

(c) *Notification to plan administrator.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the amount owed the PBGC pursuant to paragraph (a) of this section. The notice shall also include the terms and conditions for payment of this debt, as established under paragraph (b) of this section.

PART 4050—MISSING PARTICIPANTS

Sec.

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APPENDIX A TO PART 4050—EXAMPLES OF DESIGNATED BENEFIT DETERMINATIONS FOR MISSING PARTICIPANTS UNDER §4050.5 IN PLANS WITH DEEMED DISTRIBUTION DATES ON AND AFTER AUGUST 17, 1998

APPENDIX B TO PART 4050—EXAMPLES OF BENEFIT PAYMENTS FOR MISSING PARTICIPANTS UNDER §§ 4050.8 THROUGH 4050.10

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

SOURCE: 62 FR 60440, Nov. 7, 1997, unless otherwise noted.

§ 4050.1 Purpose and scope.

This part prescribes rules for distributing benefits under a terminating single-employer plan for any individual whom the plan administrator has not located when distributing benefits under § 4041.28 of this chapter. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 4050.12) is in a plan year beginning on or after January 1, 1996.

§ 4050.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, ERISA, insurer, irrevocable commitment, mandatory employee contributions, normal retirement age, PBGC, person, plan, plan administrator, plan year and title IV benefit.

In addition, for purposes of this part:

Deemed distribution date means—

(1) The last day of the period in which distribution may be made under part 4041 of this chapter; or

(2) If the plan administrator selects an earlier date that is no earlier than 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, such earlier date.

Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 4050.5.

Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 4022.81(c) of this chapter.

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 subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose).

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.

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods for valuing benefits under § 4044.52 of this chapter, applied—

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

(2) Using mortality rates that are a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the

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healthy female mortality rates in § 4044.53(c)(2) of this chapter;

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(d) 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 \$5,000.

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

Missing participant lump sum assumptions means the interest rate and mortality assumptions and actuarial methods for determining the lump sum value of a benefit under § 4022.7(d) of this chapter applied—

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

(2) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

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.

Post-distribution certification means the post-distribution certification required by § 4041.29 or § 4041.50 of this chapter.

Unloaded designated benefit means the designated benefit reduced by \$300; except that the reduction does not apply in the case of a designated benefit determined using the missing participant annuity assumptions without adding the \$300 load described in paragraph (5) of the definition of “missing participant annuity assumptions.”

[62 FR 60440, Nov. 7, 1997, as amended at 63 FR 29355, May 29, 1998; 63 FR 38306, July 16, 1998; 65 FR 14753, Mar. 17, 2000; 71 FR 75117, Dec. 14, 2006]

§ 4050.3 Method of distribution for missing participants.

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

(a) Purchasing from an insurer an irrevocable commitment that satisfies

the requirements of § 4041.28(c) or § 4041.50 of this chapter (whichever is applicable); or

(b) Paying the PBGC a designated benefit in accordance with §§ 4050.4 through 4050.6 (subject to the special rules in § 4050.12).

§ 4050.4 Diligent search.

(a) *Search required.* A diligent search must be made for each missing participant before information about the missing participant or payment is submitted to the PBGC pursuant to § 4050.6.

(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;

(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).

§ 4050.5 Designated benefit.

(a) *Amount of designated benefit.* The amount of the designated benefit is 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 is 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 (\$5,000 or less) as of the deemed distribution date under the missing participant lump sum assumptions is 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 is 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 is 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 must 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 as-

sumptions) 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 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 must 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 must be made in accordance with § 4050.6 and will be deemed made on the deemed distribution date.

[62 FR 60440, Nov. 7, 1997, as amended at 63 FR 38306, July 16, 1998]

§ 4050.6 Payment and required documentation.

(a) *Time of payment and filing.* The plan administrator must 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. Except as otherwise provided in

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the missing participant forms and instructions, the plan administrator must submit the designated benefits, information, and certifications with the post-distribution certification.

(b) *Late charges*—(1) *Interest on late payments*. Except as provided in paragraph (b)(2) of this section, if the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator must 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 §4007.7 of this chapter. Interest assessed under this paragraph will 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.

(2) *Assessment of interest and penalties*. The PBGC will assess interest for late payment of a designated benefit or a penalty for late filing of information only to the extent paid or filed beyond the time provided in §4041.29(b).

(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 must 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.

(d) *Filing with the PBGC*—(1) *Method and date of filing*. The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file*. See §4000.4 of this chapter for information on where to file.

(3) *Computation of time*. The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part. How-

ever, for purposes of determining the amount of an interest charge under §4050.6(b) or §4050.12(c)(2)(iii), the rule in §4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[62 FR 60440, Nov. 7, 1997, as amended at 68 FR 61354, Oct. 28, 2003]

§ 4050.7 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, the relevant policy number, and (to the extent known) the amount or value of the benefit.

(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 §§4050.8 through 4050.10 (subject to the limitations and special rules in §§4050.11 and 4050.12).

(c) *Examples*. See appendix B to this part for examples illustrating the provisions of §§4050.8 through 4050.10.

§ 4050.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under §4050.5(a)(1) (mandatory lump sum) or §4050.5(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 will 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 § 4050.5(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 may 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.

§ 4050.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(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 may 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 § 4050.5(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 ERISA). 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.

§ 4050.10 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 § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and whose benefit is not payable under § 4050.9.

(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 ERISA).

(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 percent 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 percent survivor annuity beginning on the annuity starting date, under which reduced payments (at the 50 percent level) are made only after the death of the missing participant during the life of the spouse (and not after the death of the spouse during the missing participant's life).

(iii) *Time of benefit.* The PBGC will pay the survivor benefit beginning at the time elected by the surviving spouse (which may 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 § 4050.5(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 after the missing participant's death and before 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 before the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date

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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 will 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.

§ 4050.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under this part will 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 §§ 4050.8 through 4050.10, determined as of the deemed distribution date, will 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 §§ 4050.8 through 4050.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC will instead pay the minimum benefit. The minimum benefit is the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trustee plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose); or

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(2) The benefit based on the designated benefit that should have been paid under § 4050.5.

(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.

§ 4050.12 Special rules.

(a) *Missing participants located quickly.* Notwithstanding the provisions of §§ 4050.8 through 4050.10, 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 must make distribution to the individual in such manner as the PBGC will direct.

(b) *Qualified domestic relations orders.* Plan administrators must and the PBGC will take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of ERISA 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 must use the assumptions for a missing participant who is a beneficiary under § 4050.5(b).

(c) *Employee contributions—(1) Mandatory employee contributions.* Notwithstanding the provisions of § 4050.5, if a missing participant made mandatory contributions (within the meaning of section 4044(a)(2) of ERISA), the missing participant's designated benefit may 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 ERISA

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(whichever produces the greater amount).

(2) *Voluntary employee contributions.*

(i) *Applicability.* This paragraph (c)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of ERISA) 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, must pay the employee contributions described in paragraph (c)(2)(i) of this section (together with any earnings thereon) to the PBGC, and must file Schedule MP with the PBGC, by the time the designated benefit is due under § 4050.6. Any such amount must be in addition to the designated benefit and must be separately identified.

(iii) *Payment by PBGC.* In addition to any other amounts paid by the PBGC under §§ 4050.8 through 4050.10, the PBGC will pay any amount paid to it under paragraph (c)(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 § 4050.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment will be made to the missing participant's estate.

(d) *Residual assets.* The PBGC will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part apply to any distribution (to participants and beneficiaries who cannot be located) of residual assets remaining after the satisfaction of plan benefits (as defined in § 4041.2 of this chapter) in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the payment of residual assets for a participant or beneficiary who cannot be located, and the submission to the PBGC of the related Schedule MP (or amended Schedule MP), must be made no earlier than the date when the post-distribution certification is filed with the PBGC, and no later than the later of—

(1) The 30th day after the date on which all residual assets have been dis-

tributed to all participants and beneficiaries other than those who cannot be located and for whom payment of residual assets is made to the PBGC, and

(2) The date when the post-distribution certification is filed with the PBGC.

(e) *Sufficient distress terminations.* In the case of a plan undergoing a distress termination (under section 4041(c) of ERISA) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of ERISA, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 4050.5 is limited to the title IV benefit plus any benefit to which funds under section 4022(c) of ERISA have been allocated.

(f) *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 will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part apply to such benefits.

(g) *Discretionary extensions.* Any deadline under this part may be extended in accordance with the rules described in § 4041.30 of this chapter.

(h) *Payments beginning after required beginning date.* If the PBGC begins paying an annuity under § 4050.9(a) or 4050.10(a) to a participant or a participant's spouse after the required beginning date under section 401(a)(9)(C) of the Code, the PBGC will 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 the required beginning date. The PBGC will also pay lump sum equivalents under this paragraph (g) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (g) will increase the total value of the benefits payable with respect to a missing participant.)

APPENDIX A TO PART 4050—EXAMPLES OF DESIGNATED BENEFIT DETERMINATIONS FOR MISSING PARTICIPANTS UNDER § 4050.5 IN PLANS WITH DEEMED DISTRIBUTION DATES ON AND AFTER AUGUST 17, 1998

The calculation of the designated benefit under § 4050.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of \$3,500 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 \$3,000 under plan A's assumptions. Under § 4050.5(a)(1), the plan administrator pays the PBGC \$3,000 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is \$5,200 under plan A's assumptions and \$4,700 under the missing participant lump sum assumptions. Under § 4050.5(a)(2), the plan administrator pays the PBGC \$4,700 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is \$4,900 under plan A's assumptions, \$3,600 under the missing participant lump sum assumptions, and \$4,950 under the missing participant annuity assumptions. Under § 4050.5(a)(3), the plan administrator pays the PBGC \$4,950 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 \$5,000 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 4050.5(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 § 4050.5(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 paragraph (2) of the definition of "missing participant annuity assumptions" in § 4050.2, 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. (Because a new spouse may succeed to the survivor benefit, 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.

[62 FR 60440, Nov. 7, 1997, as amended at 63 FR 38306, July 16, 1998]

APPENDIX B TO PART 4050—EXAMPLES OF BENEFIT PAYMENTS FOR MISSING PARTICIPANTS UNDER §§ 4050.8 THROUGH 4050.10

The provisions of §§ 4050.8 through 4050.10 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 annual 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.

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(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 paragraph (2) of the definition of "missing partic-

ipant annuity assumptions" in §4050.2, 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.