

Notes from Intersector Meeting with PBGC October 15, 2014

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. Twice a year the Intersector Group meets with representatives of the Pension Benefit Guaranty Corporation (PBGC) to dialogue with them on regulatory and other issues affecting pension practice. Attending from the Intersector Group were: Tom Finnegan, Eli Greenblum, Eric Keener, Judy Miller, Heidi Rackley, Maria Sarli, and Larry Sher. Matthew Mulling, 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.

1. Update from PBGC

Alice Maroni is the Acting Director of the PBGC. Before joining the PBGC in 2011, Ms. Maroni was the CFO at the Smithsonian in DC. The Obama Administration has not yet nominated a successor Executive Director (who would be subject to Senate approval) following Josh Gotbaum's departure in July.

Current top priorities are the multiemployer program and the projections report.

The PBGC, Internal Revenue Service, and Department of Labor are jointly working on a longer-term project to expand electronic reporting of Form 5500 information. PBGC would like to see the age/service/salary (for hybrid plans, age/service/account balance) scatter filed electronically and discussed whether this would cause filing difficulties for actuaries. Intersector Group members reported they did not see any problem automating the creation and download of the scatter to e-filing software.

- 2. Post termination audits** – Recently, in post-termination audits, the PBGC has been requiring plans to determine late retirement increases using interest and mortality regardless of the preretirement death benefit (even if there is no forfeiture upon death), unless the plan is clear that actuarial increases do not include survivorship. The PBGC apparently has been focusing on the plan's definition of "actuarial equivalent" and does not give any consideration as to whether there could be forfeiture upon death. Is this policy rooted in a legal construction or actuarial principle that the PBGC believes requires this outcome? Or does the PBGC believe that if the plan is ambiguous in this regard that it is appropriate to interpret its terms in favor of the affected employees? Would amending the plan to codify the long-standing practice of ignoring survivorship when there is no forfeiture on death raise issues for PBGC? Must such an amendment be adopted before the termination date?

Discussion Summary:

The PBGC representatives indicated this issue has come up in only two standard termination audits. In both cases, the plan document's definition of actuarial equivalence specified a pre-commencement mortality table and also a post-commencement mortality table. In addition, the plan provisions describing the Code Section 415 limits specifically indicated that pre-commencement mortality was ignored in adjusting the 415 limits for commencement age. Taken together, PBGC determined the document was unambiguous in calling for the use of pre-commencement mortality unless otherwise specified. Since the late retirement adjustment provisions were silent, they required the plans to use pre-commencement mortality in late retirement calculations.

If the plan document had been ambiguous, PBGC would have taken plan practice into account and might have taken a different position. PBGC has not raised this issue for any plans that did not list a separate pre-commencement mortality assumption. It was suggested that careful plan drafting in this area could avoid having to include mortality adjustments for deferred retirees where there was no forfeiture on death in the deferral period.

- 3. Premium increases** – With the large premium increases under existing law and the prospect of further increases being enacted, does the PBGC have concerns that such increases are contrary to one of its key missions to promote DB plan sponsorship? If so, has the PBGC communicated this concern to Congress or the White House?

Discussion Summary:

The PBGC representative indicated that the agency is sensitive to this concern, that the current system (balance between fixed and variable components) already reflects that concern, and the PBGC continues to study ways for premiums to do the least harm to the system.

PBGC believes that current premiums are still below what a "true insurance cost" would be for both the multiemployer and single-employer insurance programs, and that a true market price would vary by plan sponsor. They believe a study from the 1980's that indicated PBGC undercharged for ongoing liabilities is still valid despite the premium hikes. PBGC has also reviewed UK experience with market pricing of pension insurance. The Intersector group feels that the program costs must be bifurcated, so current sponsors only pay for current coverage, not legacy costs.

The Administration's budget proposals are for PBGC to set premiums and the presumption is that they would do it using some form of underwriting – though any premium increase should be carefully crafted to "do the least harm." PBGC has spent a lot of time looking at the structure of the multiemployer program, given there is a 75+% chance that program will run out of money within 10-12 years. PBGC's single-employer premium projections take into account that employers will fund up to avoid variable-rate premiums. PBGC has also examined the ability of plan sponsors to absorb premiums and how premium increases affect employers' willingness to sponsor plans. PBGC has no secret lobbying campaign to raise premiums in the single-employer program.

- 4. Multiemployer system** –With a new interim Director, should we expect any change in focus with respect to addressing the challenges, especially with respect to proposals for systemic reform, a more hands-on role for PBGC, and a revised (significantly higher) premium structure? For example, what are the implications from the PBGC “projections” report released this summer?

Discussion Summary:

PBGC does a lot more work on single-employer plans as a general rule because there are three times as many participants in single-employer plans as multiemployer plans and PBGC administers terminated single-employer plans (PBGC only provides money to fund guaranteed benefits to insolvent multiemployer plans, with the multiemployer plan continuing to administer benefits). Nonetheless, the PBGC representatives said that the multiemployer program remains a top priority, and that the PBGC is focused on helping to reach a solution to the severe problems. The PBGC Board is very interested in this subject and is studying the current system and ratcheting up the visibility of this issue, especially education about PBGC’s multiemployer guarantees and how the multiemployer program works in practice.

There is a group of multiemployer plans that will fail and fall upon PBGC’s guarantees if nothing changes. The 1-1.5 million participants in these plans are likely to be surprised at how low the PBGC guarantee is, and the fact that when the multiemployer program runs out of money these low guaranteed benefits will drop 10 or 20 fold (to match the multiemployer program premium receipts). In September, they sent “data collection request” letters to an additional 45 “critical status” plans; they hope actuaries will encourage their clients to respond.

- 5. Single and multiemployer benefit guarantees** –We understand that an upcoming report will examine experience as to the portion of benefits that PBGC has guaranteed in historical plan terminations (and multiemployer insolvencies). Can you provide some insight on that study, and the potential policy implications?

Discussion Summary:

The PBGC representatives were not willing to say much on this now, apparently because the status of the report is far along, though there is more scrutiny required and internal discussions are ongoing. It was suggested that we keep an eye on the PBGC website, but it might be a few months until release. They also noted they are paying careful attention to how PBGC describes multiemployer guarantees on the website, in press releases, and other communications.

PBGC’s 2006 report on single-employer benefit guarantees found that 84% of participants got everything they had accumulated. Of the 16% that did not get everything they had accumulated (primarily airline pilots), the average cut was 28%.

- 6. Actuarial assumptions review** –At our last meeting, we learned that the PBGC had begun a project to review its plan termination assumptions and will propose changes where appropriate. What is the status of that review?

Discussion Summary:

The PBGC has a corporation-wide task force that has been identifying all of the assumptions that the PBGC makes, not just in the ERISA section 4044 area, but including, for example assumptions made in developing numbers in the PBGC annual reports, assumptions used to calculate optional forms of benefit for PBGC-trusted plans, and so forth. The task force has divided the project into phases, and is developing a schedule to study all of these assumptions during a five-year period. Each set of assumptions would then be put on a five-year review cycle. The process will include experience studies, rewriting of regulations as needed, etc. The first two assumptions to be taken up are interest and mortality.

There was some discussion regarding whether the PBGC will move to requiring generational mortality. The PBGC representatives indicated that while that would be desirable in the long-term, there continues to be a question as to whether doing so would be practical. The Intersector Group members indicated that most service providers and valuation systems have the capability to use generational mortality; the PBGC representatives said that the PBGC has some catching up to do in this area so it is unlikely that generational mortality will be required anytime soon, but the select and ultimate plan termination rate approach might become yield curve-based.

- 7. Proposed RP-2014/MP-2014 mortality tables** – Has PBGC assessed how its recent mortality experience compares with the proposed tables? If so, can you share your conclusions?

Discussion Summary:

The PBGC has not yet made such comparisons. The PBGC has shared a 2011 mortality experience study with the Society of Actuaries (SOA), and was asked by the SOA to send breakdowns of that data by “collar,” which the PBGC intends to do. PBGC may compare its data to the RP-2014 tables and consider adopting the SOA tables, with set-backs or set-forwards to match PBGC experience, if that comparison indicates that it makes sense. [The Society of Actuaries published the final RP-2014 mortality tables and MP-2014 improvement scale on October 27, 2014.]

- 8. Risk-transfer data** – PBGC has proposed to “require reporting of certain undertakings to cash out or annuitize benefits for a specified group of former employees” in the comprehensive premium filing. Can you tell us exactly what data you anticipate requiring? Knowing the specifics well in advance of the effective date of the new reporting requirement will enable firms to make sure their systems are capturing the required data elements.

Discussion Summary:

The PBGC representatives indicated that the PBGC is very interested in risk-transfer activity. They are in the process of developing a series of questions to be included in the 2015 premium filings to gauge the prevalence of recent lump sum windows and annuity purchases. They would like this information because the Office of Management and Budget and the Congressional Budget Office are both asking for “lump sum take-up rates” to help in projections of PBGC’s financial status. The Government Accountability Office has also been studying de-risking for the last two years.

PBGC shared the draft questions, which are attached at the end of these notes. In the 2015 premium filing, PBGC will ask for the response to include windows closing during the 2014 premium year or during the portion of the 2015 premium year ending 30 days before the 2015 premium filing is submitted (for calendar-year plans, windows closing between January 1, 2014 and September 15, 2015). For future years, the questions will cover activity from 30 days before the prior year’s premium filing to 30 days before the current year’s filing.

The Intersector Group suggested changing the labels on participant counts requested for lumps sum windows. For example, “eligible to receive lump sum” might be more precise — and less open to interpretation — than “offered lump sum” because missing participants are a major problem when lump sum windows are offered to terminated vested participants. For example, if an eligible participant cannot be located before the window closes, was the participant “offered” a lump sum, or not? Similarly, some cashout windows may include mandatory cashouts up to \$5,000, so “number paid out” might be more accurate than “elected lump sum.” We also discussed that, due to missing participants, any “take up” rate determined using the numbers reported will understate the proportion of participants who, upon receiving a lump sum offer, are likely to accept it.

- 9. HATFA guidance** – Does the PBGC intend to issue further guidance related to the Highway and Transportation Funding Act of 2014 (HATFA)? Issues raised by practitioners that may benefit from further guidance include: (1) the \$15 million threshold for ERISA section 4010 reporting; (2) providing information when a plan is retroactively exempt from section 4010 reporting due to HATFA; and (3) penalty refunds/relief when a plan was late in filing Form 10 or Form 200 but reporting is no longer required due to HATFA.

Discussion Summary:

The PBGC representatives indicated that guidance would be issued on Friday, October 17 (two days after the meeting) and that it would be flexible: PBGC will not require amendments to past filings or recalculation of at-risk funding targets. If it turns out a sponsor didn’t have to file, they need not send in any additional information (such as actuarial valuation reports, which have a later submission deadline). The guidance will not cover situation (3), but the PBGC representatives felt that was probably a hypothetical situation since they had not heard of it occurring; they said that if that situation did occur, the plan sponsor should just call them to discuss. [PBGC indeed issued Technical Update 14-2 two days after the Intersector Group meeting.]

Draft risk-transfer questions for 2015 premium filings
Handed out by PBGC at October 15, 2014, meeting
with Intersector Group

The questions are currently drafted as follows:

Risk transfer activity – Omit this item if this is the last filing for this plan.

(a) Lump sum windows: If, during the time period described in the instructions, the plan offered a limited duration opportunity for certain former employees to receive a lump sum, provide the following participant count information:

Participants not in pay status when lump sum was offered:	Offered lump sum _____	Elected lump sum _____
Participants in pay status when lump sum was offered:	Offered lump sum _____	Elected lump sum _____

(b) Annuity purchases: If, during the time period described in the instructions, the plan purchased annuities for a group of former employees, provide the following participant count information with respect to the participants for whom annuities were purchased:

Participants not in pay status:	_____	Participants in pay status:	_____
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The (a) and (b) shown above will not appear on the My PAA screens but will appear on the illustrative form. On the illustrative form, these questions will appear in Part VI, the Miscellaneous Information section. The draft instructions for these two data items are as follows:

(a) Enter the requested information with respect to lump sum windows offered during:

- the premium payment year, excluding windows for which the time period for electing a lump sum under the window ended fewer than 30 days before the premium filing is made, or
- the prior premium payment year.

(b) Excluding annuities purchased for participants upon retirement as part of routine plan operation, enter the requested information with respect to annuities purchased during:

- the premium payment year, excluding annuities purchased fewer than 30 days before the premium filing is made, or
- the prior premium payment year.