The following questions and answers are based on informal discussions between private-sector representatives of the JCEB and PBGC staff members. The questions were submitted by ABA members in advance to the agency and the responses were given at a meeting of JCEB and government representatives. The responses reflect the unofficial, individual views of the government participants as of the time of the discussion, and do not necessarily represent the official position of PBGC. This report on the discussions was prepared by designated JCEB representatives, based on the notes and recollections of the JCEB representatives at the meeting (with informal review by PBGC staff), and it was understood that this report would be made available to the public.

PREMIUMS

1. **QUESTION:** Please describe the most common errors PBGC has been finding in its initial reviews of premium filings. Please also describe PBGC’s current audit program relating to PBGC premiums, including recent activity, flat-rate and variable-rate premium audit findings and results (along with a brief summary of the most common problems found), and plans for future audits.

   **PBGC’S MEETING RESPONSE:** A detailed list of common errors can be found at Q&A 2 of the 2011 Blue Book. The most common errors are late filings and not paying on time. PBGC looks at Form 5500’s and matches that information against PBGC Form 1 to identify anomalies. PBGC also looks at whether the plan was eligible for the full funding limitation exemption. PBGC is currently looking at the 2008 Form 5500’s (which generally would have been filed in late 2009) and the parallel 2009 Form 1’s.

   [Scrivener’s Note: References herein to the “Blue Book” for a given year refer to the Summary of Discussions between the Enrolled Actuaries Program Committee and Staff of the Pension Benefit Guaranty Corporation held at the Enrolled Actuaries Meeting for the year involved. Copies of the Blue Books (copyright ©, Enrolled Actuaries Meeting), can be found on PBGC’s website at http://www.pbgc.gov/Documents/2011bluebook.pdf. The answers reflect the views of individual staff members and do not represent the official position of PBGC.]

2. **QUESTION:** What steps has PBGC taken, and what steps does it plan to take, to enhance MyPAA (e.g., by adding “error checks” and/or “alert” notices) to reduce the likelihood of premium filers making errors? Has PBGC considered encouraging or requiring vendors of private-sector premium filing software to incorporate similar features in their software?

   **PBGC’S MEETING RESPONSE:** PBGC has modified MyPAA to provide additional “error check” or “alert” notices. PBGC assists vendors with their systems and encourages
vendors to have the same “checks” as in the PBGC system. However, PBGC does not force them to make changes. PBGC also referred practitioners to Q&A 3 of the 2011 Blue Book.

3. **QUESTION:** Please provide an update describing PBGC’s collection experience with respect to the $1,250 per participant termination premium.

**PBGC’S MEETING RESPONSE:** There has been no change from last year. PBGC continues to assert and collect termination premiums. Because PBGC typically settles all of its claims against an employer at the same time, it is hard to break out the portion related to termination premiums.

4. **QUESTION:** Please provide an update on the status of PBGC’s regulatory implementation of the authority PPA gave to PBGC to pay interest on premium overpayments. Does PBGC anticipate that, when this authority is implemented, interest will be paid retroactive to 2006, as is permitted by PPA?

**PBGC’S MEETING RESPONSE:** PBGC said that there was nothing new to report, and that this is still a long-term item on the regulatory agenda. In response to a question as to why it was still on the back burner, PBGC indicated that issues regarding its technology systems need to be resolved before a regulation can be issued. Those technology issues are being worked through. PBGC has not decided whether to provide for retroactive interest.

5. **QUESTION:** The Administration has proposed that PBGC be allowed to set its own premiums based on the financial health of the employer and the circumstances of the individual plan. Please provide an update on this proposal, including anything you can share about the issues and options under consideration.

**PBGC’S MEETING RESPONSE:** Currently PBGC pays out $5B a year in benefits but takes in only $2B a year in premiums. The Administration’s FY 2012 budget estimated that its premium proposal would result in $16B of increased premium revenue over 10 years. The Congressional Budget Office estimated PBGC’s proposed change would raise $8B over the same period. The House budget resolution included an estimate of $2.7B in increased premium revenues, but did not specify how the system would change.

PBGC is talking with legislative leaders regarding the proposed changes, but there is no concrete legislative language yet. The Administration’s proposal provides for a 2-year period of study before any changes would be put into effect. PBGC has a sense of the major parameters, but needs input on the design and implementation of the new structure and wants input from stakeholders. PBGC said that the Administration’s proposal is based on an approach adopted by the FDIC beginning 10 years ago in response to the S&L crisis, under which higher premiums were borne by companies with higher risk profiles and are cyclical so that firms are not hit with higher premiums during bad economic times. PBGC said that the financial strength of the company and of the plan will almost certainly be factors. PBGC said that it is sensitive to the Dodd Frank limits on use of credit ratings by federal agencies.

In response to questions, PBGC said that whether plan asset investment mix will be a factor is part of the evaluation process and that it would be difficult for a risk-based premium system to be implemented through legislation.
[Note: On August 30, 2011, Secretary of Labor Hilda Solis, in her capacity as Chair of the PBGC Board, wrote letters (see attached) outlining the premium proposal to the Chairman and Ranking Member of the Senate Budget Committee, the Senate Health, Education, Labor & Pensions Committee, the House Budget Committee, and the House Education & the Workforce Committee.]

**TITLE IV COVERAGE**

6. **QUESTION:** Please confirm PBGC’s guidance in [Q&A 8 of the 2011 Blue Book](#), which dealt with a situation where a plan that at one time had several non-owner participants, currently has only two remaining participants: the owner of 100 percent of the stock of the plan sponsor and the owner’s parent. The question was whether the plan remains covered by Title IV of ERISA.

**PBGC’S MEETING RESPONSE:** In response to 2011 [Blue Book Question 8](#), PBGC stated that the answer depended on the age of the owner (because of the rules that attribute a minor’s ownership interest to his or her parent), with the plan being exempt from coverage if the owner were under age 21 at any time during the 60-month period ending on the date of the coverage determination, and the plan being covered if the owner had turned 21 on or before the first day of that 60-month period. PBGC confirmed that it continues to agree with that guidance.

7. **QUESTION:** It has been well over 5 years since the ERISA agencies set up a task force to address rulings on church plan and government plan status. How has PBGC been handling these issues from a premium viewpoint and from a termination viewpoint during that period? For example, in the case of a plan that stops paying premiums based on a belief that the plan was always a church plan (it never made the Code election) and requests a premium refund, are you making a coverage determination and/or providing a premium refund?

**PBGC’S MEETING RESPONSE:** PBGC said that the answer was the same as included in [Q&A 22 of the 2011 Blue Book](#). In response to a follow-up question, PBGC stated that it defers to IRS on church plan issues. PBGC declined to answer how it handles situations in which an employer takes a position that its plan is or is not a church plan and PBGC believes the assertion is incorrect. PBGC does not anticipate making any determinations with respect to government plans until IRS issues further guidance.

**PBGC GOVERNANCE**

8. **QUESTION:** There has been significant discussion about changing PBGC’s corporate governance. Please explain the various proposals and what their aims are.

**PBGC’S MEETING RESPONSE:** PBGC’s Board consists of three Cabinet Secretaries – the Secretaries of Labor, Commerce, and the Treasury. The Secretary of Labor is the Chairman. In 2007, after looking at other government corporations, GAO issued a report
that, among other things, concluded that the small size of the Board was a constraint on good governance. The current structure makes it difficult to have typical board committees such as audit and investment committees. GAO thought such committees were necessary and that the Board should also have outside expertise. GAO was also concerned that a change in administration results in 100% turnover on the Board.

Congress has taken up the issue. Senator Kohl introduced the PBGC Governance Improvement Act of 2010. The bill provides for four new Board members (including one representative for employers and one for employees), and provides that only two of the four new members could belong to the same party. The bill also provides for staggered four year terms. During an oversight hearing, HELP committee members have also expressed interest in changing PBGC’s governance. PBGC Director Joshua Gotbaum has indicated that he would be comfortable with the current structure or a new one. There is no Administration position on this issue.

STANDARD TERMINATIONS

9. QUESTION: When PBGC reviews a Standard Termination Notice (Form 500) or conducts a standard termination audit, and identifies a possible plan qualification defect or possible violation of any legal requirement, under what circumstances, if any, does PBGC refer the matter to another Federal agency, such as IRS or the Employee Benefits Security Administration? Please provide examples, if any, of situations in which such a referral took place.

PBGC’S MEETING RESPONSE: Referrals to other agencies are made on a case-by-case basis and depend on the specific facts and circumstances. Referrals are infrequent.

10. QUESTION: Please confirm PBGC’s guidance in Q&A 6 of the 2011 Blue Book, which dealt with a situation where PBGC required, as part of a standard termination audit, that additional payments be made to participants. The question was whether these payments had to be made through a trust (e.g., to enable the participants to be able to roll over the distributions).

PBGC’S MEETING RESPONSE: In response to 2011 Blue Book Question 6, PBGC stated that its concern is that the participant’s benefit liability be fully satisfied, and that questions about whether payments must be made through a trust should be directed to IRS. PBGC confirmed that it continues to agree with the guidance reflected in Q&A 6 of the 2011 Blue Book.

11. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with standard termination audits, including a discussion of common errors found and of how PBGC has dealt with plans that distribute plan assets in satisfaction of plan liabilities before or without filing a standard termination notice with PBGC.

PBGC’S MEETING RESPONSE: PBGC said that this question is answered in Q&As 5 and 7 of the 2011 Blue Book.
12. QUESTION: In its response to Question 15 at the 2010 JCEB-PBGC meeting, PBGC staff stated that PBGC’s then-current policy for allocating its recoveries among various claims and plans (“PBGC Operating Policy 8.2-1: Valuation and Allocation of Recoveries”) was “currently under review.”

(a) Has that review resulted in the issuance of a new or revised policy? If so, please describe the new policy or revisions.

(b) If not, is PBGC following the above-noted written policy pending the issuance of a new or revised policy?

PBGC’S MEETING RESPONSE: (a) The policy is still under review. (b) PBGC is still following the old policy.

13. QUESTION: When a plan terminates in a distress or involuntary termination, PBGC, in its role as statutory trustee under ERISA Section 4042, will generally have a claim against the employer for due and unpaid minimum funding contributions (the “DUEC Claim”), as well as a claim against the employer for certain shortfall amortization charges and installments (and, where applicable, for certain waiver amortization charges and installments) under ERISA Section 4062(c) (the “4062(c) Claim”).

(a) The amounts of the DUEC Claim and 4062(c) Claim may overlap with one another and, if PBGC determines its claim against the employer for unfunded benefit liabilities under ERISA Section 4062(b) (the “UBL Claim”) without making any adjustment relating to either of these claims, there will be overlap between each of these claims and the UBL Claim. When PBGC finalizes the amounts of its DUEC Claim, 4062(c) Claim, and UBL Claim (e.g., for purposes of making benefit determinations), how does PBGC make adjustments for any such overlap?

(b) ERISA Section 4044(f) provides generally for the use of an historical recovery ratio, in lieu of use of the recovery ratio in a particular case, to determine the value of PBGC’s recovery on its Section 4062(c) Claim that is allocable as a plan asset under ERISA Section 4044 for purposes of determining the amount of benefits payable by PBGC. Does PBGC use this or any other historical recovery ratio to determine the value of PBGC’s recovery on its DUEC Claim for any purpose, or is PBGC continuing, as it did in the pre-PPA context, to determine the value of its recovery on its DUEC Claim for all purposes based solely on its experience in the particular case in which it had that claim?

Response: PBGC declined to answer this question.

14. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with any requests that have been made to PBGC or (to the extent PBGC is aware of such requests) to the plan administrator or contributing sponsor for information in accordance with PPA section 506 (“Disclosure of Termination Information to Plan Participants”).
PBGC’S MEETING RESPONSE: There have been no requests to PBGC in the past year for information in accordance with PPA section 506, and PBGC is not aware of any such requests to a plan administrator or contributing sponsor in the past year.

15. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with applications for distress termination outside of bankruptcy under Distress Test 3 (“Continuation in Business”) or Distress Test 4 (“Unreasonably Burdensome Pension Costs”).

PBGC’S MEETING RESPONSE: The answer to Question 9 of the 2011 Blue Book remains up to date.

16. QUESTION: When PBGC reviews a Distress Termination Notice of Intent to Terminate (Form 600), a Distress Termination Notice (Form 601), or otherwise reviews or evaluates the circumstances surrounding a plan involved in a distress or involuntary termination, and identifies a possible plan qualification defect or possible violation of any legal requirement, under what circumstances, if any, does PBGC refer the matter to another Federal agency, such as IRS or the Employee Benefits Security Administration? Please provide examples, if any, of situations in which such a referral took place.

PBGC’S MEETING RESPONSE: Same answer as Question 9 above: Referrals to other agencies are made on a case-by-case basis, and depend on the specific facts and circumstances of the specific case. Referrals are infrequent.

17. QUESTION: When PBGC becomes statutory trustee of a pension plan that underwent a distress or involuntary termination, does PBGC review the plan’s compliance with the rules governing benefit restrictions under Code Section 436? If PBGC believes that these rules were not complied with, what action, if any, does PBGC take?

PBGC’S MEETING RESPONSE: PBGC does take into account the 436 restrictions. For example, if no AFTAP calculation has been certified, PBGC will apply the 436 funding status presumptions, which could result in a benefit freeze prior to termination. If the plan did not comply with the 436 rules, PBGC will adjust benefits and take any other appropriate actions.

PBGC REPORTING

18. QUESTION: In November 2009, PBGC published a proposed rule that would, among other things, eliminate virtually all of the waivers and extensions under the reportable events regulations (74 Fed. Reg. 61427 (Nov. 23, 2009)). In its response to Question 12 of the 2011 Blue Book, PBGC stated that it had decided to re-propose the reportable events rule with an emphasis toward reducing the burden on employers to the extent feasible. When does PBGC anticipate issuing its re-proposal, and does it anticipate using the negotiated rulemaking process (as it did in developing the existing reportable events regulation)?
**PBGC’S MEETING RESPONSE:** PBGC expects to re-propose the reportable events rule in 2011 and to include the public in discussions as part of the process, though it has not decided in what form. The PBGC wants a give-and-take interactive format to explore the issues. PBGC is not intending to use negotiated rulemaking for the re-proposal. In response to a follow-up question, PBGC said that Director Gotbaum is eager for stakeholder input. PBGC also noted that it desires to get things moving and that negotiated rulemaking can be slow.

19. **QUESTION:** Please confirm PBGC’s guidance in Q&A 13 of the 2011 Blue Book, which addressed issues regarding the rules under Technical Update 10-4 (“Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2011 Plan Years”). Those rules provide, among other things, for a one-year lookback to determine whether a funding-related waiver test is met under the reportable events regulation. The question was whether, in a situation where Plan B merges into Plan A, effective January 1, 2011, with a reportable event occurring for Plan A on February 1, 2011, Plan A may use its own stand-alone funding status for the prior plan year without taking into account the funding status of Plan B.

**PROPOSED RESPONSE:** In its response to Blue Book Question 13, PBGC stated that, although the guidance in Technical Update 10-4 is not explicit regarding a situation where one plan merges into another, it seems reasonable to read the Technical Update as being consistent with a look-back to the surviving plan’s VRP values alone. PBGC confirmed that it continues to agree with the guidance reflected in Q&A 13 of the 2011 Blue Book.

20. **QUESTION:** Please confirm that the following hypothetical accurately interprets and applies PBGC’s guidance in Technical Update 10-4 (“Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2011 Plan Years”), which provides, among other things, for look-back rules to determine whether a funding-related waiver or extension test is met under the reportable events regulation.

Assume that a reportable event occurs on January 15, 2011, for Plan A, a calendar-year plan with fewer than 100 participants for flat-rate premium purposes for all relevant plan years; that Plan A’s funding valuation date is January 1 for all relevant plan years; and that there is a funding-related waiver and a funding-related extension available for this reportable event. Under Technical Update 10-4, Plan A would determine whether it qualifies for the funding-related waiver using numbers required to be determined for premium purposes as of January 1, 2010. Assuming that Plan A does not qualify for a waiver based on January 1, 2010, numbers, it would determine whether it qualifies for the funding-related extension using numbers required to be reported for premium purposes as of January 1, 2009. If it does qualify for the funding-related extension, it would have until May 30, 2012, to report the event that occurred on January 15, 2011.

**PBGC’S MEETING RESPONSE:**

PBGC clarified the hypothetical as follows: assume that a reportable event under § 4043.27 (distribution to substantial owner) occurs on January 15, 2011, for Plan A, a calendar-year plan
with fewer than 100 participants for flat-rate premium purposes for all relevant plan years; and 
that Plan A’s funding valuation date is January 1 for all relevant plan years. Under the principles 
of Tech Update 10-4, whether the 80-percent-funded waiver under § 4043.27(c)(2)(iii) applies to 
this event depends on whether the fair market value of Plan A’s assets was more than 80 percent 
of Plan A’s premium funding target, as both quantities were determined for premium purposes, 
for 2010. Assume that no waiver applies. Under the principles of Tech Update 09-4 (Reportable 
Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2010 
Plan Years), http://www.pbgc.gov/res/other-guidance/tu/tu09-4.html, whether the “Form 1” 
extension under § 4043.27(d) applies depends on whether the fair market value of Plan A’s assets 
was more than 80 percent of Plan A’s premium funding target, as both quantities were 
determined for premium purposes, for 2009. If the extension applies, the notice date is extended 
to May 30, 2012. Qualification for the waiver or extension depends on the values computed for 
premium purposes no matter what the plan’s funding valuation date is. (Plan A’s premium 
computations are to be made as of January 1, since premium calculations are made as of the UVB 
valuation date, which is the same as the funding valuation date. See §§ 4006.2 and 4006.4(a).)

21. QUESTION: Under 29 CFR § 4043.29, a reportable event occurs for a plan when there is a 
transaction that will result in a person ceasing to be a member of the “plan’s controlled 
group” (which is defined as each contributing sponsor of the plan and each member of each 
such contributing sponsor’s controlled group), and a “legally binding agreement” is treated as 
a “transaction” for this purpose. Assume that an agreement that will result in a person 
ceasing to be a member of the plan’s controlled group is conditioned on obtaining one or 
more governmental approvals and cannot become effective until all such governmental 
approvals have been obtained. For PBGC reporting purposes, could such an agreement 
constitute a “legally binding agreement” triggering an obligation to report within 30 days that 
a person will cease to be a member of the plan’s controlled group?

PBGC’S MEETING RESPONSE: PBGC declined to answer at this time. It will consider 
addressing the meaning of “legally binding agreement” in this context in the upcoming 
re-proposed rule on reportable events.

22. QUESTION: Please describe PBGC’s experience under the reportable events regulation. In 
particular:

(a) Is it common for PBGC to learn, from sources other than a reportable event notice, 
about an event that was not reported but was required to be reported? If so, what does 
PBGC do in such situations?

(b) What does PBGC do when it receives and reviews a reportable event notice?

PBGC’S MEETING RESPONSE:

(a) PBGC sometimes learns about reportable events from other sources. For example, PBGC 
might find out about missed contributions from the Form 5500 Schedule SB. PBGC reviews 
Schedule SBs to see whether a missed contribution has been reported and cross-checks those 
plans to see if a reportable event notice has been filed with PBGC. Depending on the facts 
and circumstances, PBGC may notify the employer that a reportable event notice was missed
and request the employer to provide information. PBGC also may assess penalties for failure to timely report a reportable event and/or take other appropriate action as described in (b).

(b) PBGC reviews the filing to determine whether it needs further information and, if so, contacts the employer for additional information. Depending upon the nature of the event, PBGC might seek plan termination, request the employer to make additional contributions to (or provide other protection for) the plan, and/or take other action. In response to a follow-up question as to how often a reportable event notice leads to plan termination, PBGC said that it doesn’t happen often, but it has no statistics.

23. QUESTION: Please confirm PBGC’s guidance in Q&A 14 of the 2011 Blue Book, which addressed issues regarding PBGC’s section 4010 regulation. Under the regulation, only plans that are maintained by the filer (or any member of the filer’s controlled group) on the last day of the information year are considered for purposes of the gateway tests. Question 14 asked for guidance regarding how the gateway tests and other section 4010 provisions would be applied with respect to a seller and a buyer in a corporate transaction involving the transfer of a plan (where the information year for the seller and buyer is the calendar year) wherein the documentation relating to the corporate transaction makes it clear that the transaction takes effect at the “stroke of midnight” between information years (i.e., that the seller is the sole sponsor of the plan for all of December 31 and that the buyer is the sole sponsor of the plan for all of January 1).

PBGC’S MEETING RESPONSE: In its response to Blue Book Question 14, PBGC stated that, in the circumstances described, it would treat the seller as the sole sponsor of the plan on the last day of the first of the two information years for purposes of the 4010 gateway test and for purposes of the requirement to report actuarial information under ERISA Section 4010. PBGC confirmed that it continues to agree with the guidance reflected in Q&A 14 of the 2011 Blue Book.

24. QUESTION: PBGC noted at the 2010 Enrolled Actuaries Meeting that there had been significant noncompliance with ERISA Section 4010 reporting requirement by filers whose reporting obligations were based on the reporting triggers tied to there being over $1 million in missed contributions or in minimum funding waivers. Please provide an update on PBGC’s experience regarding ERISA Section 4010 compliance.

PBGC’S MEETING RESPONSE: With respect to 2010 filings for 2009, PBGC has noticed significant underreporting for these triggers. PBGC followed up with plan sponsors (identified through other sources) and requested missing information. In some cases, getting the information was important. PBGC reserves the right to assess penalties for noncompliance with reporting requirements.

25. QUESTION: Please provide an update regarding PBGC’s experience in connection with requests for waivers or extensions under ERISA section 4010.

PBGC’S MEETING RESPONSE: PBGC has received only a handful of request for waivers or extensions. The 4010 information is important for PBGC in assessing the risk posed by a particular plan. Most waivers granted by PBGC were with respect to plans in the
late stages of the termination process (PBGC consequently already had the information). A common reason for extension requests is that the controlled group includes foreign companies or companies with different fiscal years. In most cases, PBGC gave extensions of a couple of months to allow time to gather the information.

**PENALTIES**

26. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with assessment, waiver, and/or collection of late information penalties under ERISA Section 4071.

**PBGC’S MEETING RESPONSE:** In the last six months, PBGC assessed and collected one penalty with respect to the late filing of a post-distribution certification in a standard termination case and six penalties regarding reportable event (Form 10) or $1M+ missed contribution (Form 200) delinquencies.

27. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with waiver and/or collection of late premium payment penalties under ERISA Section 4007.

**PBGC’S MEETING RESPONSE:** PBGC has granted waivers where reasonable cause (circumstances that could not be avoided by ordinary business care and prudence) was present.

**ERISA SECTIONS 4062(e), 4063, AND 4064**

28. QUESTION: ERISA section 4062(e) applies when an employer ceases operations at a facility and, as a result, more than 20 percent of employees covered by its defined benefit pension plan separate from employment. Please provide an update regarding PBGC’s experience and enforcement plans in connection with finding out about 4062(e) events and pursuing and resolving 4062(e) liability.

**PBGC’S MEETING RESPONSE:** PBGC learns about 4062(e) events through monitoring and filings. There has been a large increase in 4062(e) filings since PBGC’s regulation regarding calculation of 4062(e) liability was issued in 2006. PBGC appreciates the efforts that the actuarial and legal communities have made in getting the word out about 4062(e). PBGC takes a flexible approach towards settlements so that employers’ business needs can be met. During the first half of fiscal 2011 (October 2010 to March 2011), there have been around 10 settlements resulting in $130 million in additional protections for the plans involved and their approximately 12,000 participants. PBGC is currently actively working about 50 cases. PBGC has not seen as big a growth in cases this year as in the past (quarter over quarter). By the end of fiscal year 2011 (9/30/11), PBGC hopes to have obtained about $1 billion in additional protection for plans covering 100,000 participants.
29. **QUESTION:** ERISA section 4062(e) provides for a liability that may be assessed against the employer (i.e., the entire controlled group maintaining the affected plan), with the liability serving to protect the plan if it terminates in a distress or involuntary termination within a specified five-year period.

(a) As of what date are the entities making up the responsible controlled group determined—the date the cessation occurs, the date the resulting headcount reduction first exceeds 20 percent, or the later of those two dates?

(b) When does the five-year period start—the date the cessation occurs, the date the resulting headcount reduction first exceeds 20 percent, or the later of those two dates?

(c) Is a distress or involuntary termination treated as having occurred within the five-year period for this purpose only if the termination date established under ERISA Section 4048 falls within the five-year period, only if the termination decision is made (whether by agreement between PBGC and the plan administrator or by a final, non-appealable court order) within the five-year period, or only if the termination date falls and the termination decision is made within the five-year period?

**PBGC’S MEETING RESPONSE:** PBGC declined to answer at this time since 4062(e) is the subject of a current rulemaking project.

30. **QUESTION:** Assume that it is clear that an ERISA section 4062(e) event has occurred and that the resulting liability amount is fully collectible. Is PBGC legally required to attempt to collect the resulting liability amount, whether through settlement, litigation, or otherwise, or does PBGC have the authority to decide not to attempt to collect the resulting liability or to decide to attempt to collect (or to settle for) only a portion of the resulting liability?

**PBGC’S MEETING RESPONSE:** The answer is the same as in Q&A 15 of the 2011 Blue Book. To a follow-up question regarding PBGC’s legal authority, PBGC stated that had nothing to add to its Blue Book answer.

31. **QUESTION:** Assume that an employer is considering whether to take some action (e.g., closing a plant or engaging in a going-concern asset sale) that PBGC would view as triggering liability under ERISA Section 4062(e), and that the employer, for valid business reasons, is not willing to take the action without knowing in advance how its exposure under ERISA Section 4062(e) will be addressed.

(a) If the employer approached PBGC in advance of taking this action, would PBGC be willing to negotiate an appropriate settlement agreement with the employer to resolve any ERISA Section 4062(e) liability before the ERISA Section 4062(e) event occurs?

(b) Assume that the action the employer is contemplating would clearly serve to strengthen the employer and thereby enhance the employer’s ability to fund its PBGC-covered pension plan(s), and that the employer, for valid business reasons, is not willing to take the action unless PBGC agrees not to pursue collection of any resulting 4062(e) liability. Under what circumstances, if any, would PBGC be willing to agree not to pursue such collection?
PBGC’S MEETING RESPONSE:

(a) Yes. PBGC has authority under ERISA Section 4067 to reach a settlement with an employer regarding its 4062(e) liability in advance of the time the liability arises, and would be happy to pursue such negotiations with interested employers.

(b) PBGC said the answer to this question depended upon the facts of circumstances of a particular case and that it therefore could not give a general answer. PBGC encouraged employers to contact the agency to discuss specific cases.

32. QUESTION: PBGC has taken the position that a going-concern asset sale in which operations and employment cease with the seller and immediately continue with the buyer can trigger a liability under ERISA Section 4062(e). Please describe PBGC’s experience in dealing with such situations, including cases in which the asserted resulting 4062(e) liability was settled. If PBGC has taken the same kind of position vis-à-vis stock sales, please provide the same kind of information.

PBGC’S MEETING RESPONSE: This situation is not very common. Most asset sales PBGC sees involve liquidations. PBGC has settled one going-concern asset sale case involving Elkem Metals (there is a press release on PBGC’s website). PBGC has not seen any stock sale situations implicating 4062(e). PBGC said its position on asset and stock sales is stated in its proposed rule.

33. QUESTION: In August 2010, PBGC published a proposed rule that would provide guidance on the applicability and enforcement of ERISA section 4062(e) (75 Fed. Reg. 48283 (Aug. 10, 2010)). When does PBGC anticipate issuing a final rule?

PBGC’S MEETING RESPONSE: PBGC anticipates issuing a final rule providing guidance on the applicability and enforcement of ERISA section 4062(e) in the later part of calendar 2011.

Note: After the meeting, PBGC published the following statement in its Preliminary Plan for Regulatory Review: “In light of industry comments, PBGC will also reconsider its 2010 proposed rule that would provide guidance on the applicability and enforcement of ERISA section 4062(e). The statutory provision provides for reporting of and liability for certain substantial cessations of operations by employers that maintain single-employer plans.” In its July 7, 2011, semiannual regulatory agenda, PBGC stated that it expects to publish its final rule on 4062(e) in November 2011.

34. QUESTION: Please confirm PBGC’s guidance in Q&A 17 of the 2011 Blue Book, which addressed issues regarding the provisions of ERISA Sections 4001(a)(2) and 4063 governing the liability of a substantial employer who withdraws from a multiple-employer plan. The question sought guidance on what constitutes the “amount required to be contributed” and the “required contributions” under these provisions.

PBGC’S MEETING RESPONSE: In its response to Blue Book Question 17, PBGC stated that the terms “required contributions” and “amount required to be contributed” are synonymous and should be interpreted as the required contributions under the agreement.
between contributing sponsors to a multiple-employer plan; that the required contribution may be more or less than the actual amount contributed by a particular employer; and that the required contributions should not be offset by any available carryover or pre-funding balance. PBGC confirmed that it continues to agree with the guidance reflected in Q&A 17 of the 2011 Blue Book.

**MINIMUM FUNDING WAIVERS**

**35. QUESTION:** Please provide an update regarding PBGC’s role and recent experience in connection with minimum funding waiver requests involving amounts in excess of $1 million, including any steps taken by PBGC and/or IRS to streamline or otherwise improve the process for applying for these waivers.

**PBGC’S MEETING RESPONSE:** PBGC said that its response to Question 36 in the 2010 JCEB session remained accurate. PBGC noted that many times, information in a waiver request is incomplete (e.g., five year minimum funding projections with and without the waiver are missing). PBGC said that it needs controlled group financial projections to see if there is a hardship, and whether the hardship is temporary. PBGC looks at collateral offered and sometimes has accepted junior liens on real or personal property. PBGC will touch base with IRS regarding the status of the project to streamline the waiver process.

**REVOCATIONS OF PRA ELECTIONS**

**36. QUESTION:** Under the Pension Relief Act, an employer may revoke an election to use an alternative amortization schedule only with the approval of IRS, in consultation with PBGC. What are the issues PBGC considers in connection with such consultations? In particular, what are the kinds of reasons PBGC might have to oppose a revocation?

**PBGC’S MEETING RESPONSE:** PBGC has received only one request, which was straight-forward and approved. Typically a change back to the existing funding rules would be a plus for the plan and PBGC. PBGC will consider the facts and circumstances of each case. If PBGC filed a bankruptcy claim or took other action (e.g., reached a 4062(e) settlement) based on the prior schedule, allowing a revocation might be problematic. PBGC’s perception is that the number of cases in which an employer may want to revoke an election is likely to be limited.

**EARLY WARNING PROGRAM**

**37. QUESTION:** In Technical Update 00-3 (“PBGC’s Early Warning Program”), PBGC announced that it “contacts a company for further information about a transaction only if” certain screening criteria are met (emphasis added). More recently, in its response to Question 19 of the 2011 Blue Book, PBGC stated that “[g]enerally, PBGC monitors
employers with pension plans that in the aggregate have $50M or more in underfunding or 5,000 or more participants,” and noted that “PBGC also monitors employers for other reasons as appropriate.”

(a) Does PBGC still have screening criteria that, as under Technical Update 00-3, provide companies with certainty that, if the criteria are not met, they will not be included in PBGC’s Early Warning Program? If so, what are they?

PBGC’S MEETING RESPONSE: No. The screening criteria in Technical Update 00-3, which incorporate pre-PPA funding concepts, are no longer applicable given the enactment of PPA. Typically, PBGC will look at employers with plans that in the aggregate have $50 million or more in underfunding or 5,000 or more participants, but other companies may also be monitored, depending upon the facts and circumstances. Currently, there are approximately 1,000 employers being monitored in the Early Warning Program.

(b) The screening criteria announced in Technical Update 00-3 explicitly took into account bond ratings. Does PBGC currently take bond ratings into account in deciding which employers to monitor under its Early Warning Program? If so, how?

PBGC’S MEETING RESPONSE: PBGC may monitor an employer without regard to its credit rating. However, PBGC may take an employer’s bond rating into account in determining whether a situation involves a risk to PBGC.

(c) How does PBGC calculate the “$50M or more in underfunding” test it announced in its response to Question 19 of the 2011 Blue Book? In particular, is it based on numbers reported (for all plans maintained by the controlled group) for variable-rate premium purposes, for funding purposes, for ERISA Section 4010 purposes, or for some other purpose?

PBGC’S MEETING RESPONSE: The calculation generally is performed by PBGC actuaries using 4010 information and termination assumptions. PBGC actuaries also may review other data, including information on Form 5500 Schedule SB.

(d) How does PBGC calculate the “5,000 or more participants” test it announced in its response to Question 19 of the 2011 Blue Book? In particular, is it based on the participant counts reported (for all plans maintained by the controlled group) for flat-rate premium purposes, for Form 5500 purposes, or for some other purpose?

PBGC’S MEETING RESPONSE: The 5,000 participant calculation is based on the most recent data available to PBGC and is derived from a variety of sources, including 4010 information, Form 5500 and PBGC premium filings and responses to PBGC inquiries to the plan sponsor.

(e) Does PBGC have any plans to withdraw or to revise/update Technical Update 00-3?

PBGC’S MEETING RESPONSE: PBGC is reviewing the Technical Update to determine what changes to make.
38. **QUESTION:** Please provide an update regarding the cases PBGC has been involved in over the past year under its Early Warning Program, along with a discussion of the types of transactions that are of concern to PBGC and of what PBGC does when it learns of a transaction of concern.

**PBGC’S MEETING RESPONSE:** PBGC referred the JCEB to Q&A 19 of the 2011 Blue Book.

**MISSING PARTICIPANTS PROGRAM**

39. **QUESTION:** PPA expanded the missing participants program to cover (among other things) terminating defined contribution plans. When does PBGC intend to issue regulations to implement this program? Are there any issues of particular concern that could complicate the implementation or administration of this program?

**PBGC’S MEETING RESPONSE:** PBGC plans to issue a proposed rule this year. PBGC is also looking to see if there are system issues that need to be resolved. PBGC said that it would be premature to discuss specific issues.

**HYBRID PLAN ISSUES**

40. **QUESTION:** How is PBGC dealing with hybrid plans that have terminated in distress or involuntary terminations where the plan’s interest crediting rate exceeds the market rates on IRS’s permitted list?

**PBGC’S MEETING RESPONSE:** As of April 2011, 14 post-PPA cash balance plans have been terminated and trustee by PBGC. Where plans used a variable interest crediting rate, PBGC has used the 5-year averaging rate mechanism in PPA to determine the interest crediting to apply in calculating accrued benefits for applicable periods. The PBGC staff’s preliminary position is that if a plan uses an excessive rate once IRS regulations are final, PBGC will adjust the plan rate to the extent IRS rules require. In response to a follow-up question, PBGC indicated that it is auditing standard terminations to see if plans used a market rate of interest.

41. **QUESTION:** PBGC’s regulatory agenda includes a proposed rule, not yet issued, that would amend PBGC’s regulations to prescribe rules on valuing benefits in terminating cash balance and other hybrid plans, prescribe rules on how PBGC determines benefits payable in such plans that it trustees, and take into account relevant PPA provisions. What is the status of this proposed rule? In particular, will issuance of the proposed rule have to await issuance of further guidance by IRS? Does PBGC anticipate that the proposed rule will provide guidance on the language that must be in the plan regarding the interest crediting rate, annuity conversion rate, and mortality table to be used in the event of plan termination, or is such guidance viewed as being within the jurisdiction of IRS rather than of PBGC?
PBGC’S MEETING RESPONSE: A draft of the proposed rule is far along in development. PBGC expects that its rules will be consistent with IRS final and proposed regulations. The PBGC regulation will address plan benefit calculations, allocations, and other Title IV issues. PBGC is coordinating closely with IRS, but is not prepared to say whether it will wait until all IRS cash balance regulations are final before issuing its rule.

[Note: After the meeting, PBGC submitted its proposed rule to OMB for regulatory review. The rule was received on July 25, 2011.]

LITIGATION AND GENERAL MATTERS

42. QUESTION: Please describe PBGC litigation in the past year that has established precedent that would be of interest to employee benefits attorneys.

PBGC’S MEETING RESPONSE: PBGC provided the following handout summarizing litigation matters.

Central States Southeast & Southwest Areas Pension Fund v. O’Neill Brothers Transfer & Storage Co., 620 F.3d 766 (7th Cir. 2010) – Under MPPAA, a withdrawn employer must arbitrate any dispute it has with the plan, and must make periodic withdrawal liability payments in the interim. If the employer fails to pay, the plan may bring a collection action. But, under a PBGC rule, the plan cannot declare a default and accelerate the future payments during arbitration for a mere “payment default.” On the other hand, if the employer is liquidating or otherwise makes the plan feel insecure, the plan can declare a default and accelerate (an “insecurity default”). Based on this distinction, the court affirmed a judgment holding that Central States properly accelerated O’Neill’s withdrawal liability for an insecurity default. PBGC filed an amicus brief urging this result.

Deppenbrook v. PBGC, 2011 WL 1045765 (W.D. Pa. Mar. 17, 2011) – A group of participants brought suit in Pennsylvania, seeking recalculation of their benefits under a terminated plan. PBGC moved to dismiss or transfer venue to the District of Columbia, as no termination proceedings were pending in Pennsylvania. The court granted that motion. The court also dismissed without prejudice the claims of any participant who had failed to exhaust administrative remedies.

In re Chemtura Corp., 2010 WL 4272727 (Bankr. S.D.N.Y. Oct. 21, 2010) – As part of a global settlement between PBGC, a pension plan sponsor, and its creditors, the sponsor agreed to maintain its pension plans and make a contribution to the largest plan, in exchange for PBGC agreeing not to initiate termination due to possible long-run loss. In confirming the plan of reorganization over objections of a committee of equity holders, the bankruptcy court held that “settling with . . . PBGC was entirely sensible,” and that “the wisdom of . . . pushing . . . pension funding issues off to another day, and risk[ing PBGC-initiated] termination of their pension plans . . . would be debatable, at best.” The court added that absent settlement, the plan sponsor “may well have had to create a huge reserve for satisfying [PBGC’s] plan termination claims.”
**PBGC v. Rouge Steel Co.,** 2010 WL 3324921 (E.D. Mich. Aug. 23, 2010) – In 2006, the court vacated PBGC’s decision to initiate the termination of two pension plans of a bankrupt sponsor and remanded the decision for further development of the administrative record. In this second decision, the court granted PBGC’s motion for summary judgment, ordering the two pension plans terminated as of the date PBGC chose and denying the UAW’s motion for summary judgment, which sought a later termination date. The court concluded that the participants’ expectation that the plans would continue had been extinguished both by actual notice of PBGC’s termination action, and by constructive notice when the plans’ sponsor ceased operations. The court rejected the union’s argument that participants’ receipt of benefits during the pendency of the litigation revived their expectations that the plans would continue. The court was also unconvinced by the union’s argument that either the lengthy termination litigation or the possible assumption of the plans by a third party revived participants’ expectations. Finally, the court rejected the union’s request that the court equitably prohibit PBGC from recouping benefit overpayments.

**PBGC v. New United Motor Mfg., Inc.,** 2010 WL 2739993 (N.D. Cal. Jul. 11, 2010) – PBGC initiated termination of a pension plan sponsored by a joint venture involving a bankrupt automobile manufacturer. After PBGC sued the joint venture under section 4042 of ERISA, the agency and the joint venture reached a settlement and together moved to dismiss the case. Under the settlement, the joint venture agreed to initiate a standard termination of the pension plan, make a contribution to the plan, and, if the standard termination could not be completed, make an additional contribution and execute a trusteeship agreement terminating the plan. A union representing the pension plan’s participants moved to intervene and opposed the parties’ motion to dismiss. The court, in denying the union’s motion, held that “Congress gave the authority to PBGC, not the union, to bring . . . enforcement actions [under section 4042] and to settle them,” and that intervention “would interfere with PBGC’s ability to effectively manage and terminate [pension] plan[s] in the most beneficial manner.”

**PBGC v. Divin,** 2010 WL 2196114 (M.D. Ga. May 27, 2010) – After plan termination, PBGC intervened as lead plaintiff in a suit that was brought by the plan’s participants against the sponsor’s former officers and directors for allegedly failing to prudently invest the plan’s assets, a breach of their fiduciary duties under Title I of ERISA. The court denied the defendants’ motion to dismiss the complaint, holding that the facts alleged in the complaint were a sufficient basis for the claims, but denied PBGC’s motion to strike two of the defendants’ affirmative defenses, holding that such a decision should not be made prior to the close of discovery.

**US Airline Pilots Ass’n v. PBGC,** 2010 WL 3168048 (D.D.C. Apr. 16, 2010) – A union representing participants of a terminated pension plan alleged that PBGC failed to investigate and rectify possible wrongdoings by former plan fiduciaries, and moved for a preliminary injunction to have a “special trustee” appointed to fulfill the duties that PBGC allegedly refused to perform. The court denied the union’s motion, finding that its likelihood of success on the merits was remote, and that the union failed to show that its members would suffer irreparable injury absent an injunction because, should PBGC sue the former fiduciaries and recover judgment, that judgment (up to $510 million) would go to PBGC, and
not to participants. Moreover, according to the court, a decision to appoint a “special trustee” would inevitably “open the door to frequent disruptions” of PBGC operations. The union filed a renewed motion for preliminary injunction, which the district court also denied in March 2011.

43. QUESTION: Please describe any decisions of PBGC’s Appeals Board that would be of interest to employee benefits attorneys.

PBGC’S MEETING RESPONSE: PBGC said that its answer to Question 20 of the 2011 Blue Book remained up-to-date.

44. QUESTION: Have there been any situations within the last year in which PBGC invoked the prohibition under ERISA section 4069(a) that the principal purpose of a transaction was to evade liability? Please include matters that were settled in advance of litigation.

PBGC’S MEETING RESPONSE: No.

45. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with its assertions relating to ERISA’s extraterritorial reach.

PBGC’S MEETING RESPONSE: PBGC’s position is that controlled group liability extends beyond U.S. borders, and it continues to assert and settle claims on that basis.

46. QUESTION: Please provide an update regarding PBGC’s recent experience in connection with its claims that a private equity fund may qualify as a “trade or business” and thus be jointly-and-severally liable under ERISA for various pension-related debts of a portfolio company that it owns at least 80 percent of.

PBGC’S MEETING RESPONSE: PBGC stated that there is nothing new since the last time the question was asked by the JCEB in 2009.

47. QUESTION: PBGC’s FY 2008 Annual Report (at p. 5) announced a new PBGC initiative to consider restoring terminated plans:

This year we also initiated a process to analyze the financial condition of former sponsors of trusteed pension plans to examine whether plan restoration may be possible. Under ERISA, PBGC has authority to restore a terminated plan to the former sponsor, and a key issue is whether the sponsor has become financially healthy enough to support the pension plan. Prior to adoption of this new process, PBGC did not systematically review the financial condition of ongoing companies that previously terminated and transferred their underfunded pension plans to PBGC. This analysis will now be a recurring operating procedure within the organization.

Emphasis added. There was no mention of this “recurring operating procedure” in PBGC’s FY2009 Annual Report or FY 2010 Annual Report. In addition, in response to Question 41 at the 2010 JCEB-PBGC meeting, PBGC staff stated that PBGC’s review under this initiative “has not led to any attempts to restore a plan.” Is this restoration initiative still being
implemented by PBGC? If so, please describe PBGC’s experience under the initiative. Or has this initiative been discontinued?

PBGC’S MEETING RESPONSE: The review has not led to any attempts to restore any plans; although the initiative is still “on the books.”

48. QUESTION: During the past year, has PBGC seen any pattern in plan freezing, termination of frozen plans, or growth of cash balance plans?

PBGC’S MEETING RESPONSE: There has been no change since PBGC’s answer to 2011 Blue Book Question 21. In response to a follow-up question asking whether PBGC has done any projections as to how many frozen plans are likely to terminate if market interest rates rise and stock market returns improve (and as to the impact such terminations would have on PBGC’s premium base), PBGC thought there would likely to be more terminations but the agency has not done any studies.
The Honorable Tom Harkin
Chairman
Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Re: Preserving Pension Plans & PBGC

Dear Chairman Harkin:

I am writing on behalf of the Administration in my capacity as Chair of the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC).

The PBGC plays a critical role in the retirement security of more than 44 million Americans who rely on private defined benefit pensions, and 1.5 million more who depend on PBGC for their current or future pension benefits. While PBGC can continue paying benefits to retirees for many years, PBGC’s resources are insufficient to meet all of its obligations in the long-run. As of the end of the last fiscal year, PBGC reported a $23 billion deficit between liabilities and assets available to meet those liabilities.

As you know, PBGC receives no taxpayer financing. PBGC relies on premiums, and past premium increases have been insufficient for PBGC to meet its long-term obligations. In its FY 2012 budget proposal, the Administration proposed a way to set premiums that would improve PBGC’s ability to meet current and future commitments to retirees while at the same time encourage the preservation of better funded defined benefit pension plans. Without such action, the PBGC’s deficit will increase and we may face, for the first time, the need for taxpayer funds. To avoid this outcome and to strengthen retirement security for American workers, we strongly encourage Congress to support this proposal.

There is support for raising PBGC premiums. Two bipartisan budget commissions have proposed raising PBGC premiums. The fiscal commission chaired by former Senator Alan Simpson and former White House Chief of Staff Erskine Bowles recommended increases totaling $16 billion over the next decade. In a separate independent effort organized by the Bipartisan Policy Center, former Senator Pete Domenici and former OMB Director Alice Rivlin recommended increases totaling $5-6 billion.

Historically, Congress has responded to PBGC deficits by authorizing premium increases that are immediate instead of phased-in, and that force the majority of companies to pay for the risky behavior of the minority. As an alternative, the President’s FY 2012 budget is proposing to give the PBGC Board the authority to adjust premiums gradually over time and directs the Board to
account for the risk to the pension insurance system, which is more consistent with other federal insurance programs. Premiums would be fairer, and take into account the risks that different plan sponsors pose to their retirees and to PBGC. In addition, a reformed premium structure could also seek to mitigate the impact of hitting companies the hardest during downturns when they have the least ability to pay.

These premium reforms would be undertaken responsibly. The premium proposal includes a two-year study and public comment period that would help inform implementation and the gradual phasing in of increases. This two-year study will seek advice from a broad range of stakeholders and pension experts. These will include the business community, plan sponsors, labor, professional advisors, consultants to plan sponsors, pension industry thought leaders, and plan participants. These constituent groups will provide a rich diversity of ideas on how best to ensure that PBGC can continue to play its part in protecting pensions.

We recognize that, as in the past, there is opposition to raising PBGC premiums, particularly among some businesses and business organizations. Nonetheless, Congress has, time and again, decided that higher premiums were needed. PBGC’s deficit is again at historic highs, and premiums are too low to meet its obligations.

The alternative approach the Administration is proposing, to give the Board authority to adjust premiums gradually over time, should quell unsubstantiated claims by some that premium increases will put a company out of business or change the fundamentals of its pension costs. The proposal and accompanying broad-based consultation represents a balanced, fair approach that will improve PBGC’s ability to protect pensions.

The Board and PBGC look forward to working with Congress to achieve these goals: to strengthen the PBGC and preserve the defined benefit pension system on which so many Americans depend.

Sincerely,

HILDA L. SOLIS
Secretary of Labor
The Honorable Michael Enzi  
Ranking Member  
Committee on Health, Education,  
    Labor and Pensions  
United States Senate  
Washington, DC  20510

Re:  Preserving Pension Plans & PBGC

Dear Senator Enzi:

I am writing on behalf of the Administration in my capacity as Chair of the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC).

The PBGC plays a critical role in the retirement security of more than 44 million Americans who rely on private defined benefit pensions, and 1.5 million more who depend on PBGC for their current or future pension benefits. While PBGC can continue paying benefits to retirees for many years, PBGC’s resources are insufficient to meet all of its obligations in the long-run. As of the end of the last fiscal year, PBGC reported a $23 billion deficit between liabilities and assets available to meet those liabilities.

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account for the risk to the pension insurance system, which is more consistent with other federal insurance programs. Premiums would be fairer, and take into account the risks that different plan sponsors pose to their retirees and to PBGC. In addition, a reformed premium structure could also seek to mitigate the impact of hitting companies the hardest during downturns when they have the least ability to pay.

These premium reforms would be undertaken responsibly. The premium proposal includes a two-year study and public comment period that would help inform implementation and the gradual phasing in of increases. This two-year study will seek advice from a broad range of stakeholders and pension experts. These will include the business community, plan sponsors, labor, professional advisors, consultants to plan sponsors, pension industry thought leaders, and plan participants. These constituent groups will provide a rich diversity of ideas on how best to ensure that PBGC can continue to play its part in protecting pensions.

We recognize that, as in the past, there is opposition to raising PBGC premiums, particularly among some businesses and business organizations. Nonetheless, Congress has, time and again, decided that higher premiums were needed. PBGC’s deficit is again at historic highs, and premiums are too low to meet its obligations.

The alternative approach the Administration is proposing, to give the Board authority to adjust premiums gradually over time, should quell unsubstantiated claims by some that premium increases will put a company out of business or change the fundamentals of its pension costs. The proposal and accompanying broad-based consultation represents a balanced, fair approach that will improve PBGC’s ability to protect pensions.

The Board and PBGC look forward to working with Congress to achieve these goals: to strengthen the PBGC and preserve the defined benefit pension system on which so many Americans depend.

Sincerely,

HILDA L. SOLIS
Secretary of Labor
The Honorable Kent Conrad  
Chairman  
Senate Budget Committee  
United States Senate  
Washington, DC 20510

Re: Preserving Pension Plans & PBGC

Dear Chairman Conrad:

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HILDA L. SOLIS
Secretary of Labor
The Honorable Jeff Sessions  
Ranking Member  
Senate Budget Committee  
United States Senate  
Washington, DC  20510

Re:  Preserving Pension Plans & PBGC

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HILDA L. SOLIS
Secretary of Labor
The Honorable Paul Ryan  
Chairman  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515  

Re: Preserving Pension Plans & PBGC  

Dear Chairman Ryan:

I am writing on behalf of the Administration in my capacity as Chair of the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC).

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These premium reforms would be undertaken responsibly. The premium proposal includes a two-year study and public comment period that would help inform implementation and the gradual phasing in of increases. This two-year study will seek advice from a broad range of stakeholders and pension experts. These will include the business community, plan sponsors, labor, professional advisors, consultants to plan sponsors, pension industry thought leaders, and plan participants. These constituent groups will provide a rich diversity of ideas on how best to ensure that PBGC can continue to play its part in protecting pensions.

We recognize that, as in the past, there is opposition to raising PBGC premiums, particularly among some businesses and business organizations. Nonetheless, Congress has, time and again, decided that higher premiums were needed. PBGC’s deficit is again at historic highs, and premiums are too low to meet its obligations.

The alternative approach the Administration is proposing, to give the Board authority to adjust premiums gradually over time, should quell unsubstantiated claims by some that premium increases will put a company out of business or change the fundamentals of its pension costs. The proposal and accompanying broad-based consultation represents a balanced, fair approach that will improve PBGC’s ability to protect pensions.

The Board and PBGC look forward to working with Congress to achieve these goals: to strengthen the PBGC and preserve the defined benefit pension system on which so many Americans depend.

Sincerely,

HILDA L. SOLIS
Secretary of Labor
The Honorable Chris Van Hollen  
Ranking Member  
Committee on the Budget  
U.S. House of Representatives  
Washington, DC 20515  

Re:  Preserving Pension Plans & PBGC  

Dear Congressman Van Hollen:  

I am writing on behalf of the Administration in my capacity as Chair of the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC).  

The PBGC plays a critical role in the retirement security of more than 44 million Americans who rely on private defined benefit pensions, and 1.5 million more who depend on PBGC for their current or future pension benefits. While PBGC can continue paying benefits to retirees for many years, PBGC’s resources are insufficient to meet all of its obligations in the long-run. As of the end of the last fiscal year, PBGC reported a $23 billion deficit between liabilities and assets available to meet those liabilities.  

As you know, PBGC receives no taxpayer financing. PBGC relies on premiums, and past premium increases have been insufficient for PBGC to meet its long-term obligations. In its FY 2012 budget proposal, the Administration proposed a way to set premiums that would improve PBGC’s ability to meet current and future commitments to retirees while at the same time encourage the preservation of better funded defined benefit pension plans. Without such action, the PBGC’s deficit will increase and we may face, for the first time, the need for taxpayer funds. To avoid this outcome and to strengthen retirement security for American workers, we strongly encourage Congress to support this proposal.  

There is support for raising PBGC premiums. Two bipartisan budget commissions have proposed raising PBGC premiums. The fiscal commission chaired by former Senator Alan Simpson and former White House Chief of Staff Erskine Bowles recommended increases totaling $16 billion over the next decade. In a separate independent effort organized by the Bipartisan Policy Center, former Senator Pete Domenici and former OMB Director Alice Rivlin recommended increases totaling $5-6 billion.  

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HILDA L. SOLIS
Secretary of Labor
The Honorable John Kline  
Chairman  
Education and the Workforce Committee  
U.S. House of Representatives  
Washington, DC 20515

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Ranking Member
Education and the Workforce Committee
U.S. House of Representatives
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