

### **Justification for Non-Material or Non-substantive Change to Currently-Approved Collection**

The Department of Labor's regulation at 29 CFR 2550.404a-3 provides a fiduciary safe harbor for use in making distributions from terminated individual account plans (as defined in section 3(34) of ERISA) and abandoned plans (as described in 29 CFR 2578.1) on behalf of participants and beneficiaries who fail to make an election regarding a form of benefit distribution, including "missing participants." The safe harbor generally requires distributions to be rolled over to an individual retirement account or annuity (IRA), although in limited circumstances fiduciaries may make distributions to certain bank accounts or a state unclaimed property fund. If the conditions of the safe harbor are met, a fiduciary (including a qualified termination administrator (QTA) in the case of an abandoned plan) is deemed to have satisfied the requirements of section 404(a) of ERISA with respect to distributing benefits, selecting a transferee entity, and investing funds in connection with the distribution.

One of the conditions of the safe harbor is that participants and beneficiaries must receive a notice explaining that their account balance will be distributed to an IRA if they fail to make a distributed election within 30 days of receipt of the notice. The notice requirement is an information collection request (ICR) covered by the PRA that is approved under OMB Control Number 1210-0127, which is scheduled to expire on April 30, 2022. A model notice is provided in an Appendix to the rule.

On December 22, 2017, the Pension Benefits Guaranty Corporation (PBGC) established the PBGC Defined Contribution Missing Participants Program (Program) to hold retirement benefits for missing participants and beneficiaries in most terminated defined contribution plans and to help those participants and beneficiaries find and receive those benefits. Currently, the Department is issuing Field Assistance Bulletin (FAB) 2021-02 stating that it will not pursue violations under ERISA section 404(a) against either responsible plan fiduciaries of terminating defined contribution plans or QTAs of abandoned plans in connection with the transfer of a missing or non-responsive participant's or beneficiary's account balance to the PBGC in accordance with the PBGC's missing participant regulations rather than to an IRA, certain bank accounts, or to a state unclaimed property fund, as specified in 29 CFR 2550.404a-3. In this case, the content of the notice to participants and beneficiaries would be modified to reflect the transfer to the PBGC, rather than to an IRA, bank or savings account, or state unclaimed property fund. Specifically, notices to participants and beneficiaries must state clearly that their account balances are being transferred to the "Pension Benefit Guaranty Corporation's Defined Contribution Missing Participants Program," and include the PBGC's website address and customer contact number.

This change is a non-material, non-substantive change to the Department's ICR approved under OMB Control Number 1210-0127. The Department estimated that the public reporting burden for this component of the ICR averages approximately would require a benefits manager to spend 10 minutes per respondent preparing the notice and a clerical professional to spend two minutes preparing and distributing the notices. The change to the ICR made by FAB2021-02 will not affect the hour or cost burden associated with the ICR.