

PRC/Pension Counseling Project Staff Visit to PBGC

April 24, 2013

Welcome & Introductions

Michael Rae, Deputy Chief of Negotiations and Restructuring

3:00-4:00 Multiemployer Plans

Bruce Perlin, Manager, Multiemployer Program Division
Eric Field, Assistant Chief Counsel

4:00-4:30 Plan Termination and Trusteeship Process

Rob Jones, Program Analyst, Legislative Department

4:30-4:45 FOIA

Mike McIntyre, Disclosure Officer

4:45-5:00 Standard Terminations/Missing Participants/Lost Pensions

Bela Palli, Manager, Standard Termination Compliance Division
Charles Korb, Manager, Processing and Technical Assistance Branch,
Standard Termination Compliance Division



PBGC Multiemployer Program

Presentation to the Pension Rights Center
April 24, 2013

Bruce Perlin – Manager, Multiemployer Program Division (MEPD)
Eric Field – Assistant Chief Counsel, Office of the Chief Counsel (OCC)

The opinions of Mr. Perlin and Mr. Field are theirs alone and do not
represent the views of the PBGC

Presentation Overview



- PBGC Multiemployer Program Overview
- Where to Find Plan Information
- Critical and Endangered Plans
- Terminated and Insolvent Plans
- Hot Topic: Partitions

PBGC Multiemployer Program Overview



- Manages PBGC's program for providing financial assistance to insolvent ME plans
- Reviews and classifies risk of ME plans for PBGC's financial statements
- Evaluates and analyzes financial condition of ME plans
 - Evaluates plans with greatest risk to PBGC
 - Monitors plan changes and transactions
- *Provides technical assistance to multiemployer plan administrators and other stakeholders*
- Reviews and recommends action on PBGC's ME regulatory functions

Where to Find Plan Information

- Plan-specific Information:
 - Summary Plan Description
 - Annual Funding Notice
 - Form 5500
 - <http://www.efast.dol.gov>
 - Critical & Endangered Notices
 - <http://www.dol.gov/ebsa/criticalstatusnotices.html>
 - Plan information under ERISA §101(k)
 - Actuarial Valuation Report (at least 30 days old)
 - Quarterly, semi-annual, or annual financial report produced by investment manager, advisor, or other fiduciary (at least 30 days old)
 - Amortization period extension requests
 - Plan websites

Where to Find Plan Information



- Other Resources
 - Multiemployer Plan Universe (PBGC)
 - <http://pbgc.gov/Documents/open/multiemployerlist.xls>
 - Insolvent Multiemployer Plans (PBGC)
 - <http://pbgc.gov/open/index.html>, Click on “Financial Assistance Payments to Multiemployer Plans” (hyperlink changes quarterly as info is updated)
 - PBGC Website
 - <http://pbgc.gov/prac/multiemployer.html>
 - Multiemployer section of the PBGC website has useful information; including: opinion letters and law overviews and citations
 - Additional questions can be directed to multiemployerprogram@pbgc.gov

Where to Find Plan Information

- Other Resources (cont'd)
 - IRS
 - IRM 4.72.14;
 - IRS Top Ten Issues - ME Plans: <http://www.irs.gov/Retirement-Plans/EP-Examination-Process-Guide---Section-2---Compliance-Monitoring-Procedures---Top-Ten-Issues---Multiemployer-Plans>
 - DOL - EBSA
 - <http://www.dol.gov/ebsa/>

Critical and Endangered Plans

- Critical (red) – 4 tests; generally <65% funded
- Endangered (yellow) - <80% funded or projected to have AFD in any of the 6 succeeding years
- Seriously Endangered (orange) – meets both endangered status tests
- Multiemployer plans required to certify by 90th day of plan year whether or not the plan is in endangered or is or will be in critical status and whether or not plan is making scheduled progress in meeting FIP or RP requirements
- Zone status certification goes from actuary to plan and to IRS
- Critical and Endangered Notices due 30 days later to PBGC, DOL, bargaining parties, participants and beneficiaries

Endangered Plans

- Endangered Plans:
 - Endangered and seriously endangered plans must adopt and implement a funding improvement plan (“FIP”)
 - Can’t reduce adjustable benefits
 - Can’t restrict lump sums
 - Contribution surcharges do not apply
 - Can reduce future accruals to zero

Critical Plans

- Critical Plans:
 - Critical plans must adopt and implement rehabilitation plan (“RP”)
 - 10 year rehab period; by the end of the period must pass all critical status tests
 - Only the default schedule is required, but typically plans will have other schedule(s)
 - Can reduce adjustable benefits like early retirement subsidies, disability benefits and other ancillary benefits – only if not in pay status
 - Can restrict lump sums with prior notice
 - Generally, can't reduce future accruals below 1% of contributions
 - Employers not subject to AFD excise tax while plan is in critical status

Critical Plans: Reasonable Measures



- Critical Plans: Reasonable Measures
 - The plan declares that based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, it cannot reasonably be expected to emerge from critical status by the end of the rehab period, then the rehab plan is:
 - Emergence from critical status at a later date, or
 - To forestall possible insolvency

Historical Plan Status

Funding Status	2008		2009		2010		2011	
	Number	%	Number	%	Number	%	Number	%
Critical	139	10%	472	35%	386	29%	319	24%
Seriously Endangered	28	2%	125	9%	44	3%	17	1%
Other Endangered	155	11%	337	25%	229	17%	196	15%
Neither Critical Nor Endangered	1,047	77%	435	32%	682	51%	780	60%
Total	1,369	100%	1,369	100%	1,341	100%	1,312	100%

Terminated Plans

- Most commonly, plans are terminated by mass withdrawal under 29 U.S.C. § 1341a(a)(2):
 - Withdrawal of every employer or cessation of the obligation of all employers to contribute
 - Cut back to nonforfeitable benefit level as of date of termination. 29 U.S.C. § 1341a(c)(1); 29 C.F.R. § 4041A.22
 - Pay benefits only in form of annuity (except benefits valued at \$1,750 or less). 29 U.S.C. § 1341a(c)(2)
 - Funding requirements under I.R.C. §§ 412, 431 and 432 do not apply. I.R.C. § 412(e)(4)

Terminated Plans

- Summary of Plan Sponsor duties:
 - Limit payment of benefit to nonforfeitable benefits as of termination date
 - If assets sufficient, may close out plan
 - If assets insufficient, benefits to be paid only in form of annuity
 - Value assets and nonforfeitable benefits
 - Reduce benefits as required
 - Assess and collect withdrawal liability (initial, redetermination and reallocation liability)
 - Apply for PBGC financial assistance when assets insufficient to pay basic benefits

Terminated Plans



- Plan Close-Outs:
 - Sponsor may close out plan if assets sufficient to pay nonforfeitable benefits. 29 U.S.C. § 1341a(c)(2); 29 C.F.R. § 4041A.41
 - Plan to be closed out through purchase of annuities or lump sum if elected by participant (and available under plan document). 29 C.F.R. § 4041A.43

Terminated Plans



- Terminated Plans – Benefit Reductions:
 - Amend plan when nonforfeitable benefits exceed plan assets by reducing benefits to extent not eligible for PBGC guarantee under 29 U.S.C. § 1322b—benefits in effect less than 5 years. 29 U.S.C. §1441(c)(2)(B); 29 C.F.R. §4041A.24(b)(1)
 - Notice of Benefit Reductions provided to Participants, Beneficiaries, and PBGC. 29 C.F.R. §§ 4041A.24(c) and 4281.32

Terminated Plans



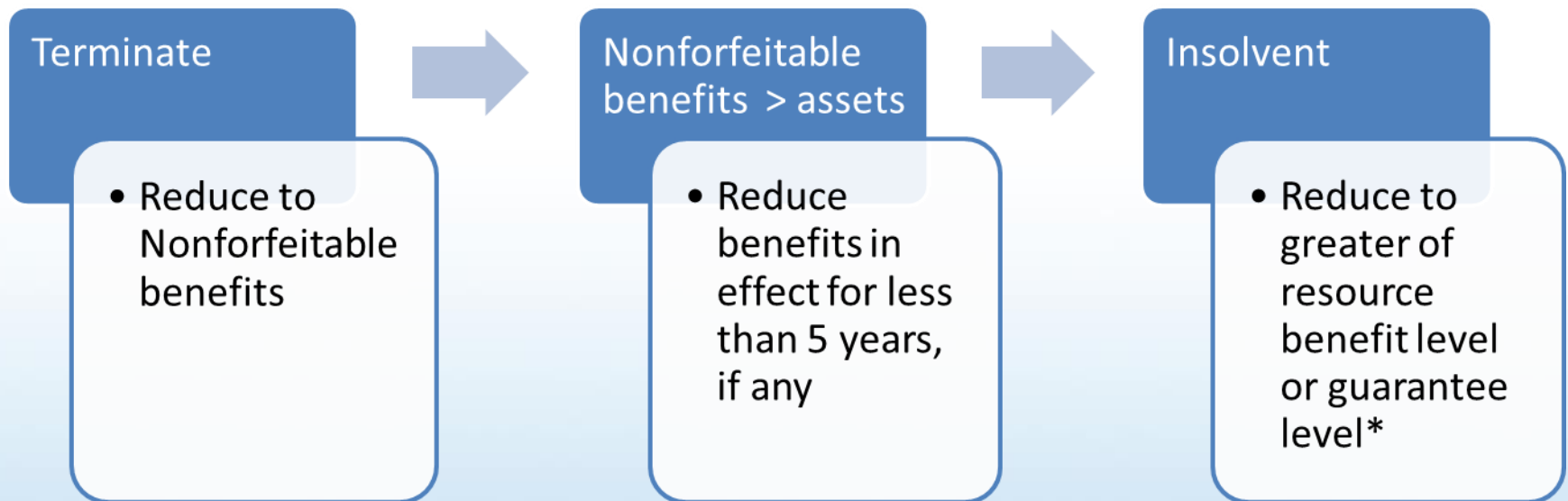
- Annual Solvency Determination:
 - Written determination to be made 6 months before beginning of PY.
29 C.F.R § 4041A.25
 - Starting the PY after effective date of amendment eliminating all benefits subject to reduction under 29 U.S.C. § 1441(c)(2)(B) and 29 C.F.R. § 4041A.24(b)(1), or
 - If no benefits subject to reduction, starting two PYs after the first PY in which plan sponsor determines that nonforfeitable benefits exceed plan assets

Insolvent Plans

- If sponsor determines plan insolvent , sponsor must suspend benefits as necessary to reduce benefits to the greater of resource benefit level or level of guaranteed benefits. 29 C.F.R. §4281.41
- Resource benefit level is highest level of monthly benefits payable from plan's available resources. 29 U.S.C. §1426(b)(2)
- If resource benefit level is below level of basic benefits (guaranteed amount), sponsor must suspend payments to the level of basic benefits. 29 U.S.C. §§1441(d)(1) and 1426(c)(3)

Termination to Insolvency

Progression of Benefit Reductions as plan approaches Insolvency:



*For ongoing plans, if resource benefit level is less than level of basic benefits, suspend payments to basic benefit amount

- Notice of Insolvency
 - Sponsor must provide Notice of Insolvency and Annual Updates to Participants, Beneficiaries, and PBGC. 29 C.F.R. §§ 4041A.25(d) and 4281.43
 - Starting no later than 30 days after plan sponsor determines insolvency and updated annually

- Notice of Insolvency Benefit Level
 - Sponsor must provide Notice of Insolvency Benefit Level to Participants, Beneficiaries, and PBGC. 29 C.F.R. §§ 4041A.25(d) and 4281.45
 - Annually starting no later than 60 days before the beginning of PY that plan insolvent or 60 days after plan sponsor determines insolvency under 29 C.F.R. § 4041A.25(b)

Insolvent Plans



- Application for Financial Assistance
 - If terminated or ongoing plan's resource benefit level (benefits payable out of "available resources") is below the level of guaranteed benefits or plan is unable to pay guaranteed benefits for any month during the insolvency year, sponsor must apply to PBGC for financial assistance. 29 U.S.C §§ 1426(f) and 1441(d)(3); 29 C.F.R. § 4041A.26
 - "Available resources" means cash (including contributions and withdrawal liability payments) and all marketable assets less expenses

- Summary:
 - Participants and beneficiaries may be subject to benefit reductions or suspensions when:
 - The plan terminates
 - The plan sponsor determines assets are insufficient to pay all nonforfeitable benefits
 - The plan is unable to pay more than the PBGC guaranteed benefit amount

Insolvent Plans: Guaranteed Benefits



- Only benefits that are nonforfeitable on date of plan termination are guaranteed:
 - Normal retirement benefits not guaranteed if participant had not met vesting requirements as of termination date
 - Early retirement subsidies not guaranteed if participant had not satisfied age and service requirements (except for waiting periods) as of termination date
 - QPSAs not guaranteed if participant dies after plan termination date

Insolvent Plans: Guarantee Calculation



- How to Calculate the PBGC Guarantee

Example of Calculation of PBGC Guarantee Under 29 U.S.C. § 1322a(c)

Plan benefit:	\$50/month/year of service
P's years of service:	30 years
P's plan benefit:	\$1,500/month
P's accrual rate:	\$50 ($\$1,500 \div 30$)

Insolvent Plans: Guarantee Calculation



- How to Calculate the PBGC Guarantee (cont'd)
 - \$11 of the accrual rate is fully guaranteed
 - \$33 of the accrual rate is guaranteed at 75% (\$24.75)
 - For the participant in this example, the PBGC maximum guarantee is \$1,072.50/month
$$((\$11 + \$24.75) \times 30)$$
 - The maximum guarantee is calculated under a formula that produces a specific dollar amount without actuarial or interest adjustments

Hot Topic: Partitions



- ERISA Sec. 4233: PBGC has the discretion to order the partition of a multiemployer plan if certain requirements are met
- Partition creates an immediately terminated insolvent plan
- Participants in the newly insolvent plan are immediately cut to the guarantee level

Hot Topic: Partitions



- PBGC must determine:
 1. A substantial reduction in the amount of aggregate contributions under the plan has resulted or will result from employer bankruptcies
 2. The plan is likely to become insolvent
 3. Contributions will have to be increased significantly in reorganization to meet minimum contribution requirements
 4. Partition will significantly reduce the likelihood of plan insolvency
- Order of partition can transfer no more than the nonforfeitable benefits directly attributable to service with a bankrupt employer

PBGC Multiemployer Program

Thank you



April 2013

Pension Benefit Guaranty Corporation

PBGC is a federal corporation

- **Protects most private-sector (nongovernmental) pension plans**
- **Defined Benefit pension plans only; not 401k's**

PBGC FACT SHEET

- **Created by ERISA in 1974**
- **Mission:**
 - Encourage DB plans
 - Work with companies to keep their plans
 - Pay benefits to participants in failed plans
 - Keep insurance premiums at a minimum

PBGC FACT SHEET

(continued)

- **Entirely Self-Financing (no full faith & credit):**
 - Insurance premiums
 - Assets from trusteed plans & recoveries from plan sponsors
 - Investment income
- **No cost to taxpayers**
- **Two programs:**
 - **Single-employer Plans:**
 - Plans that provide benefits to workers of one employer, or
 - Multiple employer plans that provide benefits to workers of unrelated employers but are not collectively bargained
 - **Multiemployer Plans**
 - Collectively bargained plans that provide benefits to workers of unrelated employers in the same industry, such as construction or trucking, and
 - Taft-Hartley structure with joint labor-management boards of trustees

PBGC FACT SHEET

(continued)

- **PBGC Guarantees – Single-employer Plans:**
 - Maximum guarantee is currently \$57,477.24 per year (indexed) if PBGC payments start at age 65
 - Maximum guarantee is lower for early retirement or survivor benefits
 - Benefit increases within 5 years of plan termination date (or earlier bankruptcy filing of sponsor) may not be fully guaranteed
 - Participants get PBGC guarantee plus any nonguaranteed amounts funded by plan assets or employer recoveries
- **PBGC Guarantees – Multiemployer Plans:**
 - Maximum possible guarantee is \$12,870 for someone with 30 years of service (not indexed)
 - Guarantee is in the form of a loan to an insolvent plan

PENSION PLANS TRENDS

- **Number of DB plans and participants grew until mid-1980s:**
 - 112,000 PBGC-insured DB plans in FY 1985
 - 30 million participants – 72% active
- **Since mid-1980s shift from DB to DC plans:**
 - 27,000 PBGC-insured DB plans in FY 2011
 - 34 million participants – less than 50% active
 - DB plan freezes

PBGC Plan Termination Insurance Program

Continuing Benefits When Plans Fail

Single-employer Plans

- Responsible for 1.5 million people in about 4,500 failed plans.
- \$5.5 billion paid to about 887,000 retirees.
- Responsible for almost 614,000 future retirees.

Multiemployer Plans

- Since 1980, PBGC has provided financial assistance to 71 multiemployer plans.
- During FY 2011, PBGC paid \$95 million in financial assistance to about 54,000 retirees in 49 multiemployer pension plans.

Q&A

What does it mean for my pension if I get a notice that my plan sponsor is in bankruptcy?

If the plan is not fully funded, and remains with the plan sponsor . . .

- Plan can no longer pay lump sums

- Plan cannot make irrevocable commitments

Q&A

What does it mean for my pension if I get a notice that my plan sponsor is in bankruptcy?

PBGC guarantee is “frozen” as of the date the plan sponsor enters bankruptcy.

Q&A

Why does the formal determination process take so long?

Each plan is different

Records may be difficult to obtain, interpret

Benefit calculations, sponsor history can be complex

Guarantee limits, asset valuation /allocation, litigation

Q&A

Why does the formal determination process take so long?

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The FOIA Process

PBGC FOIA Request Process

- PBGC's FOIA public website is at <http://pbgc.gov> (bottom of page, "FOIA" link). The site contains information on how to file a FOIA request, etc.
- Under the FOIA, a request for records must be in writing
- Send written requests by mail, fax or email to the Disclosure Division, attention Michael McIntyre, Disclosure Officer
 - By FAX to 202-326-4042
 - By mail to: Michael McIntyre, Disclosure Officer, Pension Benefit Guaranty Corporation, 1200 K Street, NW Ste 11101, Washington, DC 20005
 - By email at the following internet link:
<http://pbgc.gov/about/pg/footer/foia.html>
- The FOIA requires a response from the PBGC to the requester on the request within 20 work days of the Disclosure Office receiving the request (about 30 days)

PBGC FOIA Process con't

- If the requester is seeking another person's Privacy Act records or other records containing an individual's personal information, the records will be withheld unless:
 - The FOIA otherwise requires release (i.e., no exemption applies)
 - The individual whose personal information is requested provided written consent for release
 - A Privacy Act "routine use" applies
 - Other legal authority, such as a court order from a court of competent jurisdiction (i.e., not an attorney signed subpoena or "order" signed by a court clerk. Usually state court Order is also insufficient); Power of Attorney; Attorney representing client

PBGC FOIA Process con't

- PBGC conducts a search for responsive records that is “reasonably expected to produce the documents requested”
- Search up to what date? PBGC policy – the date the search begins. Can be a different date (such as an earlier time), but specify

PBGC FOIA Process con't

- Once records are found, they are reviewed for release or withholding
- If records contain commercial or financial information of a company, then that company is afforded an opportunity to advise PBGC of what, if anything, should be withheld (EO 12600)
 - PBGC may also have to consult with another PBGC office or federal agency
- Information that is not releasable is withheld/redacted under a FOIA exemption (this will be noted in response letter)
- A response letter to requester is normally provided within 20 work days, with appeal rights. The General Counsel is the appeal authority

The FOIA Exemptions

- (b)(1) – Classified information
- (b)(2) – Related solely to the Agency's internal personnel rules and practices
- (b)(3) – Another federal statute requires withholding
- (b)(4) – Confidential commercial, financial; or trade secret information of an individual or company
- (b)(5) – Information protected under federal civil litigation discovery privileges, such as attorney client privileged information

The FOIA Exemptions

- (b)(6) – An individual’s personal information that if released would constitute a clearly unwarranted invasion of privacy
- (b)(7)(A), (B), (C), (D), (E) and (F) – Protects certain information contained in records created for a law enforcement purpose
 - 7(C) – Protects personal information that if released could (as opposed to “would”) constitute an invasion of privacy (as opposed to “clearly unwarranted”)
 - (b)(8) – Financial Institution information
 - (b)(9) – Wells