



# Give Us a Call

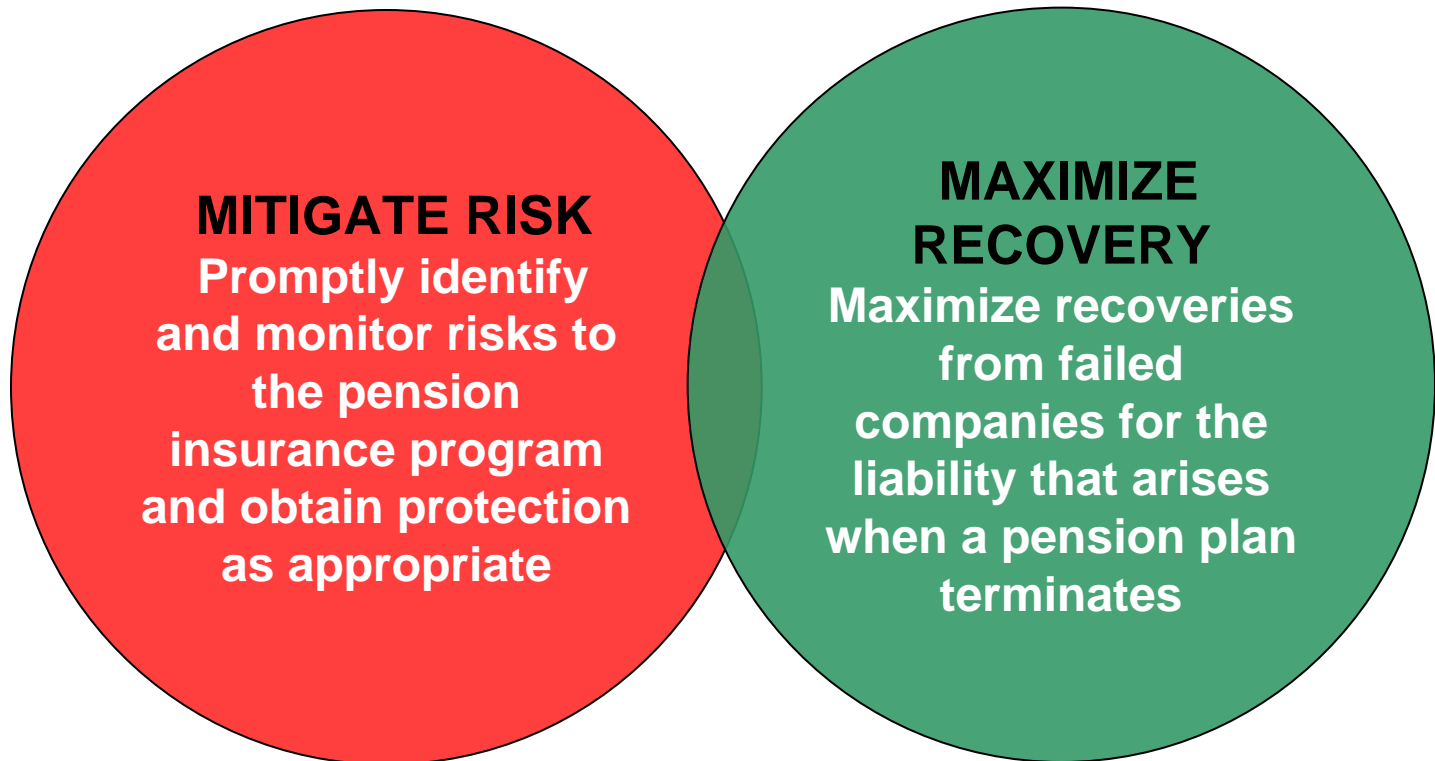
Department of Insurance Supervision and  
Compliance

Conference of Consulting Actuaries  
Annual Meeting  
November 3, 2009

# Introduction to DISC

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- The Department of Insurance Supervision and Compliance (“DISC”) has two main mission objectives:



# Tools for Mitigating Risk

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- DISC focuses efforts on risk mitigation to obtain protection for pension plans in order to prevent plan terminations
- We strive to protect the promised benefits to participants (both guaranteed and non-guaranteed)
- Tools for mitigating risk include:
  - Early Warning Program
  - Participant Reductions Due to Cessation of Operations (“Downsizing Liability”)
  - Statutory Liens for Missed Contributions
  - Minimum Funding Waivers - an Alternative to Distress Termination

# Early Warning Program

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- PBGC routinely monitors companies to determine whether events may pose a risk to the pension plan
- PBGC uses the program to prevent losses before they occur by negotiating with companies to provide additional protection for the pension plan
- Events of concern may include:
  - Break-up of corporate structure
  - Leveraged buyouts
  - Payment of large dividends
- See PBGC fact sheet on program on PBGC website  
(<http://www.pbgc.gov/practitioners/risk-mitigation-program/content/page13360.html>)

## Early Warning Program (cont.)

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- Our initial inquiry regarding an event includes a request for up-to-date actuarial data and information regarding the event
- We analyze the information provided to determine whether the event could pose risk for the plan and plan participants
- If the event is deemed problematic, PBGC works with company management to tailor a settlement that is appropriate to the business transaction and financially feasible for the company
- It is important to involve PBGC early on in the process to avoid delays in the closing of transactions

# Participant Reduction Due to Cessation of Operations (“Downsizing Liability”)

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- Under section 4062(e) of ERISA, companies are required to provide protection when a cessation of operations at a facility in any location results in a decline in the number of active participants in the plan of more than 20%
- Failure to notify PBGC within 60 days of a 4062(e) event could result in penalties – notification requires companies to request a calculation of the liability (this is in addition to Form 10 filing requirements)
- The 4062(e) liability is equal to the percentage reduction in active participants multiplied by the plan’s underfunding, calculated on a termination basis as of the date of the cessation

# Participant Reduction Due to Cessation of Operations ("Downsizing Liability") (cont.)

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- In response to questions from the ERISA community, PBGC is working on a regulation to clarify various issues
- We have broad flexibility to work with companies to structure protection that fits within their business plans, provided the protection is equal to the liability
- This has become an important part of our risk mitigation efforts. As of September 30, 2009, the agency had negotiated 18 settlements valued at about \$400 million, protecting about 50,000 participants
- See PBGC's website for press releases on settlement agreements PBGC has reached with plan sponsors

# Statutory Liens for Missed Contributions

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- Companies are required to notify us through a Form 10 within 30 days of missed contributions of less than \$1M and through a Form 200 within 10 days for amounts over \$1M
- Waivers for filing requirements no longer exist for plans with less than 500 participants
- A lien arises by statute for missed contributions (including interest) that amount to more than \$1M
- PBGC routinely perfects liens against the assets of all members of the controlled group for missed contributions in excess of \$1M. We also file liens against foreign companies

# Minimum Funding Waivers- an Alternative to Distress Termination

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- We expect to see an increase in the number of plan sponsors facing distress
- Companies in distress may find it more difficult to meet minimum funding requirements
- Companies may qualify for a waiver from IRS – business hardship must be temporary
- Sponsors must file a request for a waiver no later than 2 and ½ months after the end of the plan year (March 15 for calendar year plans)
- Prior year funding deficiencies can no longer be rolled into the current year for purposes of obtaining a waiver

# Minimum Funding Waivers- an Alternative to Distress Termination (cont.)

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- Sponsors need not wait until after the plan year has ended to file an application
- PBGC comments on all waivers that exceed \$1M
- PBGC requires collateral for the waived amount
- PBGC and IRS are working together to streamline the process through efficiencies – one cause for delay is incomplete applications submitted by plan sponsors

# Summary

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Call us Early, Call us Often

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