Intersector Group Meeting with the Pension Benefit Guaranty Corporation April 16, 2015 Notes

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, Don Fuerst, Eli Greenblum, Eric Keener, Judy Miller, Heidi Rackley, Maria Sarli, and Josh Shapiro. Matthew Mulling, Academy staff 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.

Questions were submitted to the PBGC in advance of the meeting and are shown in bold typeface below.

1. Update from PBGC

- PBGC is without an acting director until President Obama nominates an executive director (at which point Alice Maroni will be acting director while the confirmation process plays out), but this should have no practical effect.
- Dave Gustafson has been detailed to Treasury to work on Multiemployer Pension Reform Act (MPRA) guidance.
- Amy Viener is acting chief policy actuary while Dave is detailed to Treasury.
- Working on multiemployer plans—"All multis all the time" from a policy perspective. PBGC is trying to work on regulations on partitions on Treasury's timetable; they are working closely with Treasury. DOL is also "in the room" but has less to do.
- PBGC will be posting ads for visiting actuaries.
- Work is pretty far along on final reportable events regulations. The regulations will probably be issued this year.
- PBGC is making progress on expanding missing participant programs to DC plans, multiemployer plans and non-covered DB plans. That will probably be finalized this year as well.

- A new, more intuitive, MyPAA interface will be rolled out soon.

2. Status of PBGC's internal review of assumption methodology

- The PBGC representatives indicated they are moving along with their internal review. They have catalogued all regulations and policies that have economic and/or actuarial content and will set up a schedule for review.
- ERISA Section 4044 plan termination interest and mortality assumptions will be the first addressed. PBGC sets its plan termination assumptions to match annuity prices in the market.
    - Reviewing the new SOA mortality tables and projection scale
        - But mortality is not considered in isolation. In the market, mortality and interest are linked.
        - PBGC will likely contact pricing actuaries at insurers to determine what mortality they use.
        - Annuity market pricing is different from long bonds; PBGC is considering how to make PBGC rates more current (i.e., reflect changes in credit quality as they happen rather than long after the fact) and transparent.
    - Given that mortality has greatly improved, updating the 4044 mortality assumption will likely increase interest rates used in conjunction with that assumption, so that the combination still reproduces market annuity purchase rates. PBGC expects an increase in interest rates of 1% or more.
    - Format of interest rates used to approximate market annuity price is aging.
        - Looking at how those factors are set.
        - Format is several decades old.
            - Would like to make methodology more transparent.
            - May move to something more like a yield curve.
- The next phase of the review will look at the old PBGC lump sum interest and mortality assumptions. PBGC is cognizant that some plans continue to use these assumptions to determine lump sums.

3. Mortality, including projection scales

- PBGC consults with annuity pricing actuaries to see what is being used in the market.
- Society of Actuaries' RP-2014 mortality table and MP-2014 improvement scale: it appears the use of the base table (potentially backed up to the 2006 central year) and the projection scales are two different decisions.

  - If PBGC were to use the RP-2014 mortality table, or some adjusted version thereof, it does not mean that they would necessarily also use the MP-2014 mortality improvement scale.

- The PBGC representatives inquired about the prevalence of industry-based mortality usage in the marketplace.

4. **Early warning program: Anecdotal reports suggest PBGC may be expanding its early warning program and taking novel positions in certain transactions. For example, a number of clients are getting letters from PBGC asking for all kinds of information – including the most recent two valuation reports, six-year plan minimum funding projections (including complete details on all elements of the projections; quarterly contribution requirements; plans to use funding balances and permission to speak with the plan's actuaries); master trust statements, five-year employer financial projections; copies of any covenant compliance reports provided to lenders; or any presentations to the rating agencies, during the last twelve months etc. — in the absence of any transaction. In another case, when a plan had completed past risk-transfer transactions and the sponsor subsequently engaged in a corporate transaction, we understand PBGC is insisting the sponsor make additional contributions to return the funded percent to the pre-risk-transfer level, even though the net effect of the transaction was to reduce PBGC's exposure. Can you share with us what changes you are making in the early warning program and what is triggering these information requests and funding demands?**

   The PBGC representatives indicated that nothing has changed and that the Early Warning Program has not expanded. They said that they have always talked to plan sponsors in the absence of any transaction when they believe that circumstances may have changed. One example of this would be if the sponsor's credit profile had declined. (NOTE: The legal basis for this is ERISA Section 4042(a)(4) — PBGC can act if "failure to terminate now could reasonably be expected to increase PBGC's long term loss unreasonably.") The idea is that PBGC would gather information to determine if any action was necessary, perhaps allowing them to get in pre-bankruptcy.

   With respect to risk transfer transactions, when a corporate transaction occurs following a risk-transfer transaction and the risk transfer has negatively affected the plan's funded percentage, the PBGC may suggest to the sponsor that additional contributions be made to bring the plan's funding up to its pre-transaction level. PBGC noted that these are suggestions and they are not insisting on these contributions or in any way threatening plan termination or other consequences. They indicate that, if practitioners become aware of any situations (involving threats or other coercion), we should let them know.

5. **4062(e) change: The new 4062(e) trigger based on the reduction in the number of employees eligible for any qualified retirement plan can produce some strange results. For example, closing down a facility that offers only DC plans could, technically, meet the definition of a 4062(e) event even if no DB plan participants**

are part of the workforce reduction and there is no 4062(e) liability. Would such an event trigger reporting requirements? What is the guidance timeline?

Per 2015 Blue Book Q&A 19, reporting is required even if there is no 4062(e) liability. Plan sponsors can always contact PBGC to discuss specific cases.

The PBGC representatives indicated they are still reviewing the new statute. They are sending out follow-up information requests to all cases sitting in the hopper. The first request will ask if either the small-plan waiver or waiver for plans with assets at least 90% of the premium funding target apply. If neither waiver applies, PBGC will follow up to see if the new definition of a 4062(e) event applies. If a plan sponsor or practitioner has concerns, just call PBGC, explain the situation, and PBGC will be happy to work with them.

6. **Standard termination post-distribution certification – new requirements are problematic**

   The Intersector Group indicated that the proof of payment requirement (i.e., cancelled checks, or trustee statements listing names and amounts) in the new rules for Post-Distribution Certifications is problematic and questioned the need for the additional documentation. The PBGC representatives indicated that they receive approximately 2,000 inquiries per year with respect to distributions from terminating plans and need the additional information to make it possible to handle these requests. The Intersector Group pointed out that the documentation requested (e.g., cancelled checks) would not indicate the correct amount due to tax withholding, partial direct transfers, etc. The Intersector Group suggested the PBGC consider the Form 1099, as it would have more information and, for example, would have a better chance of reflecting if a check had not been cashed (because it is prepared later than the monthly trustee statement). The Form 1099 would obviously require the 60-day deadline to be lengthened.

7. **Schedule MB – new line 4f: for a (critical status) rehabilitation plan, indicate the "plan year in which the plan is projected to emerge…[or] the insolvency is expected."**

   a. **Different interpretations as to timing and source (plan document; actuarial models)**

      Like the IRS/Treasury representatives, the PBGC representatives indicated that they expected that the date would be tied to the scheduled progress certification. The Intersector Group explained that this may produce inconsistent results and that the scheduled progress in many cases would not produce an emergence or insolvency date.

   b. **Ability to request limited solvency projection for 2015 Schedule MB**

      The PBGC representatives indicated that practitioners should expect to see a requirement to attach a cash flow projection (15-20 years, for critical status plans) on the 2015 Schedule MB.

8. **Critical and Declining (C&D) plan notices:**
    a. **Annual funding notice – timing with respect to zone status of prior plan year; this implies a 13-month gap between C&D status and notice thereof**
    b. **Critical status notice – no statutory change, yet current model language may not be appropriate for a C& D plan.**

       The PBGC representatives are aware of the annual funding notice timing gap, but expect that many C&D plans will provide appropriate language in their 2015 critical status notice to participants, rather than use the pre-MPRA model.

9. **Benefit Suspensions under MPRA**
    a. **What concerns are there with respect to how actuaries may approach the duration of the 432(e)(9)(C)(i) solvency certification?**
    b. **What is the regulatory perspective on the practical need to base this solvency projection on a measurement date that precedes the effective date of suspensions, as well as a projection date that may not coincide with that effective date?**
    c. **Role of deterministic versus stochastic projections in the application process**
    d. **Importance of prompt agency follow up, if application is not deemed complete**
    e. **How should participant notices approach early retirement benefits and future benefit accruals?**
    f. **How should the exclusion of disability benefits from suspensions apply to disability benefits that "convert" to normal retirement benefits?**

       This topic was not discussed.

10. **Partition authority under MPRA**
    a. **Update on progress of guidance**
    b. **Was RFI process fruitful?**
    c. **Any topics that guidance will definitely address or not address?**
    d. **Minimum transfer amount necessary to remain solvent**
        i. **What might be the process for setting the assumptions used in this determination?**
        ii. **Should plan sponsors expect to determine on their own what they believe is the minimum transfer amount necessary to remain solvent? Does PBGC intend to calculate this on their own? Or will it be a collaborative process?**
        iii. **Once established, does a plan sponsor have free rein to select participants to be partitioned?**

e. We understand the non-impairment clause is causing concern among practitioners, and perhaps within the agency. Any update on where this stands?

f. Discussion of withdrawal liability calculations and premiums post-partition

The PBGC representatives indicated they are "joined at the hip" with Treasury with respect to partition, which is intended to be an option for plans that are unable to return to solvency through the use of benefit suspensions. The statute appears to require that plans implement "maximum benefit suspensions" in conjunction with a partition, and PBGC representatives suggested that they interpret it this way (e.g., plans are required to use "all reasonable measures" to improve funding before seeking partition). However, they pointed to a comment letter from the Pension Rights Center which takes the opposite interpretation.

The Intersector Group discussed the background to this issue, which focused on the fact that there is a moral hazard issue at play. Some critical and declining plans will be able to avoid insolvency through the use of the benefit suspensions alone, while others will require a combination of benefit suspensions and partition. The plans using benefit suspensions and partition will receive financial assistance from PBGC, while those using benefit suspensions alone will not. It is unreasonable for a plan to solve its funding problems entirely through the use of benefit suspensions while a different plan implements lesser suspensions and receives PBGC financial assistance. The only way to ensure that this situation does not occur is to require maximum permissible benefit suspensions as a condition of partition.

Partition is voluntary on the part of the PBGC and on the part of the plans. The Intersector Group discussed factors that plans may consider when deciding whether or not to seek a partition. Plans with lower benefit levels may be more likely to request partitions, since maximum benefit suspensions represent a lesser benefit sacrifice in these cases. Plans may be motivated to wait as long as possible before requesting a partition, since all else being equal, a later partition date will mean larger total benefit payments to participants (paid for by larger financial assistance from PBGC). The Intersector Group suggested that this provides an opportunity for PBGC to proactively engage troubled plans by suggesting partition as an option if it is undertaken soon, and that this option might not be available at a later date.

There was a discussion of the calculation of the 110% suspension floor and the asset return assumption used in the suspension application (similar to the IRS discussion, including the discussion of whether future accruals were included in suspension; the Intersector Group believes the answer is "no"). There was also a discussion of the "non-impairment" clause in the partition provisions, but no indication that there is currently a PBGC consensus view of this clause.

11. Withdrawal liability changes – there is a MPRA directive for "simplified methods" with respect to surcharges and remedial plan contributions. What topics should be covered?

This topic was not discussed.