



Notes from Intersector Meeting with PBGC March 9, 2016

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Intersector Group Meeting with the Pension Benefit Guaranty Corporation Notes

March 9, 2016

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, Society of Actuaries, Conference of Consulting Actuaries, and ASPPA College of Pension Actuaries. Attending from the Intersector Group at this meeting were Tom Finnegan, Eli Greenblum, Tonya Manning, Judy Miller, Heidi Rackley, and Josh Shapiro. Eric Keener and Maria Sarli participated by phone. Ted Goldman and Matthew Mulling, Academy staff members 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.

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.

1. With new leadership, should we anticipate any changes in priorities?

Tom Reeder, the new PBGC Director, was unable to attend, but hopes to join us at the next meeting. The theme continues to be "how to stem the decline in defined benefit retirement plan participation."

Neela Ranade has retired, but will be back soon, working on contract for PBGC.

2. Experience under new Reportable Events rules, especially in regard to post-event reporting

There have been about 120 filings since Jan. 1 under the new final rules—20 Form 200s and the rest Form 10s (consistent with prior years). PBGC representatives provided the following comments regarding their 2016 experience:

- a. *Filers are using the wrong forms. Many filings used the old Forms 10 and 200 rather than the new forms updated for the final regulations. PBGC is being flexible in accepting Form 200 filings that used the old forms, but not Form 10 filings (Form 10 was significantly changed).*
- b. *Twenty plans filed Form 200 (for missed contributions of at least \$1 million); half of those were filed late. PBGC is assessing penalties for late filings.*

- c. *20 percent of Form 10 filings were late. Most Form 10 filings were triggered by missed contributions or active participant reductions.*
- d. *PBGC is still receiving some filings through regular mail. E-filing is mandatory, either using the filing portal or via email.*
- e. *The e-filing portal is working well and PBGC urges all filers to use it. Filing through the portal eliminates concerns about using outdated forms, does a lot of checking to make sure the filing is complete and accurate, and the filing goes straight into the system.*
- f. *Filers with e-4010 accounts can use the same account for e-Form 10 filings.*
- g. *Using the portal is particularly helpful for Form 200 filings for missed contributions. Form 200 must be certified by both the actuary and plan sponsor and filed within 10 days after the missed contribution's due date. When Form 200 is filed through the portal, the actuary and plan sponsor can both be working on the filing (almost) simultaneously, and there's no need to mail paper forms around for signatures.*

3. 4010 final regulations

- a. Timeframe—If still effective for 2016 information years, plan sponsors need time to plan 2015 plan year contributions

PBGC is committed to publishing final rules before the Enrolled Actuaries Meeting (note: guidance came out before the end of March).

- b. Experience granting 2015 filing waivers in situations where the proposed rules would waive the filing (for example, 2015 filing is triggered solely by aggregate late contributions of at least \$1 million and the employer timely filed Form 200)

PBGC is reviewing requests based on the facts and circumstances; the agency is not automatically waiving filings that would not have been required if the new rules had taken effect for the 2015 information year.

4. Prospects for 4062 regulations

PBGC is having internal discussions regarding next steps. With the change in the definition of a 4062 event, the agency can no longer follow up on Form 10 filings reporting active participant reductions to determine if a 4062 event occurred. The new definition has dramatically reduced the number of 4062 events that would trigger a filing or liability assessment.

5. We appreciate the timely adoption of regulations on multiemployer partitions.

- a. Has there been experience to date with applications or preliminary discussions?

The PBGC has entered informal discussions with several plans, and is finding possible pathways for more plans than originally thought. The agency encourages plans to open discussions with the agency before going through the

application process, as the constraints on PBGC's ability to accept partition are very tight.

- b. Any useful lessons learned for the plan sponsor community?

Under the Multiemployer Pension Reform Act (MPRA), any partition must reduce the PBGC deficit, and cannot impair the agency's overall ability to help other plans. The agency is working though that "non-impairment" constraint—currently leaning to consideration of whether PBGC's own insolvency would be affected by a partition.

Timing of cash flow is critical: One key factor is the shape of liabilities and benefit payments across participant demographic groups. Vested terminated participants with benefit payments far in the future are optimal from the PBGC perspective. PBGC also hasn't ruled out partitioning actives' accrued benefits, with any future accruals provided under the ongoing post-partition plan (or another plan).

In addition, the agency emphasized that the proposed regulations' impact estimates of estimated partition activity were not a budget or "cap" on partition activity.

6. Prospects for multiemployer "facilitated merger" guidance—both financial and not

Attempted to finish guidance in 2015, but fell short. The rules are "somewhere close to going out the door" but the clearance process requires sign-off by all board agencies, then the Office of Management and Budget, which takes time. PBGC does not have the ability to make matches, but would like to see both healthy and unhealthy plans align. Most guidance concerns are with respect to financial assistance for mergers. (Note: PBGC published [proposed regulations](#) on June 6.)

As to the prospect of composite plans, it is expected that Chairman Kline will try to introduce draft language; some legacy plan issues still appear to need resolution.

7. Update on review of PBGC actuarial assumptions and timing of changes

PBGC has worked through interest and mortality approaches, with revisions intended to better replicate group annuity rates (the underlying process will be the same: soliciting annuity quotes from carriers, then setting assumptions to best replicate annuity pricing). PBGC hopes to publish proposed regulations in the fall. Key changes will include:

- a. *A full yield curve (rather than select and ultimate);*
- b. *A more modern mortality table and request for input on using generational mortality (the PBGC process is completely independent of the IRS project to update mortality tables under Code Sections 417(e) and 430);*
- c. *More frequent interest rate updates—rates now vary quarterly, but PBGC is considering going back to monthly updates; and*
- d. *Publication of updated rates closer to the effective date (i.e., shortly before the start of the month);*

PBGC has not discussed with IRS the possibility of allowing plans that determine lump sums using PBGC interest rates to move to the new basis without 411(d)(6) protection.

The next assumption project will look at expected retirement ages (XRAs) and optional form factors.

8. Issues related to uncashed checks in plan terminations

Sponsor can still file a post-distribution certification but PBGC will look into any uncashed checks in the termination audit. PBGC has seen only two instances in 10 years where participants in terminating plans had the checks in their possession and refused to cash them. In both cases, the agency called the individuals directly to resolve the situation. If it's a big enough problem, the agency will intervene on the sponsor's behalf to convince participants to cash checks.

A missing participant proposed regulation is on the way; practitioners might want to point out the uncashed check issue in comments.

9. "Proof of payment" guidance/practice

Sponsor simply needs to provide sufficient documentation to enable PBGC to trace payments to participant. PBGC will change the proof-of-payment guidance when the forms are next updated. While the actuaries agreed that word of the change in practice has gotten out and the number of questions has been down, they encouraged PBGC to post something on its website clarifying what types of "proof" the agency will accept.

10. Some have proposed that PBGC premiums be removed from the consolidated budget to provide a basis for more sound congressional decisions focused on long-term sustainability (rather than a 10-year window). Reactions?

The agency did not request the PBGC premium increase for single employer plans enacted in the Balanced Budget Act of 2015. Because Congress sets PBGC premiums, premium increases generate a score by the Congressional Budget Office (CBO) that can be used to pay for unrelated priorities. The price for not allowing the agency to set premiums is to have them on budget. The federal budget is all about cash flow and is not friendly to present value calculations. Back in the '90s, CBO said the current situation was confusing.

There currently is a move underway from the U.S. House Ways and Means Committee to take PBGC premiums "off budget" by congressional action. PBGC representatives indicated that both premiums and multiemployer financial assistance need to be treated the same way to avoid an odd double-counting situation. If premiums are removed from the budget, financial assistance should also be removed.

Other topics: PBGC's report to Congress under MPRA detailing the agency's ability to provide financial assistance for 10 or 20 years is due in June.