PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private defined benefit plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. PBGC protects the pensions of nearly 42 million working men and women in about 50,000 private defined benefit plans, including about 2,000 multiemployer plans.

Under the single-employer program, PBGC pays guaranteed and certain other pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). At the end of fiscal year 1996, PBGC was trustee of about 2,300 plans and paid $792 million in benefits to nearly 200,000 people during 1996. Another 240,000 people will receive benefits when they retire in the future.

Most terminating single-employer plans terminate with sufficient assets to pay all benefits. PBGC has administrative responsibility for these terminations (standard terminations), but its role is limited to seeing that proper procedures are followed and participants and beneficiaries receive their plan benefits.

The multiemployer program (which covers about 8.6 million workers and retirees in about 2,000 insured plans) is funded and administered separately from the single-employer program and differs in several significant ways. The multiemployer program covers only collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a repayable loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are generally less than a participant's full benefit under the plan (and less than the single-employer guaranteed benefit). PBGC financial assistance occurs infrequently.

PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC must issue regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV: (1) To encourage voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

PBGC implements its statutory purposes by developing regulations designed (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries; (2) to improve services to participants; (3) to ensure that the statutory provisions designed to minimize losses for participants in the event of plan termination are effectively implemented; (4) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible; and (5) to simplify the termination process.

Legislative Initiatives

On December 8, 1994, the Retirement Protection Act of 1994 was enacted. The Retirement Protection Act (1) accelerates the funding of underfunded single-employer pension plans, (2) phases out the cap on the variable rate portion of the premium paid to PBGC by underfunded single-employer plans, (3) provides PBGC with better tools to prevent employers from escaping their plan funding obligations through corporate transactions, (4) requires better information to participants in underfunded plans on plan funding status and PBGC guarantees, and (5) helps assure that workers do not lose pensions because they have lost contact with a terminating pension plan covered by PBGC.

In May 1996, the President submitted the Retirement Savings and Security Act to Congress. The RSAA would have expanded coverage, increased portability and worker protection, and simplified pension law. The proposal included a doubling of the guarantees in the multiemployer insurance program to address inflation since 1980 and expansion of PBGC's missing participant program to include terminating defined contribution plans and non-PBGC-covered defined benefit plans. The Small Business Job Creation Act of 1996, signed by the President on August 20, 1996, included many of these provisions. It did not include the doubling of the multiemployer guarantee or the expansion of the missing participant program. These changes remain legislative objectives.

Regulatory and Deregulatory Initiatives

To implement the new requirements of the Retirement Protection Act (RPA), PBGC issued regulations:

- Requiring plan administrators of underfunded plans to annually notify participants and beneficiaries about the plan's funding status and the limits on PBGC's guarantee of benefits (final rule, June 30, 1995).
- Creating a clearinghouse in PBGC to locate and pay benefits to missing participants in terminating fully funded pension plans (final rule, December 1, 1995).
- Requiring certain corporate groups with large underfunded pension plans to provide annually to PBGC financial and actuarial information (final rule, December 20, 1995).
- Requiring plan administrators and sponsors to report to PBGC certain ''reportable events'' that may jeopardize workers' pensions and the pension insurance system (final rule, December 2, 1996). This rule was developed using a negotiated rulemaking process for the first time.

The RPA regulations seek to facilitate compliance. Regulations on participant notice and corporate reporting allow use of information prepared for other purposes. The reportable events regulation waives reporting in many cases to minimize the number of plans affected and uses existing information for reporting thresholds. Both the reportable events and participant notice regulations include optional notice forms. The missing participants regulation ties reporting to forms and deadlines already provided for under the termination regulations.

PBGC also took additional actions to reduce regulatory burden, encourage compliance, and simplify existing regulations by:

- Proposing to extend the time limits for various actions required to terminate a fully funded single-employer plan (''standard termination'')(proposed rule, March 14, 1997).
- Reducing penalties for late premiums that are paid before PBGC notifies the plan of the delinquency (Federal Register Notice, December 2, 1996).

- Reorganizing, renumbering, and ‘‘reinventing’’ its regulations to key them to the numbering system of the statutory sections they implement and to reduce the volume of regulations by 20 percent (final rule, July 1, 1996).

PBGC is continuing to review its regulations to look for further simplification opportunities.

The PBGC’s regulatory plan for October 1, 1997, to September 30, 1998, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

150. CALCULATION AND PAYMENT OF UNFUNDED NONGUARANTEED BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1322(c)

CFR Citation:

29 CFR 4022 subpart C

Legal Deadline:

None

Abstract:

In the Pension Protection Act, Congress created a scheme by which to channel employer liability recoveries to plan participants and beneficiaries (amended ERISA section 4022(c)). Under section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC’s claim covers both its shortfall (unfunded guaranteed benefits) and participants’ losses (unfunded nonguaranteed benefits (UNBs)). In turn, the PBGC is to use a portion of its employer liability recovery to pay UNBs to participants and beneficiaries.

Statement of Need:

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work.

Summary of the Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

The statute provides that the amounts of UNBs that the PBGC will pay under terminated plans be based in most cases on the PBGC’s recoveries on its statutory claims for employer liability with respect to plans that terminate during a prescribed time period. However, the statute does not prescribe when the PBGC is to determine its recovery experience during the applicable historical period. An earlier determination would mean that fewer recoveries would be included in the historical average. While the historical average could be updated when more recoveries can be included, this would result in differing payments depending on when the PBGC makes benefit determinations for a plan subject to the historical average. A later determination would ensure more complete data for inclusion in the historical average, but may delay benefit determinations.

Anticipated Costs and Benefits:

Because of the complexities involved, it may take a long time for the PBGC to determine what its recovery will be. In addition, it may be difficult to value a recovery in cases where the PBGC receives assets other than cash or readily marketable securities. Thus, the accuracy of the PBGC’s computation of the amounts payable to participants would be enhanced by waiting longer to make that computation. However, long delays are not generally in the best interest of plan participants. The regulation will address these concerns in developing rules governing the calculation of the historical average.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	05/00/98	
NPRM Comment Period End	07/00/98	

Small Entities Affected:

None

Government Levels Affected:

None

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