CONFERENCE
OF CONSULTING
ACTUARIES

Notes from Intersector Meeting with PBGC April 19, 2024

Intersector Group Meeting with
the Pension Benefit Guaranty Corporation (PBGC) Notes
April 19, 2024 (virtual)

Periodically the “Intersector Group” (“the Group”) meets with representatives of the PBGC to discuss regulatory and other issues affecting pension actuarial practice. The Group is composed of two delegates from each of the following actuarial organizations: the American Academy of Actuaries (Academy), the Conference of Consulting Actuaries (CCA), the Society of Actuaries (SOA), and the American Society of Enrolled Actuaries (ASEA). Attending from the Intersector Group at this meeting were Bruce Cadenhead (Academy), Kelsey Mayo (ASEA), Eric Keener (SOA), Ellen Kleinstuber (CCA), Tonya Manning (CCA), Maria Sarli (SOA), and David Pazamickas (Academy). Philip Maguire, Academy staff member supporting the Group, also attended.

These meeting notes are not official statements of the PBGC and have not been reviewed by its representatives who attended the meeting. The notes reflect the group’s understanding of the current views of the PBGC representatives and do not represent the positions of the PBGC nor 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 nor reviewed them to determine whether the statements herein are accurate or complete.

Discussion topics were submitted by the group to the PBGC in advance of the meeting and are shown in regular typeface below; a summary of the discussion is shown in italics.

Discussion Topics

ERISA Section 4044 Assumptions

Plan administrators and consultants continue to grapple with various issues related to determining reasonable actuarial assumptions under ERISA Section 4044 in certain situations. The Group wants to share insights on these situations to ensure PBGC is aware of these issues and welcomes any feedback or questions on these topics.

- PBGC involvement in adjudicating alternative reasonable assumptions:
    - Use of XRAs vs. other reasonable assumptions.
    - Mortality for “non-typical” plans (e.g., plans with approved substitute mortality table or multiemployer plans with blue collar populations in mass withdrawal).
- Availability and maintenance of the full spread adjustment curve.

The Group noted that 414(l) requires the use of “reasonable” assumptions, with the PBGC 4044 assumptions serving as a safe harbor. The PBGC assumptions are derived from information that may be out of date, as of the date of a spinoff, and those involved in the transaction might prefer using another, more current reasonable assumption basis. In situations where a plan, or a portion of a plan, is spinning out of a controlled group and there are differences in the financial *strength of the pre- and post-transaction employers, the PBGC may have an interest in the choice of assumptions. Examples of alternative assumptions include:*

- *Plan-specific retirement assumptions rather than the statutory XRA assumptions;*
- *Using IRS-approved plan-specific mortality tables or a collar-adjusted table for multiemployer plans or other blue-collar workforces.*

If there are situations such as this, where PBGC might get involved in assessing the reasonableness of those assumptions, it would be helpful to understand when that might happen and how PBGC might assess the alternative assumptions.

PBGC noted that the assumptions to be used in a spinoff situation are defined in the IRS's safe harbor guidance, so it is outside of PBGC's jurisdiction to opine on the reasonableness of alternative assumptions. If the spinoff transaction involves a lot of money going outside of an existing controlled group, the transaction would likely trigger a reportable event filing. In that case, the Corporate Finance and Restructuring Division (CFRD) would get involved with a review of whether one plan has been left in a weaker position.

The Group shared that in some spinoff cases, actuaries and plan administrators might prefer using the PBGC assumptions from the proposed regulations, because they reflect up-to-date market conditions, and are therefore likely to be more reasonable than PBGC's current assumptions, which are based on lagging information on annuity pricing. These assumptions, although not finalized, are clearly defined, except for the full spread adjustment curve. PBGC noted that the full spread adjustment curve will be available once the regulation is finalized. The Group shared that practitioners don't necessarily want to extrapolate from the last available set of data, and inquired whether this information will be available before the regulation is finalized. The PBGC indicated they will have the appropriate internal discussions with the Office of the Inspector General (OIG) to see if any of this can be shared before the regulation is final. PBGC staff speculated that the information might be available through a FOIA request.

Assuming the proposed rule is finalized as it was proposed, the PBGC will post the final full spread adjustment curve, so actuaries don't have to do the math on their own. They will also publish a worksheet, as the IRS does with the publication of the Treasury yield curve under PPA. The current and new bases will be available on their website.

Special Financial Assistance (SFA) Topics

Death audits and potential repayment of assistance for plans that already received SFA.
The Group understands there is a process underway to conduct death audits using the Social Security Death Master File on the full census data used to calculate a plan's amount of SFA. We also understand that PBGC is working with other executive branch agencies to recoup any potential overpayment of assistance from plans that already received SFA related to this death audit process. As of April 12, 2024, one plan (Central States) has repaid approximately $127

million in SFA. Is there any information you can share regarding this process for the remaining plans?

The PBGC requested full census data on all plans receiving SFA that had not completed a full census death audit. The PBGC has received all of those files back from the affected funds, processed the data through the Death Master File, and returned the listing of the matching SSNs to the fund, along with a request for a response as to the proposed treatment of those participants. About half of the funds have already responded, and the PBGC is reviewing those responses on a record-by-record basis.

The goal is to reach a consensus with the plan about what census data changes must be made before any analysis is conducted on the redetermination of the SFA amount. The PBGC has guidance in the clearance process, with responses to follow-up questions from the prior round of guidance. Since the clearance process is still ongoing, the PBGC representatives are not able to discuss any specific questions or scenarios.

PBGC capacity to review SFA applications for all eligible plans.

As of April 12, 2024:

- 72 plans have been approved for SFA,
- 19 plans have an application under review,
- 19 plans have withdrawn an application and will likely apply again, and
- 86 plans are on the wait list that have yet to apply for SFA.

It has been over three years since the enactment of the American Rescue Plan Act, which created the SFA program, and a little over one-third of eligible plans have received SFA. With about three years remaining on the SFA program, plan sponsors and practitioners are becoming increasingly worried that some eligible plans may not receive SFA. Can you comment on PBGC's capacity to review applications for all eligible plans by the statutory deadline (i.e., April 30, 2027, for plans that file their last revised application on the latest date possible— December 31, 2026)?

The PBGC confirmed that this question has crossed their mind also, and they are confident in their ability to effectively review all the applications submitted before the deadline, based on experience to date and what they have learned. The PBGC has plenty of internal actuaries/staff (28 total —doubled since 2021) and contractor (large consulting firm) resources. Two additional actuaries were added in April and another is starting in May. The PBGC also believes they have sufficient contractor support to complete the remaining queue of cases requiring review. Budget has not been a constraint on their resources or capacity.

The PBGC demonstrated their ability to move through the reviews crisply before their process was called into question last November. The largest SFA case has been closed and almost all the other large cases are well along in the review process. Several applications have had to go *through the process twice due to a change in how SFA is determined (original and supplemented application).*

The PBGC believes that based on the overall workload involved in reviewing all the SFA applications, they are about halfway through the process, rather than 1/3 of the way through as the writeup suggests. The PBGC is confident they can complete the reviews in process and still pending by the deadline. There are, of course, unknowns that could arise and complicate the process.

The Group raised some concern about the larger plans in priority group 6; however, the Group generally agrees with PBGC's assessment. The Group shared that some plans are worried about whether the timing of the process will afford them the ability to withdraw and reapply if there is a problem with the submission, as many funds have already had the opportunity to do, or if they will only get "one bite at the apple."

The PBGC responded that most plans would only want to apply once and the cleaner the application, the easier the process. The PBGC encouraged plans and their consultants that are on the waitlist to not skip the final peer reviews after the plan has been sitting for a while, waiting for their number to be called. Plans should look at what has happened since the measurement date and assess whether actual experience supports the assumptions they made. The PBGC encourages plans to make use of the pre-submission consultation process to address any questions and facilitate getting the application through review on the first submission.

The Group also expects that the more experience people have with these reviews, the better prepared the plans at the end of the line will be to get it right the first time. The PBGC noted that the plans earlier in the process having clean applications also supports those at the end of the line getting the opportunity for a resubmission, if needed.

There is intense interest in the retrospective death audits. The PBGC's expectation is that the portal opening will be slow and far between until they get through the retrospective death audits and the priority group 6 plans. After that, they will be able to move smartly through the review process. The PBGC reiterated that this assumes that their review procedures remain stable.

The Group expressed appreciation for PBGC's transparency through the process and the support they have provided to the profession and plans in navigating this process. The Group recognizes that this is driven by a lot of work going on behind the scenes.

Calculation of withdrawal liability following a merger.
Plans that receive SFA are subject to conditions related to withdrawal liability, which include the required use of ERISA 4044 interest rates and a phase-in of SFA when developing unfunded vested benefits (UVB) [see 29 CFR 4262.16(g)(1) and (2)]. In addition, following the merger involving a plan that received SFA, these withdrawal liability conditions continue to apply when

determining the UVB that arose under the plan that received SFA before the date of the merger and determining withdrawal liability for employers that participated in that plan [see 29 CFR 4262.16(f)(3)(iv) and (5)].

It would be beneficial if PBGC provided more clarity on the mechanics of calculating withdrawal liability following an approved merger involving at least one plan that received SFA. For example, how would withdrawal liability be calculated for an employer who withdraws after the initial plan year of a merger for plans using the presumptive method [see 29 CFR 4211.32]? Consider situations where:

- All plans involved in the merger received SFA or at least one plan involved in the merger did not receive SFA;
- The employer participated in: (i) the plan that received SFA, (ii) the plan that did not receive SFA, or (iii) both plans; or
- All plans involved are considered to be in the building and construction industry.

The Group indicated that we understand that PBGC would like to see some of these beneficial mergers happening, but practitioners don't have a clear understanding of how withdrawal liability will be calculated following a merger involving an SFA plan and a non-SFA plan. There is concern about potential leakage of UVB from one plan to the other in these situations, which may curtail desire to proceed with such transactions.

The PBGC shared that questions have been coming in from practitioners, so these issues are on their radar and they are looking into it. The PBGC is hoping to have some guidance out on this and some other topics as soon as they can, which might be Q&As or take some other form. Plans with SFA are looking like better merger partners, so these questions are coming up. The PBGC understands that what they say in guidance may affect plan trustees' willingness to go through with a merger, so there is more urgency than simply having guidance out by the time the first such employer is looking to withdraw.

Other discussion topics

The PBGC asked the Group if there were any discussions during the Intersector meeting with Treasury and IRS that may also be of interest to them. The Group shared that the discussion with Treasury and IRS included discussions around cash balance plans, 417(e) regulations, funding method changes for spinoff and merger situations, and closed plan nondiscrimination testing regulations.

The PBGC also inquired about any general trends the Group is seeing that would be helpful for them in projecting the future of the single employer and multiemployer insurance programs.

- *With respect to pension risk transfer, nothing in particular is slowing the trend. The recent lawsuits related to the selection of certain annuity providers are of some concern;*

however, they are not expected to stop the process, they may just delay it a bit. Plan sponsors are working diligently to make sure they fulfill their fiduciary duty.

- *Premiums remain a concern for plan sponsors. Finding a way to reduce premiums might encourage other employers in a position similar to IBM to use surplus to bring more participants back into the plan. The PBGC indicated they are seeing more plans derisking assets and taking other positive risk management steps besides a standard termination. The PBGC has seen a decrease in the number of claims coming in through the distress termination process. Their perception is that the overall health of plans is getting stronger. The Group noted that every frozen plan is a plan waiting to terminate at some point in the future. Reducing premiums is important, however, it may not be enough to stop the trend on its own.*
- *Market-based cash balance plans and other risk-sharing plan designs remain of interest, however, the regulatory uncertainty about these designs makes it challenging to get sponsors to adopt them.*
- *Plan sponsors will appreciate any efforts to simplify guidance and plan administration and increase transparency.*

The PBGC noted that defined benefit plans are sponsored for a variety of reasons, and often the objectives of these different groups are at odds with each other. For example, PBGC added the Alternative method for single employer premiums to assist smaller plans, so they don't have to do a second calculation. That has now become a vehicle for larger plans, who seek to utilize these rules in a way that minimizes the premiums due. The original intent was simplicity, given that the two calculations were so similar, and it's become a lot more than that.

The PBGC provided an update to the Group on various items they believe may be of interest to readers of these notes.

- *The RFI on SECURE 2.0 Section 319 – Effectiveness of Reporting and Disclosure Requirements issued by IRS, EBSA, and PBGC, was extended to May 22.*
- *The Bipartisan Budget Act of 2015 had a provision accelerating the premium due date for plan years beginning in 2025 by one month (for calendar year plans, to September 15, 2025). While most people assumed it would be repealed by now, it hasn't been. PBGC wants to spread the word that this is coming up in a little over a year. The Group advised PBGC that while some plan sponsors will end up submitting amended premium filings, due to the inability to submit an accurate premium filing on the same date that a final contribution is made for the prior plan year, it is generally more of a nuisance than a big issue.*
- *The PBGC Pension Insurance Data Tables for 2021 have recently been updated. These Data Tables include a wealth of statistics on coverage, premiums, financial status of plans, guaranteed benefits, plan design, risk transfer activity, and the SFA program. The Data Tables are available in Excel and PDF and include hyperlinks to each separate table and the tab within the workbook. They also include links to other reports they have*

issued. The Data Tables are available on the PBGC website: *https://www.pbgc.gov/prac/data-books*

- *The 2020 report* Analysis of Single-Employer Partial Pension Risk Transfers *is being updated to cover the period 2015 – 2022. The report includes experience by year, plan size, and industry for different types of risk transfer. The 2022 report will include some new charts including data analyzing the VRP data for these employers (e.g., paying at the VRP cap, paying less than the VRP cap, not paying a VRP).*
  - *Post-meeting note:* Updated Analysis of Single-Employer Pension Plan Partial Risk Transfers *was released in June of this year.*
- *The instructions for the 2023 Form 5500, Schedule SB, line 26b projected benefit payments include an option to provide the cash flows on either a lump sum or an annuity substitution basis. For PBGC, it is helpful if everyone takes advantage of the annuity substitution basis alternative. Also, the PBGC encourages people to use the Excel tool, the structured attachment option, rather than submitting a hardcopy of the payouts. The PBGC acknowledged that there was a glitch with respect to 2022 plan year filings, so that larger numbers could not be entered, but it has been fixed so everyone should be able to use the structured attachment option.*