



Notes from Intersector Meeting with PBGC September 30, 2015

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Notes from the Intersector Group Meeting with the
Pension Benefit Guaranty Corporation
September 30, 2015

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 this meeting from the Intersector Group were: Eli Greenblum, Eric Keener, Judy Miller, Heidi Rackley, Lawrence Sher, and Josh Shapiro. Matthew Mulling, Academy staff 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 bold typeface below.

1. Final reportable events regulations

a. Logistics of 4% probability-of-default test

The PBGC representatives indicated that the 4% probability-of-default test in the final reportable events regulations was in response to comments received regarding the use of Commercial Credit Reporting Company (CCRC) scores in the proposed regulations. The general reaction to the use of CCRC scores was not positive; there were concerns that scores were only available from one CCRC, that they might not be accurate or easy to obtain, and that they might not be updated with sufficient frequency. The use of the 4% probability-of-default criterion is optional, and plan sponsors will need to determine for themselves—based on publicly available information such as a credit score or credit rating—whether they meet it. Each rating agency will have a specific score that correlates directly with the 4% test. PBGC generally expects that plan sponsors will know what their own measures are, although they may need to request information on the corresponding default percentage from the provider. Actuaries will need to coordinate with plan sponsors to know whether the 4% probability-of-default safe harbor applies.

b. Logistics of public company waiver

The PBGC representatives indicated that, in order for the public company waiver in the final regulations to be available with regard to a reportable event, the SEC Form 8-K filing would need to include information that is sufficiently specific so that PBGC would be able to determine that the reportable event had occurred. For example, in

the event of an active participant reduction, a Form 8-K filing that merely stated “as a result of the restructuring, the company’s worldwide workforce will be reduced 15%” would not be sufficient to meet the public company waiver. To qualify for the waiver, the SEC Form 8-K would need to be more specific about the reportable event, for example: “The 15% reduction in the company’s worldwide workforce resulted in more than a 20% drop in the number of active participants in US pension plans.”

c. Other issues

The PBGC representatives indicated that they did not contemplate a broad waiver of reporting for 2015 events that are not waived under the old reportable events regulations, which remain in effect through 2015 year end, but would have been waived if the new regulations (which take effect January 1, 2016) had been in effect for 2015. However, plan sponsors can contact the PBGC via the reportable events e-mail box to request a fact-specific waiver.

The PBGC representatives also indicated that new reportable events forms were submitted to the Office of Management and Budget on September 11, 2015 and can be accessed via reginfo.gov ([Form 10](#), [Form 10 Instructions](#), [Form 10-Advance](#), and [Form 10-Advance Instructions](#)). The forms are similar to the recently updated forms under the prior reportable events regulations, with certain changes specific to the new regulations.

Practitioners and plan sponsors with questions about event reporting requirements may submit questions to the email boxes listed on the forms and instructions and expect a prompt reply.

2. Update on PBGC’s review of actuarial assumptions and potential timing of any changes

The Intersector Group noted that the assumed retirement age structure mandated for plan termination liability calculations under ERISA section 4044 can make these calculations particularly burdensome and costly. This may become a larger issue for plan sponsors if the PBGC implements proposed regulations under ERISA section 4010 that would increase the number of plan sponsors who are required to report.

The PBGC representatives indicated that they expect to issue proposed regulations within the next 12 months on the interest rates and mortality tables to be used for plan termination liability calculations. The intent is to continue to replicate annuity market pricing, while modernizing the interest rate structure set forth in the regulations (since yield curves can be supported now more than in the past) and updating the mortality assumption. Other actuarial assumptions, including expected retirement ages, will also be considered. The PBGC representatives also indicated that they have received questions about whether updating lump sum interest rates is a priority, but no decisions have been made yet. The mortality assumption was updated for the 2015 PBGC projections report. The mortality assumption for PBGC’s annual report will be updated after the section 4044 regulations are issued.

3. Timing of final regulations under ERISA section 4010

The PBGC representatives could not provide specific comments on changes to the regulations under ERISA section 4010. Given the number and scope of comments received on the proposed regulations, it will take time to review and address them all. However, they expected that the regulations would be finalized in sufficient time for the proposed effective date.

4. Difficulty finding suitable annuity carriers when small- to mid-sized plans terminate

The Intersector Group noted that some smaller terminating plans are having difficulty finding annuity providers willing to bid on termination annuity contracts, particularly for active or terminated vested (TV) participants. Larger carriers sometimes indicate that capacity is an issue, or they may not be willing to underwrite actives and TVs since retiree-only deals are more attractive. This can lead to questions about whether the plan is still considered to have been terminated, since plan assets must be distributed as soon as is “administratively feasible” following the termination date. It has been suggested that the PBGC could potentially assume the liability for participants when an annuity provider is not available, but this would likely require a statutory change. The Intersector Group also noted that smaller plans sometimes have complicated optional forms, and having some way of eliminating those forms for terminating plans (as permitted under regulations, but without a four-year wait) could be helpful to plan sponsors in carrying out the termination.

The PBGC representatives indicated that they had heard of difficulties in finding annuity carriers, but that this has mostly been with cash balance plans. When the PBGC has received questions about this, they have looked back at recent terminations to determine which carriers provided annuities and then provided carrier names to plan sponsors. PBGC is aware of five new carriers entering the market and another five- to ten considering doing so, but there may be limits to their capacity. The PBGC representatives also noted PBGC does not hesitate to extend the distribution deadline when a plan sponsor is having difficulty finding an annuity carrier. They also stressed that lump sums paid in connection with a plan termination should not be distributed until an annuity contract is in place, since the termination may need to be rescinded if a carrier cannot be found.

5. Issues related to Multiemployer Pension Reform Act of 2014 (MPRA)

a. Timing of final version of proposed and temporary regulations

The PBGC representatives indicated that they had received very few comments on their proposed MPRA regulations. Final partition regulations are anticipated by the end of the year.

b. In light of section 110 of MPRA (guaranteeing preretirement survivor annuities), there are various opinions as to whether the qualified preretirement survivor annuity should now be included in vested benefits for withdrawal liability purposes. Is the PBGC planning to issue guidance on this issue?

The PBGC representatives indicated that PBGC is aware of this issue, but did not indicate whether PBGC plans to issue guidance.

c. Will there be guidance forthcoming on section 109 of MRPA, “Disregard for certain contribution increases for withdrawal liability purposes”?

The PBGC representatives indicated that PBGC has a statutory obligation to provide guidance, is actively working on it, and the Academy Multiemployer Plans Subcommittee has been helpful in that regard.

d. Experience to date with applications for partitions

The PBGC representatives indicated that PBGC has not yet received any formal applications but has received preliminary inquiries. Plan sponsors are definitely encouraged to contact PBGC before submitting a formal application.

The Intersector Group noted that the amount of partition is dependent upon the assumptions used in the solvency projection, including asset returns and future contributions. It is unclear whether the assumptions used for partition may differ for the assumptions used for the zone certification, Plan sponsors might conclude that measures such as contribution rate increases or benefit decreases that were previously determined to be unreasonable due to their inability to materially affect the expected insolvency of the plan might be reasonable when viewed in conjunction with a benefit suspension and partition.

The Intersector Group also noted that, in contrast to the approval of a benefit suspension application where the statute directs the Treasury Department to accept the conclusion of the plan sponsor unless it finds them to be clearly erroneous, PBGC has the authority to apply any criteria or conditions that it believes to be appropriate to the approval of a partition.

6. The PBGC representatives shared information on the following items:

- The e-4010 website will be expanded in the near future (likely by December 2015) so that it can be used for other reporting purposes including reportable events and multiemployer plan notices. Going forward, it will be used for all electronic filing other than premiums. In connection with this, practitioners will need to change their e-4010 passwords for enhanced security. There will be a communications campaign to announce these changes.
- The 2015 PBGC projections report was released in late September. Compared to the 2014 report, the results show a lower deficit for the single employer program and include official estimates of the impact of MPRA. The projected solvency of the multiemployer program has been extended by about three years, based primarily on enhancements to its models. Although the long-term multiemployer deficit is significantly smaller as a result of assumptions in regard to MPRA suspensions and partitions, that development did not have a material effect on the projected insolvency date (now 2025, for the median outcome). PBGC is available to discuss the report in further detail with trade associations, actuarial organizations, or other interested parties.