PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs under title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA): a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program.

Under the single-employer insurance program, the PBGC has two primary roles. First, when a plan with insufficient assets to pay guaranteed benefits terminates, PBGC pays participants and beneficiaries their guaranteed benefits and any unfunded nonguaranteed benefits that are payable based on recoveries from employers. Second, PBGC is responsible for providing plan sponsors and plan administrators with guidance in complying with title IV's termination rules and procedures and for administering the plan termination process (a process that all terminating single-employer plans covered by title IV must go through). To finance itself, the PBGC is also responsible for collecting premiums paid by covered pension plans and employer liability amounts arising from the termination of plans without sufficient assets to pay all plan benefits.

In order to carry out these functions, the PBGC must issue regulations interpreting a number of complicated statutory provisions. The areas covered include implementation of the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Under the Multiemployer Insurance Program, as revised by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), PBGC has a more limited role than under the Single-Employer Program. The primary purpose of MPPAA was to strengthen and foster the continuation of multiemployer pension plans by ensuring that employers could not avoid their obligation to share in the funding of plan benefits by withdrawing from participation in a multiemployer plan. To this end, MPPAA imposed withdrawal liability on an employer for either a partial or complete withdrawal from a plan. An employer's withdrawal liability is generally based on its allocable share of the plan's unfunded vested benefits. This liability is calculated, assessed, and collected by the multiemployer plan. Disputes arising from the assessment of liability are to be resolved first through arbitration and then, if necessary, through the courts.

PBGC's insurance function under MPPAA is limited to the provision of financial assistance (in the form of a repayable loan) to a plan that does not have sufficient assets to pay benefits currently due at the guaranteed level. Under MPPAA, guaranteed benefits are generally less than a participant's full benefit under the plan, Plan insolvency necessitating PBGC financial assistance occurs infrequently.

The multiemployer regulations fall into several general categories: (a) rules relieving potential administrative burdens imposed by the statute on multiemployer plans; (b) rules waiving or reducing employer withdrawal liability in certain limited circumstances; and (c) rules authorizing multiemployer plans to adopt their own rules in lieu of following certain of the statutory rules.

Regulatory Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV of ERISA: (a) to encourage the continuation and maintenance of voluntary private pension plans, (b) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (c) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

In the context of its regulatory program, the PBGC implements its statutory purposes by developing regulations that are designed (a) to assure the security of the pension benefits of workers, retirees, and beneficiaries, (b) to improve services to participants through more responsive benefit payment policies and accelerated determinations of final benefits, (c) to ensure that the several statutory provisions designed to minimize losses for participants in the event of plan termination are fully and effectively implemented and enforced, (d) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible and (e) to simplify the termination process for plans as much as possible.

Legislative Initiatives

In order to assure that the PBGC can accomplish its statutory purposes, the Secretary of Labor established an interagency task force in March 1993. The task force, which was made up of representatives of PBGC; the Departments of Labor, the Treasury, and Commerce; the Office of Management and Budget; and the National Economic Council, took a comprehensive look at PBGC insurance. Based on the recommendations of the task force, the Administration sent to the Congress the Retirement Protection Act of 1993 (H.R. 3396, introduced October 28, 1993, and S. 1780, introduced November 23, 1993). On December 8, 1994, the Retirement Protection Act of 1994 was enacted.

The Retirement Protection Act (a) accelerates the funding of underfunded single-employer pension plans, (b) phases out the cap on the variable rate portion of the premium paid to PBGC by underfunded single-employer plans, (c) provides PBGC better tools to prevent employers from escaping their plan funding obligations through corporate transactions, (d) provides better information to participants in underfunded plans on plan funding status and PBGC guarantees, and (e) helps assure that workers do not lose pensions because they have lost contact with a terminating pension plan covered by PBGC.

Pursuant to the President's Executive Order 12866 of September 30, 1993, ''Regulatory Planning and Review,'' and the ''Regulatory Reform Initiative'' contained in the President's memoranda of March 4, 1995, and April 21, 1995, the PBGC has reviewed all of its regulations and identified regulatory provisions that can be simplified or eliminated. The PBGC will be amending its regulations to make these changes. The PBGC will also renumber its regulations to follow the statutory numbering scheme, which will make the regulations much easier to use. In addition to these regulatory changes, the PBGC is working with the Department of Labor and the Internal Revenue Service to simplify the Annual Report (Form 5500) filing requirements for pension plans, as part of the President's June 1995 initiative, ''Simplifying Pensions.''

The PBGC's regulatory plan for October 1, 1995, to September 30, 1996, consists of one significant regulatory action.

PBGC

PROPOSED RULE STAGE

143. CALCULATION AND PAYMENT OF UNFUNDED NONGUARANTEED BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1322(c)

CFR Citation:

29 CFR 2623; 29 CFR 2627

Legal Deadline:

None

Abstract:

The Pension Protection Act of 1987 repealed ERISA sections 4049 and 4062(c). Those provisions established new employer liability to plan participants and beneficiaries in the event of a distress termination or involuntary termination by the PBGC of a plan without sufficient assets to pay all benefit commitments; the section 4049 trust was the vehicle for collecting and distributing these liability amounts. This system proved flawed in several respects.

In the Pension Protection Act, Congress created a new scheme by which to channel employer liability recoveries to plan participants and beneficiaries (amended ERISA section 4022(c)). Under new section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC's claim covers both its shortfall (unfunded guaranteed benefits) and participants' losses (unfunded nonguaranteed benefits (UNBs)). In turn, the PBGC is to pay a portion of its employer liability recovery to pay UNBs to participants and beneficiaries.

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures to make this system work. Thus, a regulation is needed to implement these statutory provisions.

Statement of Need:

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work. Thus, a new regulation is needed to implement these statutory provisions.

Summary of the Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

The statute provides that the amounts of UNBs that the PBGC will pay under terminated plans be based upon the amounts that the PBGC recovers on its statutory claims for employer liability against the sponsors of those plans and the other trades or businesses under common control with the plan sponsors. However, the statute does not prescribe when the PBGC is to perform its valuation of its recovery with respect to a plan. There are two competing objectives: (1) prompt payment to participants of their UNBs and (2) precise calculation of benefit entitlements. The PBGC could promote prompt payment at the expense of precision of calculation by valuing recoveries whenever the PBGC is otherwise ready to calculate benefits under a plan. On the other hand, the PBGC could promote precision of calculation at the expense of prompt payment by deferring valuation until the collection process is finished, even if that means delaying benefit calculations.

Anticipated Costs and Benefits:

Because of the complexities involved, it may take a long time for the PBGC to determine what its recovery will be. In addition, it may be difficult to value a recovery in cases where the PBGC receives assets other than cash or readily marketable securities. Thus, the accuracy of the PBGC's computation of the amounts payable to participants would be enhanced by waiting longer to make that computation. However, long delays are not generally in the best interest of plan participants. The regulation will attempt to balance adequacy of precision in benefit determinations, avoidance of increased administrative costs, and timely payment of benefits.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	04/00/96	
NPRM Comment Period End	06/00/96	

Small Entities Affected:

None

Government Levels Affected:

None

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