PBGC Update

ABA Section of Taxation 2019 May Tax Meeting – Employee Benefits Defined Benefit Plans Update

May 10, 2019

Dan Liebman, Deputy General Counsel, Program Law and Policy Department, Office of General Counsel, PBGC
Status of Insurance Programs
## Program Comparison as of 9/30/2018

<table>
<thead>
<tr>
<th></th>
<th>Single-Employer</th>
<th>Multiemployer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2018 PBGC financial position</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Liabilities (includes “probable” losses)</td>
<td>$107.5 billion</td>
<td>$56.2 billion*</td>
</tr>
<tr>
<td>• Assets</td>
<td>$109.9 billion</td>
<td>$2.3 billion</td>
</tr>
<tr>
<td>• Net position</td>
<td>$2.4 billion</td>
<td>($53.9 billion)</td>
</tr>
<tr>
<td><strong>Insurable event</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plan Termination</td>
<td>Plan Insolvency</td>
</tr>
<tr>
<td><strong>FY 2018 premium income</strong></td>
<td>$5.5 billion</td>
<td>$292 million</td>
</tr>
<tr>
<td><strong>2019 guaranteed annual benefit</strong></td>
<td>$67,295 for age 65 retiree, regardless of service</td>
<td>$12,870** for retiree with 30 years of service, regardless of age</td>
</tr>
<tr>
<td><strong>Number of plans</strong></td>
<td>23,400</td>
<td>1,400</td>
</tr>
<tr>
<td><strong>Number of participants in plans</strong></td>
<td>26.2 million</td>
<td>10.6 million</td>
</tr>
</tbody>
</table>

- All but $2B is for “probable” insolvent plans.
- **Two-tier guarantee: 100% of the first $3,960, 75% of the next $11,880. Not indexed.
PBGC Net Position

Both Insurance Programs FY 2000-2018

($ in billions)


Single-employer Multiemployer
Multiemployer Plans Only

Active Participants
Inactive Participants

Participants, in millions

Plans, in thousands

Pension Benefit Guaranty Corporation
1.3 Million Participants are in Critical and Declining Zone Status Plans

Number of People in Multiemployer Plans by Zone Status

*Source: 2015 Form 5500 and zone status certifications*
PBGC Multiemployer Fund Still Drained in 2025

PBGC Assets, Average Assistance Payments and Premiums by Fiscal Year
Reflecting Assumed MPRA Suspensions / Partitions
(Projected in Nominal $ Amounts)
Timeline of Projected Fiscal Risks for Certain Federal Programs

- **2025**: Multiemployer Insurance Program trust fund is projected to be depleted.
  - Insufficient to pay the full level of guaranteed benefits in insolvent plans.

- **2028**: Social Security Disability Insurance (DI) trust fund is projected to be depleted.
  - Sufficient to pay 93% of benefits.

- **2029**: Medicare Hospital Insurance (HI) trust fund is projected to be depleted.
  - Sufficient to pay 88% of hospital-related Medicare spending.

- **2035**: Social Security Old-Age and Survivors Insurance (OASI) trust fund is projected to be depleted.
  - Sufficient to pay 75% of benefits.

Sources: GAO analysis of data from the Social Security Administration, the Centers for Medicare and Medicaid Services, and the Pension Benefit Guaranty Corporation. | GAO-18-111SP
About 1/3 of Retirees Experienced Benefit Cuts of Over 50 Percent in the recent Teamster multiemployer plan insolvency.
PBGC-Insured Participants and Plans
Single-Employer Plans Only

[Graph showing the number of participants and plans from 1980 to 2018.]
# Top 10 Single-Employer Plan Claims

## Table S-5

Top 10 Firms Presenting Claims (1975-2016)

<table>
<thead>
<tr>
<th>Top 10 Firms</th>
<th>Number of Plans</th>
<th>Fiscal Year(s) of Plan Termination(s)</th>
<th>Claims (by firm)</th>
<th>Vested Participants</th>
<th>Average Claim Per Vested Participant</th>
<th>Percent of Total Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Airlines</td>
<td>4</td>
<td>2005</td>
<td>$7,304,186,216</td>
<td>122,483</td>
<td>$59,634</td>
<td>14.9%</td>
</tr>
<tr>
<td>Delphi</td>
<td>6</td>
<td>2009</td>
<td>$8,205,959,418</td>
<td>66,614</td>
<td>72,366</td>
<td>9.8%</td>
</tr>
<tr>
<td>Bethlehem Steel</td>
<td>1</td>
<td>2003</td>
<td>3,702,771,655</td>
<td>92,174</td>
<td>40,172</td>
<td>7.6%</td>
</tr>
<tr>
<td>US Airways</td>
<td>4</td>
<td>2003, 2005</td>
<td>2,708,858,934</td>
<td>60,585</td>
<td>44,712</td>
<td>5.5%</td>
</tr>
<tr>
<td>Delta Air Lines</td>
<td>1</td>
<td>2006</td>
<td>1,710,043,418</td>
<td>13,237</td>
<td>129,187</td>
<td>3.5%</td>
</tr>
<tr>
<td>National Steel</td>
<td>7</td>
<td>2003</td>
<td>1,319,009,116</td>
<td>35,152</td>
<td>37,523</td>
<td>2.7%</td>
</tr>
<tr>
<td>Pan American Air</td>
<td>3</td>
<td>1991, 1992</td>
<td>841,082,434</td>
<td>53,624</td>
<td>15,685</td>
<td>1.7%</td>
</tr>
<tr>
<td>Trans World Airlines</td>
<td>2</td>
<td>2001</td>
<td>668,377,105</td>
<td>32,197</td>
<td>20,759</td>
<td>1.4%</td>
</tr>
<tr>
<td>Weirton Steel</td>
<td>1</td>
<td>2004</td>
<td>640,480,970</td>
<td>9,825</td>
<td>65,189</td>
<td>1.3%</td>
</tr>
<tr>
<td><strong>Top 10 Total</strong></td>
<td><strong>35</strong></td>
<td></td>
<td><strong>$25,850,392,150</strong></td>
<td><strong>569,673</strong></td>
<td><strong>$45,378</strong></td>
<td><strong>52.8%</strong></td>
</tr>
<tr>
<td><strong>All Other Total</strong></td>
<td><strong>4,734</strong></td>
<td></td>
<td><strong>$23,152,357,816</strong></td>
<td><strong>1,703,811</strong></td>
<td><strong>13,589</strong></td>
<td><strong>47.2%</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,769</strong></td>
<td></td>
<td><strong>$49,002,749,967</strong></td>
<td><strong>2,273,484</strong></td>
<td><strong>$21,554</strong></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

Source: PBGC Fiscal Year Closing File

Values presented for Claims are the difference between liabilities and assets unless noted as Net Claims, which also consider recoveries from trustee plans.

Data in this table have been calculated on a firm basis and, except as noted, include all trustee plans of each firm.

Claim values and distributions are subject to change as PBGC completes reviews.

Due to rounding of individual items, numbers and percentages may not add up to totals.

Vested participant count is as of the date of plan termination.

* Does not include 1986 termination of a Republic Steel plan sponsored by LTV.
Recent Regulatory Activities
• Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors (5/2/19)
  o Proposed rule (7/16/18); two comments received

• Owner-Participant Changes to Guaranteed Benefits and Asset Allocation (10/03/18)
  o Proposed rule (03/07/18)

• Mergers and Transfers Between Multiemployer Plans (9/14/18)
  o Proposed rule (06/06/16); ten comments received
• Plan Sponsor Duties: Annual Valuation and Withdrawal Liability
  o Actuarial valuation may be made only every 5 years if present value of plan’s nonforfeitable benefits is ≤ $50 million.
  o New requirement for certain terminated plans and insolvent plans to file actuarial valuations; if receiving financial assistance and present value of plan’s nonforfeitable benefits is ≤ $50 may file alternative valuation information.
  o New requirement to file information about withdrawal liability payments and whether any employers have withdrawn but have not yet been assessed withdrawal liability.
Duties of Plan Sponsors Final Rule

- Insolvency Notices and Updates
  - Eliminates outdated information and changes frequency of notices:
    - Plan sponsor required to provide notices of insolvency if sponsor determines plan insolvent in current plan year or expected to be insolvent in next plan year.
  - Eliminates requirement to provide most annual updates to notices of insolvency benefit level.
• Rulemaking continues effort to reduce plan burden:
  o PBGC amended regulations in 2014 to reduce number of actuarial valuations required for certain smaller terminated plans (introduced periodic, rather than annual, requirement based on value of non-forfeitable benefits) and remove some insolvency notice and update requirements. See 79 FR 30459 (May 28, 2014).
  
  o Retrospective review under EO 13563.
Facilitated Mergers

- Final regulation updates general requirements on plan mergers and transfers of plan assets and liabilities between multiemployer plans.
- Amends regulation (29 CFR 4231) to implement facilitated merger provisions of the Multiemployer Pension Reform Act of 2014 (MPRA).
- Provides procedural and informational requirements for facilitated merger requests.
- Provisions relating to plan solvency requirements may be addressed at a later time.
• Under ERISA § 4231(e)(1), PBGC may facilitate a merger if it determines, after consultation with the Participant and Plan Sponsor Advocate, that –
   
   the merger is in the interests of participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of participants and beneficiaries of any of the plans.

• Facilitation may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies.
Facilitated Mergers

PBGC financial assistance allowed only if:

• One or more of the plans is Critical and Declining
• Is necessary to avoid / postpone insolvency of a plan
• Will reduce PBGC’s expected long-term loss
• Is necessary for the merged plan to become or remain solvent
• No impairment to PBGC’s meeting existing obligations to other plans
Additional Requirements for Facilitated Merger

- Facilitated mergers must satisfy the general merger requirements.
- Mergers facilitated with financial assistance must also satisfy general facilitation requirements.

Merger or Transfer | ERISA § 4231(b) requirements
Facilitated Merger | ERISA § 4231(e)(1) requirements
Financial Assistance Facilitated Merger | ERISA § 4231(e)(2) requirements
• Methods for Computing Withdrawal Liability, Multiemployer Pension Reform Act of 2014 (2/6/19); seven comments received
<table>
<thead>
<tr>
<th>Agenda Stage of Rulemaking</th>
<th>Title</th>
<th>RIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Rule Stage</td>
<td>Benefit Payments</td>
<td>1212-AB27</td>
</tr>
<tr>
<td>Proposed Rule Stage</td>
<td>Miscellaneous Corrections, Clarifications, and Improvements</td>
<td>1212-AB34</td>
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<tr>
<td>Proposed Rule Stage</td>
<td>Administrative Review</td>
<td>1212-AB35</td>
</tr>
<tr>
<td>Proposed Rule Stage</td>
<td>Multiemployer Plan Guaranteed Benefits</td>
<td>1212-AB37</td>
</tr>
<tr>
<td>Proposed Rule Stage</td>
<td>PBGC-Approved Arbitration Procedures--Multiemployer Plans</td>
<td>1212-AB39</td>
</tr>
<tr>
<td>Proposed Rule Stage</td>
<td>Release of Official Information and Testimony by PBGC Employees</td>
<td>1212-AB40</td>
</tr>
<tr>
<td>Proposed Rule Stage</td>
<td>Valuation Assumptions and Methods: Interest Assumptions for Paying Benefits in Single-Employer Plans</td>
<td>1212-AB41</td>
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<tr>
<td>Proposed Rule Stage</td>
<td>Examination and Copying of Pension Benefit Guaranty Corporation Records</td>
<td>1212-AB44</td>
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<tr>
<td>Proposed Rule Stage</td>
<td>Filing and Issuance Rules</td>
<td>1212-AB46</td>
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<tr>
<td>Final Rule Stage</td>
<td>*Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors</td>
<td>1212-AB38</td>
</tr>
<tr>
<td>Final Rule Stage</td>
<td>Adjustment of Civil Penalties</td>
<td>1212-AB4</td>
</tr>
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* completed
Informal Consultation/Other Guidance
New Pre-filing Distress Termination Consultation

• Discussion with sponsor and advisors about whether distress filing is appropriate
  o Involves high level review of historical financials and discussion of issues facing the sponsor
  o Review of whether distress criteria are likely to be met
  o Discussion of whether PBGC-initiated termination is more appropriate

• Outline of PBGC’s processing steps for a distress

• Reminder of need to satisfy underfunding
Distress Terminations

Request a Pre-filing Consultation

Schedule a pre-filing consultation call with PBGC’s Corporate Finance and Restructuring Department to discuss the filing process and ensure the filing of a distress termination is appropriate given the sponsor’s specific circumstances. Contact PBGC by sending an email to distress@pbgc.gov or calling (202) 326-4070.

What is a distress termination?

A plan that does not have enough money to pay all benefits owed participants and beneficiaries may be terminated only if the employer and the members of the employer’s "controlled group" of affiliated companies each meets one of the distress termination tests. To do so, however, the employer must prove that the controlled group is financially unable to support the plan. PBGC takes over the plan as trustee and

Visit this page on PBGC.gov
• Not always clear if certain plans covered by Title IV of ERISA
• Most common coverage determination requests are for:
  o substantial owner plans under ERISA 4021(b)(9)
  o smaller professional service plans under ERISA 4021(b)(13)
• Comment from 60-day notice on request for coverage determination on request for determination before creation of plan:
  o Draft form and instructions contemplate pilot program on opinion letter request in lieu of coverage determination
• ERISA 4010 requires certain underfunded plans to report identifying, financial and actuarial information to the PBGC.

• PBGC’s regulation on annual financial and actuarial reporting at 29 CFR Part 4010

• New Pre-filing Consultation Service:
  o Focus on first-time filers
  o PBGC staff can give overview of filing process, share helpful tips on how to use the e-filing software, and provide insights on how to avoid common filing errors.
  o Schedule pre-filing consultation: email ERISA.4010@pbgc.gov or call (202)-326-4000 ext. 3075.
  o See also https://www.pbgc.gov/prac/reporting-and-disclosure/4010-reporting
Staff Q&A Website

• PBGC developed page on website that compiles PBGC staff responses to questions received from practitioners about Title IV requirements that may be of interest to other practitioners.

• See https://www.pbgc.gov/prac/staff-responses-prac-questions

• Current topics covered:
  o 430(k) Liens
  o Bankruptcy Claims
  o Premiums
  o Distress Terminations
  o Guaranteed Benefits
  o Reportable Events
  o Valuations

Interpretations reflect the views of PBGC staff and are not rules, regulations, or statements of the Corporation. Positions do not necessarily contain discussion of all material considerations necessary to reach conclusions stated, and are not binding due to their informal nature. Accordingly, responses intended as general guidance and should not be relied on as definitive. No assurance that information presented in interpretations is current, as positions may change without notice.
Alternative Terms and Conditions to Satisfy Withdrawal Liability


- Plans may adopt alternative withdrawal liability payment rules that can reduce the amounts employers would otherwise pay upon withdrawal under ERISA

- Plan may, but is not required to, seek assurance from PBGC that an alternative rule is consistent with ERISA

- Guidance describes:
  - Types of information PBGC finds helpful in evaluating plan proposals
  - Factors PBGC considers in its evaluation
Alternative Terms and Conditions to Satisfy Withdrawal Liability

Informal Consultation Contacts:

- **Office of the General Counsel**
  Connie Markakis (Markakis.constance@pbgc.gov)
  Jon Chatalian (Chatalian.Jon@pbgc.gov)

- **Negotiations and Restructuring Actuarial Division**
  Julie Cameron (Cameron.Julie@pbgc.gov)
Multiemployer Program Case Work
New tools for some plans:

• Benefit Suspensions
• Plan Partitions
• Facilitated Mergers
Benefit Suspensions

• Suspension = Reductions

• Treasury approval required
  o Treasury must consult with PBGC and DOL

• Plan must show that:
  o Without suspensions, projected insolvency within 20 years
  o Suspension will prevent insolvency (alone or in conjunction with other tools)
  o Other PPA tools won’t prevent insolvency (“exhaustion of reasonable measures, forestalling insolvency”)

• Participant vote required (special rule for largest plans)

• Limits on reductions
  o Resulting benefits no less than 110% of PBGC guarantee
  o No reduction for certain participants (e.g., disabled, over 80)
  o Equitable distribution required
PBGC may approve partition only if:

• Plan has taken all reasonable measures to avoid insolvency (including maximum benefit suspensions, if applicable)

• Partition will reduce PBGC liability for the plan and is necessary for the plan to remain solvent

• PBGC certifies that its ability to meet existing obligations to other plans will not be impaired (including plans projected insolvent within 10 years)
Plan Partition and Other Multiemployer Program Activities

In FY 2019 PBGC:

- Approved a partition application for Plasterers and Cement Masons Local Number 94 covering ~ 100 participants.
- Issued one determination of legal compliance for a transfer of liabilities between multiemployer plans.
- Approved two alternative allocation withdrawal liability rules (no jumping).
- Approved one special withdrawal liability rule.
- Issued three determinations of legal compliance for mergers between multiemployer plans.
Thank You!