Notes from Intersector Meeting with PBGC September 14, 2016

Intersector Group Meeting with the Pension Benefit Guaranty Corporation Notes

September 14, 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, Conference of Consulting Actuaries, Society of Actuaries, and ASPPA College of Pension Actuaries. Attending from the Intersector Group at this meeting were Tom Finnegan, Ted Goldman, Eli Greenblum, Eric Keener, Judy Miller, Heidi Rackley, Maria Sarli, and Josh Shapiro. Matthew Mulling, the 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.

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. Proposed regulations on mergers and partitions—safe harbor provisions seem to exclude potentially beneficial transactions, which may steer plans toward individual processing. Does PBGC have the resources for that?

   PBGC representatives indicated they had received 10 very helpful comment letters, but under sunshine rules, PBGC is in a "quiet period"—agency representatives cannot discuss the rules between the end of the comment period and issuance of final rules.

   The Intersector Group expressed concern that the proposed safe harbor rules have significantly tightened requirements for mergers outside of the Multiemployer Pension Reform Act (MPRA)—not just for MPRA mergers. This may result in a large volume of requests for approval of mergers that fall outside of the safe harbor.

2. MPRA exclusion of certain contribution increases required by funding improvement and rehabilitation plans from withdrawal liability—timing and scope of regulations
   a. Simplified calculation approaches
   b. Ambiguity of "not used to pay for benefit accrual" criterion

   PBGC representatives indicated proposed rules will address both of these issues. On item (a), the drafting team is considering whether the rules will prescribe an exclusive approach or provide options. Preliminary thinking on item (b) is that in order to count any contribution increases after 2014 for critical and endangered plans toward withdrawal liability assessments, the plan must be amended to specify how much of the increase is used to pay for new benefit accruals. If the benefit increase is automatic with the *contribution increase, the trustees must amend the plan to specify treatment. If the amendment doesn't address treatment, the default will be to exclude the contribution increase for withdrawal liability purposes.*

Regulations, when issued, are expected to be prospective only.

3. MPRA partitions—evolution of PBGC philosophy on non-impairment provision

   PBGC is seeing more activity on partitions; there has been a lull in mergers, but they expect more. PBGC has been expanding resources over time and is still trying to add additional resources in the multiemployer area.

   The statute requires PBGC to consider the universe of plans and assess any harm done to the agency's ability to provide assistance to other plans by acting on a particular plan's request. In some cases, the determination may be easy. A plan that is running out of money soon and will require $1 billion of PBGC assistance before PBGC's multiemployer program runs out of money, but with a partition will need only $500 million before the multiemployer program runs out of money, clearly does not impair PBGC assistance to other plans. But most cases will not be so straightforward.

   The agency is looking at various measures for assessing impairment, but the answers obtained using different methods so far are similar. For example, PBGC is considering whether financial assistance after the multiemployer program runs out of money must be considered. But beyond that point, the amount of assistance provided is so small, it doesn't affect the answer much. The agency is also considering some sort of de minimis rule where it doesn't need to address impairment. Suspension/partition situations may work better if PBGC takes terminated vested participants first, then retirees, leaving actives in the plans.

4. Policy on refunding premiums when sponsor learns a participant died with no spouse/beneficiary entitled to plan benefits several years in the past
   a. Must Schedule SB also be amended to claim variable-rate premium refund?
   b. Could plan claim flat-rate premium refund only without refiling SBs?

   PBGC does not have any official policy position. All requests for large refunds are carefully reviewed. To date, most cases have involved errors affecting both the minimum required contribution and the variable-rate premium, and the plan has refiled Schedule SB as well as requesting the refund, so this question hasn't come up before. The representatives indicated the safest approach would be to refile Schedule SB. If the agency gets a lot of requests, it will come up with an official position.

5. 4010 filings—expecting a lot more filings and a lot more questions from potential filers

   Sponsors of calendar-year plans will generally be able to determine by Sept. 15 whether they need to make a filing for the 2016 information year by April 17, 2017. Sponsors filing for the first time are urged to review filing requirements and send questions to ERISA.4010@pbgc.gov early—don't wait until April 14. PBGC may post "Frequently Asked Questions" on the website if it gets the same question repeatedly.

PBGC urges filers making only abbreviated filings for the 2016 information year to submit the abbreviated filing before year-end. (Abbreviated filings are made in the first year a sponsor that was previously required to make 4010 filings is no longer required to do so; it documents the reason filing is now waived.) PBGC is updating the filing portal to reflect the new waiver rules effective for 2016 information years. Sponsors submitting abbreviated filings after the software has been updated will get some questions that will make the filing more burdensome.

6. Update on assumption review

   The assumption review is progressing slowly. The agency will be getting a proposed regulation out in the next six months or so and will provide ample opportunity for comment. The first phase will update ERISA Section 4044 and mass withdrawal liability mortality assumptions and will move to some variant of a yield curve. The agency will be reviewing the expected retirement age assumptions in a second phase.

7. Viability of PBGC multiemployer program—agency reaction to the Congressional Budget Office (CBO) Aug. 16 report and other recent evaluations

   The CBO report contained little that was new. The agency has been saying for some time that the multiemployer program needs additional resources or benefits will be cut dramatically. The notion that the market price is different from the present value is also not news. The PBGC representatives believe it is important for CBO, the Government Accountability Office (GAO), and others to validate what PBGC has been saying about the program.

   As to what it means, CBO is just another voice saying thousands of people already receiving guaranteed benefits will see their benefits slashed unless something is done to prevent more plans from becoming insolvent or add more revenue to the multiemployer program. The representatives also expressed concern that the current program doesn't do much to protect the most vulnerable benefit recipients.

   The Intersector Group indicated the Academy will soon release an issue brief on the current multiemployer situation, history, and options for reform, while recognizing that there are no silver bullets.

8. *Discussion issues raised by PBGC representatives*
   a. *Regulation projects nearing completion include a final rule reducing late-premium penalties* [final rule was published Sept. 23] *and a proposed rule expanding the missing participant program to terminating defined contribution, multiemployer, and non-covered pension plans* [proposed rule was published Sept. 20].
   b. *PBGC is beefing up the 2017 premium instructions with new examples for mergers and spinoffs.*
   c. *The PBGC representatives have noted an increase in employers contributing more than the minimum required amount for 2014 plan years and asked the Intersector Group what might be driving employers' funding decisions. The group indicated there are a variety of motivations: Some employers' funding decisions are driven by employer accounting results; some are on a glide path to plan termination; others are seeking to avoid variable-rate premiums or ERISA 4010*

filings or maintain the plan's funded status after a lump sum cashout window or other risk transfer transaction.

d. *PBGC is reviewing the risk transfer data reported in premium filings and expects to report on findings and share data in a few months.*
e. *Congress is considering legislation that would authorize a special type of hybrid design for multiemployer plans called a "composite plan." PBGC and the Intersector Group discussed features of these plans and the provisions in the proposed legislation that are intended to ensure that sponsors do not neglect their current defined benefit plans by shifting unreasonable contribution amounts to composite plans while allowing the funding levels in current defined benefit to deteriorate.*