

Notes from Intersector Meeting with PBGC September 11, 2013

The Intersector Group is composed of two delegates from each of the following actuarial organizations: American Academy of Actuaries, Society of Actuaries, Conference of Consulting Actuaries, and ASPPA College of Pension Actuaries. Twice a year the Intersector Group meets with representatives of the Pension Benefit Guaranty Corporation (PBBGC) to dialogue with them on regulatory and other issues affecting pension practice. Attending from Intersector Group: Don Fuerst, Eli Greenblum, Judy Miller, John Moore, Heidi Rackley, Maria Sarli, Don Segal, Larry Sher. David Goldfarb, 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 merely reflect 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.

1. Update from PBGC

Reportable Event Public Hearing – The profession's input was constructive. There was a very negative reaction at the hearing about (a) using surrogates for credit ratings, out of concern that this approach would eventually carry over to the premium area, and (b) the financial soundness criteria in general. PBGC is carefully considering the comments and will finalize reportable event regulations at some point.

De-risking – PBGC is very interested in de-risking activities. PBGC has testified about the negative policy implications of lump sum windows, and has expressed particular concern about lump sums to retirees. PBGC believes it is better to get an annuity instead of a lump sum and that annuities backed by high quality insurers are “a good, secure deal.” PBGC suggested that this is a public policy issue that the actuarial profession may be asked to address. Only one actuary testified at the hearing about de-risking. PBGC's concern is retirement security, not loss of premiums – one of PBGC's statutory charges is increasing retirement security.

PBGC believes that current rules make offering lump sums too attractive to companies – there is not a level playing field with annuities, because: IRC 417(e) mortality may be less strong than an insurer would use; lump sums are not required to include subsidies and supplements; and the look-back provision for interest rates in IRC 417(e) permits interest rate arbitrage by companies in designing lump sum windows. We pointed out that the desire to reduce fiduciary exposure was also a draw for employers, as well as the desire to reduce PBGC premiums (especially if the \$400 per participant variable premium cap applies).

Change in Plan Year to Delay Premium Increases – PBGC indicated that companies that change the plan year to delay the increase in PBGC premiums are playing “audit roulette” and can be easily identified from a Form 5500 filing.

Full Yield Curve/Generational Mortality – PBGC asked how much computational sophistication exists for small plans. We discussed that lead-time would be needed if any changes required use of the yield curve with generational mortality, and that changes are a bigger deal for pension administration systems (for example if generational mortality and/or full yield curves need to be used for 417(e) calculations), which are more likely to be in-house systems.

Windsor Decision - PBGC has Windsor decision issues for plans that PBGC takes over with respect to death benefits etc. They are working through these issues.

2. Proposed Regulations on Simplifying PBGC Premium Filings

The comment period is about to end. PBGC asked that practitioners comment even if they like the proposed regulation. The more commentators that say “go ahead and do it,” the easier the approval process will be. PBGC would like the new rules to be in effect for 2014. Also, they would welcome comments on the draft forms.

We asked that PBGC consider eliminating the “estimated” box, and simply allow premium filing corrections within six months, with interest but no penalty. PBGC has been contacting plan sponsors who fail to file the “reconciling filing” by April 30 after an estimated filing, but has not assessed a penalty for the late reconciling filing.

3. Experience regarding 4062(e) policy, financial soundness criteria currently being used, guidelines to help plan sponsors determine whether PBGC is likely to impose 4062(e) liability

PBGC still calculates 4062 (e) liability, but they have enforcement discretion. They “forbear” enforcement against strong companies. As a result of these new criteria, PBGC suspended 16 existing agreements worth \$440 million. There are another 40 cases they are forbearing. Forbearance determinations are quick and are solely based on financial considerations.

PBGC’s guidelines are on the website. If a company has investment-grade debt as rated by Standard & Poor’s or Moody’s, they are a likely candidate for forbearance. Another alternative that PBGC can look to is the D&B financial stress score, which is useful if a company doesn’t have a Standard and Poor’s or Moody’s rating. Most companies have a Dun & Bradstreet financial stress score. Currently, the Dun & Bradstreet financial stress score that qualifies as healthy for this purpose is 1477, but this qualifying score may change from time to time. Dun & Bradstreet is not a good window into debt structure, so PBGC also looks at how much secured

debt a company has. They look at debt securities in general. They also look behind-the-scenes – is there something else going on that might concern PBGC (e.g., if the company were leaving U.S. markets). Forbearance doesn't mean the sponsor is entirely off the hook. PBGC will monitor the sponsor for five years and can impose liability if the sponsor's credit rating slips.

PBGC indicated that the proposed 4062 (e) regulations reflected what they were already doing. They reflect how PBGC interprets the statute. Some of it was already in Blue Book questions and answers. Other parts of it were already in written enforcement guidelines.

4. PBGC deficit; treatment of legacy costs versus prospective exposure

PBGC was very appreciative of the American Academy of Actuaries Issue Brief on the PBGC deficit – they thought it was balanced and will help to clear up confusion on the Hill. The Academy brief discussed the possibility of recognizing the difference between legacy and ongoing risks, and handling them differently, and also reflecting the risks that different organizations pose to PBGC. But PBGC doesn't control the premium process; Congress does. PBGC would like the authority to set premiums and incorporate risk.

PBGC agrees that the Academy has laid out why it isn't a good idea to charge ongoing plans for legacy costs, but Congress follows the FDIC model which says that if you have losses you should hike premiums. A prior PBGC proposal was to treat future claims through the variable-rate premium process, with flat-rate premiums set to amortize the unfunded over a certain number of years

We discussed whether PBGC has considered other sources of revenue than current plan sponsors. PBGC said anything that involves Treasury money goes nowhere because PBGC is an independent agency. Using other sources breaches the "not based on full faith and credit of the U.S. government" line. Imposing a premium on DC plans is a political nonstarter.

We discussed that in the UK pension protection system, one of their projections is based on an assumption of no premium payers after 2030.

5. Multiemployer Plans

National Coordinating Committee for Multiemployer Plans (NCCMP) Proposal - Cutbacks

Some details of the proposal are not clear to PBGC. For example, would a plan have to push out the point of insolvency for a specific period, or is the goal to permanently avoid insolvency? It has also been suggested that actives may be resistant to further benefit reductions, leaving the brunt of benefit cutbacks to fall on the retirees through the collective bargaining process, which creates an equity issue. Another equity issue being raised by interest groups is that an older retiree may be giving up benefits for the sake of the long term health of a plan that would not

have run out of money during the retiree's lifetime in the absence of restructuring. PBGC expects these issues will need to be addressed as legislation unfolds.

The proposal is unclear whether to apply cuts using an equal percentage or an equal dollar approach. PBGC thinks the equal percentage approach makes sense. Some practitioners believe that the most equitable approach is to first roll back increases that occurred in the 1990s through 2001 when many plans were in surplus and IRS rules forced benefit improvements in order to avoid having negotiated contributions be non-deductible. We discussed that under the proposal you can't reduce benefits beyond the point where the plan is deemed not insolvent – so a plan would not just automatically cut back benefits to 110% of PBGC guaranteed benefit levels under the proposal.

NCCMP Proposal – Data Needed by PBGC to Evaluate the Proposal

The NCCMP proposal would require data to be able to determine what PBGC guarantees are, and PBGC needs data to be able to analyze the proposal. A process must be followed when the PBGC asks for data, even if it is voluntarily submitted. On July 30, PBGC submitted to the OMB a request to ask sponsors to voluntarily submit data to help PBGC evaluate the NCCMP proposal. There is a 60-day review process that runs out on September 30. PBGC will approach sponsors and ask for data shortly thereafter.

We discussed whether data is readily available to determine 110% of PBGC guaranteed benefit levels, or to determine benefits attributable to 1998-2001 improvements. Actuaries typically don't have it. Plan sponsors may or may not have computerized records that include this information, especially for older retirees.

We discussed that very few plans will go on record saying they support the NCCMP proposal cutbacks. It is unclear whether plans are willing to do labor-intensive research to help develop information to support legislation that is not on the books, when implicit or explicit support for the proposal may cause internal political and participant problems, all for naught if the law doesn't pass.

The Intersector group suggested that plans should not be prevented from using such a rule (cutbacks as needed to maintain solvency, but not below 110% of PBGC guaranteed benefits) simply because some plans can't or won't develop the necessary data at this time.

PBGC asked how actuaries do projections when determining rehabilitation plans and funding improvement plans. Is there the same degree of rigor that goes into an AFTAP certification for a single-employer plan? We indicated the "actuary's best estimate" generally is (and should be) the primary standard for projecting benefit cuts and funding levels before and after a funding improvement plan or rehabilitation plan, but that the actuary does not certify that the "plan

works” and Trustees are free to base those plans on other reasonable assumptions. With respect to a potential actuarial certification of insolvency under the NCCMP proposal, we recommended a statutory requirement to use an “actuary’s best estimate standard,” as is the case with PPA status/“zone” certifications. We also discussed the potential regulatory review process for cutback provisions, and the concern that putting the PBGC in the judge’s seat could be a conflict of interest.

PPA Sunset - PBGC asked whether actuaries could give more formal input on what the statutory uncertainties are with the post-2014 sunset of certain PPA rules. These uncertainties include the question of what happens post-sunset to funding improvement and rehabilitation plans currently in place.

Changes in Withdrawal Liability Methodology – PBGC indicated that there is no moratorium on approvals of withdrawal liability methods involving a bifurcation of pools between “old” and “new” employers, but there have not been many approvals recently. There have been applications. If the change is simple and the “new” employer pool includes only employers who never made a contribution in the past, approval will be quick. PBGC has more concerns (and is taking more time) before approving methods that permit existing contributing employers to settle the “old” liability – perhaps under a relaxed withdrawal liability standard – and move to the “new” pool.

6. Status of PIMs and ME-PIMS Reviews Mandated by PRA 2010

The PIMS review process is ongoing. The Social Security Administration will be putting out an RFP for services to conduct the review, which will start next year. A key concern is who is “independent enough” to give an objective opinion.