

# Intersector Group Meeting with the Pension Benefit Guaranty Corporation Notes

April 4, 2018

Twice a year the Intersector Group meets with representatives of the Pension Benefit Guaranty Corporation (PBGC) to discuss regulatory and other issues affecting pension practice. The Intersector Group is composed of two delegates from each of the following actuarial organizations: American Academy of Actuaries (Academy), Conference of Consulting Actuaries (CCA), Society of Actuaries (SOA), and ASPPA College of Pension Actuaries (ACOPA). Attending from the Intersector Group at this meeting were Bruce Cadenhead (CCA), Tom Finnegan (ACOPA), Ted Goldman (Academy), Eric Keener (SOA), Tonya Manning (CCA), John Markley (ACOPA), Maria Sarli (SOA), and Jason Russell (Academy). Monica Konaté, Academy staff member supporting the Intersector Group, also attended.

These meeting notes are not official statements of the PBGC and have not been reviewed by its representatives who attended the meetings. The notes are a reflection of the Intersector Group's understanding of the current views of the PBGC representatives and do not represent the positions of the PBGC or of any other governmental agency and cannot be relied upon by any person for any purpose. Moreover, the PBGC has not in any way approved these notes or reviewed them to determine whether the statements herein are accurate or complete.

Discussion topics were submitted to the PBGC in advance of the meeting and are shown in regular typeface below; a summary of the discussion is shown in italics.

## Part I: From the profession to the agencies

- Specific questions compiled by Intersector members—issues in need of clarification/guidance unclear, cumbersome processes, priorities, emerging issues
  - Distress terminations—in some instances, the distress terminations process consists of several separate sets of questions from PBGC that end up taking years to complete. The actuary is typically the only remaining party—any guidance?
    - **RESPONSE:** *Intersector Group noted complaint from practitioner regarding the length of the process. Reported that PBGC was requesting information years after a distress termination. PBGC noted that the time frames depend greatly on the quality of the data. For distress*

*terminations involving bankruptcy/liquidation, the approval process often moves more quickly. The PBGC makes every effort to collect all of the plan records as quickly as possible, but sometimes it takes a long time. PBGC also does not just accept the accrued benefits provided; it uses the plan document and calculates them. As a result, plans may need to keep records longer than they might have expected.*

*The PBGC prefers a pre-filing conference to smooth the process. It notes that proposed distress terminations often turn into PBGC-initiated terminations. In these cases, the pre-filing conference can help avoid a lot of extra work.*

*Negotiating final funding settlements now allows independent mediation, reducing the time expenditure for plans.*

*One area that takes some time is the movement of benefits to the pay status group.*

*PBGC also discussed the timeframe to have a distress termination approved. Those approvals are often delayed by incomplete filings. The “business continuation test” is often the biggest stumbling block; there is a very high bar, and PBGC often doesn’t get the information it needs. Are the projections provided reasonable? In a bankruptcy liquidation it would be much quicker.*

*Contact PBGC to request a pre-filing conference. PBGC will do a very high-level review to determine (a) whether it should be an involuntary termination instead of a distress termination or (b) whether a distress termination would likely be approved.*

*Also, PBGC recently put in place a pilot mediation program—it can be a lengthy process to get additional funding for a plan without putting the company out of business. Entering into mediation with a third party can often speed up the process.*

- Update of PBGC assumptions—is there any update on its internal review of assumptions (like XRA and the mortality PBGC uses to back into plan termination interest rates)?
  - **RESPONSE:** *If PBGC were to make changes it would be through a proposed regulation, therefore any proposals would not be finalized soon. Likely it would address mortality and XRA separately; most likely mortality first, XRA later.*

- De-risking activity—Has the PBGC been able to use the information you are collecting on de-risking to inform solvency projections? If so, how is it affecting them?
  - **RESPONSE:** *PBGC is trying to get a handle on the size of the trend toward de-risking; has it slowed since the new mortality table became effective for 417e, etc.? They anticipate issuing a report in the near future. PBGC has not used the data for other purposes yet (e.g., solvency projections), but expects to.*
  
- Premium filings—are there particular common issues PBGC is seeing in premium filings (beyond the issues listed in the 2018 PBGC premium instructions) that you want to alert us to?
  - **RESPONSE:** *The PBGC has added a Common Errors appendix to the form instructions. Nevertheless, some errors seem to continue. Specifically, issues pertaining to missed first-year filings and lookback year issues in small plans. Identifying information for the plan also causes problems (e.g., reusing plan numbers). The filing edits on uploading have been strengthened.*
  
- Multiemployer plans—On April 3, 2018, PBGC released guidance on alternative withdrawal liability payment arrangements. Does PBGC wish to provide any commentary on this guidance?

**Response:**

- *While the guidance is called a “policy statement,” it should be considered nonbinding guidance. The document merely reflects PBGC’s current views of alternative withdrawal liability settlement arrangements, and those views may change as more is learned on the topic. The policy statement invites plan sponsors to enter into discussions about how to settle withdrawal liabilities. The intent is to develop approaches that (a) entice new employers to enter the plan and/or (b) entice employers that can’t pay withdrawal liability to stay in the plan and keep contributing.*
  
- *There is no statutory requirement that a plan sponsor seek a favorable determination from PBGC before adopting alternative withdrawal liability settlement arrangements under section 4224 of ERISA. However, consulting with PBGC before implementing a non-statutory arrangement will give plan sponsors a greater degree of confidence that they are adhering to their fiduciary duties.*

- *PBGC had two key situations in mind when issuing this guidance.*
  - *The first situation is when a small plan with generally small employers is very troubled. An alternative withdrawal liability payment arrangement could be in the best interest of the plan, its participants, and the employers, overall. For example, if the statutory payment schedule might force an employer into bankruptcy, a reduced or restructured payment schedule could keep the employer in business and extend the solvency of the plan.*
  - *The second situation PBGC had in mind is when a larger plan with generally large employers seeks to combine an alternative withdrawal liability payment arrangement with a two-pool (or other) alternative withdrawal liability allocation method. PBGC encourages plan sponsors to consult with PBGC before implementing rules that allow employers to transition from the old pool to the new pool.*
- *PBGC also expressed concern over plan sponsors accepting lump sum withdrawal liability settlements that have a lower present value than the expected statutory withdrawal liability payments. A distressed plan may benefit from the influx of cash (thereby extending solvency), but there is a concern that the plan still has financial issues and is accepting less than it is owed.*
- *For larger employers in larger plans, PBGC expressed concerns with the two-pool design and allowing lump sum settlements of the “old plan” withdrawal liability. Even if the single sum is significantly lower than the PV of future expected withdrawal liability payments, the influx of cash can be good, even essential to the survival of the plan—but concern for the allocation of the savings as additional liability to smaller employers that couldn’t afford a settlement raises concerns.*
- Multiemployer plans—Is there any point of view toward plan sponsors freezing legacy plans and starting new, separate plans?

***Response:***

- *PBGC would consider whether there is a “substantial business purpose” for doing so. Such a two-plan arrangement could be properly structured to be in the best interest of all participants in both plans. That said, PBGC has concerns about the protection of the legacy benefits and the allocation of negotiated contributions between the legacy plan and the*

*new plan. It would need illustrations of the effect of these plans (e.g., deterministic projections).*

- *PBGC has concerns about situations in which the new plan provides a wraparound benefit that makes whole benefits in the legacy plan in the event the legacy plan becomes insolvent. For example, how would the new plan recognize the wraparound benefit in its annual valuation?*
- *PBGC encourages plan sponsors that are considering freezing a legacy plan and starting a new plan to consult PBGC for guidance before engaging in such a transaction. PBGC is considering issuing guidance on this topic, similar to the recently released guidance on alternative withdrawal liability payment arrangements.*

#### *Part II: From the agencies to the profession*

- *PBGC noted, under its newly expanded program, that it has received its first transfer of missing participants from a terminated DC plan.*
- *The forms for standard terminations expired in November 2017. A new form has been approved by OMB. (The new forms have since been posted at <https://www.pbqc.gov/prac/forms>).*