

PBGC PARTICIPANT & PLAN SPONSOR ADVOCATE

Pension Counseling and Information Program
National Training Conference

June 26, 2019

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HISTORY & STATUTE

PBGC Participant and Plan Sponsor Advocate

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History

- PBGC Advocate role long under consideration by Congress
- MAP-21 (2012) amended ERISA, added sec. 4004, "Participant and Plan Sponsor Advocate"
- PBGC Board appointed first Advocate in Nov. 2013
- Inaugural Annual Report issued Dec. 2014
- Reorganization of the "Office of the Advocate" in Oct. 2015
- 2018 Annual Report suggested legislative changes to clarify ERISA 4004

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Advocate Statutory Duties

1. Act as a liaison between PBGC, DB plan sponsors, and participants...;
2. Advocate for the full attainment of the rights of participants...;
3. Assist plan sponsors and participants in **resolving disputes**...;
4. Identify persistent problems...;
5. Propose changes in **administrative practices**...;
6. Identify **potential legislative changes**; and
7. Refer instances of fraud, waste, and abuse... to Office of the Inspector General.

ERISA § 4004(b)

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Advocate Annual Report

Content:

- Submit by Dec. 31
- Summarize requests for assistance...
- Identifies significant problems and legislative changes...
- Identifies actions to correct previously identified problems...

Submission:

- Concurrently to: PBGC committees of jurisdiction, Secretary of Labor, PBGC Director...

ERISA § 4004(e)

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Advocate's Role: Multiemployer Pension Reform Act of 2014

Benefit Suspension

- Advocate may submit recommendations to Treasury Secretary (systemically important plan)

Partition

- PBGC consults with Advocate on all reasonable measures to avoid insolvency

Merger

- PBGC consults with Advocate on the effect of the merger on participants and beneficiaries

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Advocate 2018 Annual Report – Notable Themes

- Delays when resolving matters with PBGC
- Coordination challenges when a case transcends multiple departments
- Need for increased oversight and supervision to promote case resolution
- Communications lacking in clarity

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PLAN SPONSOR ISSUES

Advocate 2018 Annual Report

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Plan Sponsor Issues

- Longstanding delays during termination liability settlement
- Lack of transparency in dealings with PBGC
- Need for better understanding of plan sponsor entities and unique business challenges
- Issues that transcend several PBGC departments
- Interest on premium overpayments

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PBGC Positive Strides

- Interagency cooperation on IRS excise tax issues
- Informal staff guidance
- ERISA 4062(e) guidance
- Pilot Mediation Project

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PARTICIPANT ISSUES

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Case Example: Participants Seeking Missing Benefits

Situation:

- Cohort of potentially omitted participants (POPs) seeking benefit entitlements from PBGC
- Communications to POPs did not fully approve or deny claims

Advocate Observations/Recommendations:

- Importance of collecting and reviewing **all available documentation** during case review
- Historical SPD repository and other sources of information

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Case Example: Complex Case, Generic Response

Situation:

- Complex facts surrounding participant's request to qualify a domestic relations order
- Boilerplate response not relevant to participant's facts and circumstances

Advocate Observations/Recommendations:

- Communications need to explain agency's rationale/reasoning, cite relevant law and policies
- One size response does not fit all

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Case Example: Supervision Concerns

Situation:

- Participants in trustee plan seeking detailed benefit determination worksheets
- Lack of case management creates challenges for participants seeking resolution

Advocate Observations/Recommendations:

- Need for greater supervision and employee accountability for participant cases that do not lend themselves to standardized procedures
- Field Benefit Administration (FBA) offices often lack oversight

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PBGC Positive Strides

- Consolidating review of POPs claims
- Expansion of interagency initiative with EBSA to locate missing participants
- Resolution of longstanding class action lawsuit

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FIVE YEARS AS ADVOCATE: PAST & FUTURE

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Participant Highlights

2014

- First Advocate Annual Report
- Historical summary plan description collection
- Emergence of “woodwork participants”

2015

- Regular meetings with PBGC and participant advocacy groups

2016

- Interagency initiative with EBSA to reunite participants with missing benefits
- Shift away from solely relying on tax returns to prove a benefit entitlement

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Participant Highlights Continued

2017

- Guiding operating principles
- Expansion of interagency initiative with EBSA to locate missing participants
- Pension De-risking Study: Part I

2018

- Page-Collins class action lawsuit resolution
- Consolidating review of POPs claims into OBA
- Pension De-risking Study: Part II

“Increasing risk transfer activity has far-reaching implications for plan participants, plan sponsors and government and regulatory bodies. These implications include [p]articipant exposure to additional risk including longevity risk and inadequate retirement income risk – specifically in the case of lump sum risk transfer programs.”

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Closing Observations

- Responsive changes by PBGC
- Organization, process, and communication challenges remain
 - Difficulties encountered when issues transcend multiple departments within PBGC
- Need for CEO function

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What's Next?

- Pension plan registry project
- Any other research ideas?

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