Intersector Group Meeting With

the Pension Benefit Guaranty Corporation (PBGC) Notes

January 23, 2023 (Virtual Meeting)

Periodically the “Intersector Group” (“the Group”) meets with representatives of the PBGC to discuss regulatory and other issues affecting pension actuarial practice. The Intersector Group is composed of two delegates from each of the following actuarial organizations: American Academy of Actuaries (Academy), Conference of Consulting Actuaries (CCA), Society of Actuaries (SOA), and American Society of Enrolled Actuaries (ASEA). Attending from the Intersector Group at this meeting were Bruce Cadenhead (Academy), Kelsey Mayo (ASEA), Eric Keener (SOA), Ellen Kleinstuber (CCA), Tonya Manning (CCA), David Pazamickas (Academy), Maria Sarli (SOA) and Virginia Wentz (ASEA). Linda K. Stone, Academy senior pension fellow, Philip Maguire, Academy staff member supporting the Intersector Group, and Joseph Hicks, chairperson of the Academy’s Multiemployer Plans Committee, also attended.

These meeting notes are not official statements of the PBGC and have not been reviewed by its representatives who attended the meeting. The notes are a reflection of the group’s understanding of the current views of the PBGC representatives and do not represent the positions of the PBGC nor 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 nor reviewed them to determine whether the statements herein are accurate or complete.

Discussion topics were submitted by the group to the PBGC in advance of the meeting and are shown in regular typeface below; a summary of the discussion is shown in italics.

Discussion Topics

- ***Special Financial Assistance (SFA) for Multiemployer Pension Plans***
    - Priority Group 5
        - A plan that is eligible for SFA and is projected to become insolvent by March 11, 2026, is in Priority Group 5.
        - Applications are required to include a demonstration that supports a plan’s inclusion in a priority group.
        - Can PBGC provide any additional guidance on this? For example, are plans required and/or able to use actual market experience up to the SFA

measurement date and/or after the SFA measurement date through the date of application in making this determination?
    - There may be plans in Priority Group 5 as a direct result of recent investment performance and the details regarding how to sufficiently determine the projected insolvency date—from PBGC's perspective—is important for practitioners and plan sponsors to understand.

PBGC indicated that tying the solvency projection to conditions at the SFA measurement date is a fully supportable approach. Demonstrating eligibility for Priority Group 5 could be satisfied using an alternative approach, but it will be subject to increased scrutiny from PBGC.

- Lock-in Application
    - Certain plans eligible for SFA may submit a lock-in application, which binds a plan to a specific set of base data (SFA measurement date, non-SFA and SFA interest rate assumptions, and census data) for a future SFA application.
    - One reason a plan sponsor may decide to file a lock-in application is in the event the PBGC's filing window has closed temporarily when the plan sponsor was ready to file its initial application. A lock-in application would allow a plan to avoid the time and expense involved in revising an already completed application due to a change in base data.
    - If the filing window is closed for a significant period of time, then a plan sponsor that filed a lock-in application that is unable to apply for SFA may be harmed solely due to the filing window closure. The lower SFA interest rate may not adequately compensate the plan for the delay in receiving SFA on an expectation basis.
    - Is PBGC able to provide any information at this time on how long it would take to process applications if all non-priority group plans filed / locked-in on March 11, 2023? It would be helpful for plans to have an expectation of how long they may have to wait—three months may be manageable, but if it's 12+ months, the lock-in may simply be an added period of investment risk.
    - Assuming the portal does close for a period of time, will plans that have submitted a lock-in application be given priority over plans that did not submit a lock-in application when the portal reopens?

PBGC responded that it is not in a position to project when the filing portal will close or for how long. It is likely that a significant number of plans will want to file an application as soon as possible, so PBGC is assuming the filing portal will need to close on March 11, 2023. The length and time of the closure will depend on the state of applications under review—including the 14 complex applications PBGC expects from Priority Group 6 plans.

The Intersector Group noted that the Academy's Multiemployer Plans Committee submitted a letter to PBGC, which identified potential solutions to issues related to future filing portal *closures. PBGC is reviewing this letter and noted that it is working on a system to manage applications starting March 11, 2023, but cannot comment on any specifics at this time.*

PBGC noted that the discussion topic summary appears to presuppose that lock-in applications will have priority over non-lock-in applications, but PBGC has not made any decisions regarding this.

The group asked whether all eligible plans will be able to submit an initial application by the December 31, 2025, deadline, or whether some eligible plans could be denied the opportunity to timely file an application. PBGC indicated that it does expect that all plans will have the opportunity to apply. Further, a plan's lock-in application is considered an initial application; therefore, plans filing a lock-in application on or before December 31, 2025, will have until December 31, 2026, to file their last application.

PBGC hopes to be transparent about how it will handle SFA applications so plan sponsors can make informed decisions. There are already examples of plans that had an extended period between application date and payment date. In any event, these plans still received SFA. The group commented that many of these plans applied under the interim final rule where compensation for a delay in payment in SFA was made using the higher, non-SFA interest rate. The delay issue is exacerbated by the bifurcation of the interest rate under the final rule.

- <u>Post-MPRA Contribution Rate Increases and Withdrawal Liability</u>
    - Following the passage of MPRA, the determination of employer withdrawal liability generally ignores contribution rate increases required by a rehabilitation plan (for purposes of UVB pool allocation and annual payments) for a period of time.
    - If said contribution rate increases are no longer required by a rehabilitation plan following a plan's receipt of SFA, then does the receipt of SFA trigger the requirement for a plan to reflect these contribution rate increases in the determination of employer withdrawal liability?
    - Or does this happen upon emergence from critical status? If so, how does the "deemed" critical status provision apply in this circumstance when a plan's actuary would otherwise certify the plan in the yellow or green zone?

PBGC indicated that it has no authority over rehabilitation plans or zone status, which are under the purview of the IRS. As a result, it was unable to comment on the specific issues presented by the group. However, PBGC did point out that ERISA section 305(g)(3)(B) provides that "any increase in the contribution rate … shall be deemed to be required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan."

- <u>Use of SFA Assets Following a Plan Merger</u>
    - If a plan that has received SFA (Plan A) later merges with a plan that has not received SFA (Plan B), then can the SFA assets be used to pay benefit

payments and administrative expenses associated with both Plan A and Plan B following the merger?

PBGC views the merged plan as a unified entity and therefore SFA assets can be used to pay benefits and expenses of the merged plan. PBGC noted that there is a lot of commentary in the SFA final rule regarding mergers and the conditions/restrictions that continue to apply following an approved merger. PBGC is trying to encourage beneficial mergers.

- ***Schedule SB Benefit Payments***
  - The group understands that the SB instructions are being modified to indicate that the 50 years of benefit payments can be supplied in the form in which benefits are valued rather than the form in which they are expected to be paid in the case of benefits valued under IRC section 430 using “annuity substitution” or “lump sum substitution.” The group also understands that, alternatively, projected benefit payments can be supplied in the form in which benefits are expected to be paid if those cashflows are readily available, and PBGC would find those cash flows more useful. Can PBGC confirm that either approach is acceptable and that any reasonable assumptions can be used if expected future lump sums are supplied?”

PBGC indicated that it would be better for its purposes for plan actuaries to disclose the annuity cash flows when annuity substitution is used—whatever cash flows go into the funding target should be provided.

- ***ERISA 4010***
  - Market conditions at December 31, 2022, may lead to plan sponsors being required to prepare 4010 filings for the 2023 Information Year, due in 2024, who were not previously required to file. In many cases, the funded status that triggers the filing will not be a real economic funded status at January 1, 2023, because of interest rates smoothed over 24 months combined with market value of assets or smoothed assets that are capped at 110% of market value of assets. Would PBGC consider additional waivers for the 2023 Information Year?

PBGC will think about the question. It hasn’t yet considered whether its ability to provide waivers would extend to this situation.