise cooperate with or facilitate a property finder’s usage of PBGC’s missing participant database. PBGC does not cooperate with the collection of finder’s fees from a payee.

Since 2003, however, PBGC has provided formal guidance on locators in Internal Guidance Power of Attorney. The guidance provides that PBGC will not allow the agent in power of attorney to have the principal’s payment mailed to anyone in an effort to collect a finder’s fee.

In 2006, the Pension Protection Act expanded the missing participants program (the “Missing Participants Program”) under ERISA section 4050, to open the program to most terminated defined contribution plans, certain terminated small professional defined benefit plans, and terminated multiemployer pension plans. PBGC implemented this expanded program in early 2018.

As part of that program expansion, PBGC anticipated an ongoing increase in its population of unlocatable participants **and** an increased public awareness of the missing participant database due to the expanded universe of plans included in the program. As a result, PBGC anticipated an increase in the number of missing participant related inquiries by property locators.

In the first edition of this internal guidance, PBGC formalized and clarified its policies with respect to property locators. This internal guidance does not apply to property locators (i.e., skip tracers, private investigators, or lawyers) that PBGC enters into an agreement with to assist PBGC in finding participants.

In this second edition, PBGC clarifies those powers (identified Power of Attorney in internal guidance) that it will recognize with respect to a PBGC benefit and a power of attorney naming the property locator as agent for a PBGC customer. By doing so, PBGC is revising its internal guidance with respect to probable locators to further limit its

recognition of powers to a probable locator named as agent in a power of attorney. The possible powers no longer include several previously permitted actions, including applying for benefits or changing the

customer's address. Also, PBGC is specifying the list of applicable powers for a probable locator in Internal Guidance Power of Attorney only, to eliminate redundancy between the two policies.

B. Scope and Effective Date

This internal guidance statement applies to PBGC benefit payment operations with respect to participants, beneficiaries, and alternate payees in PBGC-trusted plans and to benefits transferred to PBGC under the Missing Participants Program.

This internal guidance is effective upon issuance.

C. Definitions

For purposes of this internal guidance, the following definitions apply:

1. **Agent.** The agent is the person who is authorized under a POA to act on behalf of the principal. The agent may also be referred to in the document as a representative, attorney-in-fact, holder, grantee or donee. (See internal guidance Power of Attorney)
2. **Probable Locator.** As determined by PBGC, a person or firm (or an employee or representative of a firm) appears to be engaged in the business of offering to find lost property (or informing an owner about how to obtain unclaimed property) in exchange for a fee or percentage of the value of the property.

D. General

1. **Payment of Fees Directly to Probable Locators** – PBGC will not pay any fees to a Probable Locator for locating a missing payee, such as a flat “finder’s fee” or a percentage of the pension asset found. PBGC will not reimburse a customer for his having paid a finder’s fee to a Probable Locator.
2. **Payment of Fees Indirectly to Probable Locators** – PBGC will not honor requests by a payee or his authorized representative to direct his or her payment, partially or wholly, to the Probable Locator’s address or to a bank account of the Probable Locator, including an account jointly titled with the customer. The only exception is where all of the conditions for a third-party payment agreement (as described in section D.4 of Internal Guidance Assignment or Alienation of Benefits) are met.
3. **Recognition of Probable Locator as Agent or other Authorized Representative** – PBGC will limit its recognition of a Probable Locator as Agent under a PBGC or Non-PBGC Power of Attorney per Internal Powers of Attorney.
4. **Other Appropriate Action** – PBGC reserves the right to take other actions to protect the benefits of participants, beneficiaries, and alternate payees from fees and judgments sought by Probable Locators.