

PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

The Pension Benefit Guaranty Corporation (PBGC or Corporation) is a federal corporation created under title IV of the Employee Retirement Income Security Act of 1974 (ERISA) to protect the retirement security of over 33 million American workers, retirees, and beneficiaries in both single-employer and multiemployer private-sector pension plans. PBGC administers two insurance programs — one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans. In addition, PBGC administers a special financial assistance (SFA) program for eligible financially troubled multiemployer plans.

- *Single-Employer Program.* Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers. In fiscal year (FY) 2022, PBGC paid over \$7.0 billion in benefits to more than 960,000 participants. Operations under the single-employer program are financed by insurance premiums, investment income, assets from pension plans trusted by PBGC, and recoveries from the companies formerly responsible for the trusted plans.
- *Multiemployer Program.* The multiemployer program covers collectively bargained plans involving more than one unrelated employer. PBGC provides traditional financial assistance (technically in the form of a loan, though almost never repaid) to the plan if the plan is insolvent and thus unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and is generally significantly lower than, the single-employer guarantee. In FY2022, PBGC provided \$217 million in traditional financial assistance to 115 insolvent multiemployer plans covering 93,525 participants receiving guaranteed benefits. Those plans also cover an additional 46,480 participants entitled to receive benefits in the future. PBGC also provided a final payment of \$9 million in financial assistance to facilitate the merger of two multiemployer plans. Operations under the multiemployer program generally are financed by insurance premiums and investment income.

- *Special Financial Assistance Program.* The American Rescue Plan (ARP) Act of 2021 added section 4262 of ERISA, which requires PBGC to provide SFA to certain financially troubled multiemployer plans upon application for assistance. PBGC's SFA Program requires plans to demonstrate eligibility for SFA and to calculate the amount of assistance pursuant to ARP and PBGC's regulations. This program is funded by general tax revenues.

For the second year in a row, both PBGC's Multiemployer Program and Single-Employer Program have a positive net position at fiscal year-end. The financial status of the single-employer program improved from a positive net financial position of \$30.9 billion at the end of FY 2021 to \$36.6 billion at the end of FY 2022. The net financial position of the multiemployer program improved from a positive net position of \$481 million at the end of FY 2021 to \$1.1 billion at the end of FY 2022.

ARP substantially improves the financial condition and the outlook for PBGC's multiemployer program. By forestalling the near-term insolvency of the most troubled multiemployer plans, the multiemployer program is no longer expected to go insolvent in FY 2026 and can accumulate a greater level of reserve assets in its insurance fund in the near-term.

To carry out its statutory functions, PBGC issues regulations on such matters as how to pay premiums, when reports are due, what benefits are covered by the insurance programs, how to terminate a plan, the liability for underfunding, and how withdrawal liability works for multiemployer plans. PBGC follows a regulatory approach that seeks to encourage the continuation and maintenance of securely-funded defined benefit plans. In developing new regulations and reviewing existing regulations, PBGC seeks to reduce burdens on plans, employers, and participants, and to ease and simplify employer compliance wherever possible. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

Regulatory/Deregulatory Objectives and Priorities

PBGC's regulatory/deregulatory objectives and priorities are developed in the context of the Corporation's statutory purposes, priorities, and strategic goals.

Pension plans and the statutory framework in which they are maintained and terminated are complex. Despite this complexity, PBGC is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties. PBGC's regulatory/deregulatory objectives and priorities are:

- To enhance the retirement security of workers and retirees;
- To implement regulatory actions that ease compliance burdens and achieve maximum net benefits while protecting retirement security; and
- To simplify existing regulations and reduce burden.

PBGC endeavors in all its regulatory and deregulatory actions to promote clarity and reduce burden on the public.

Small Businesses

PBGC considers very seriously the impact of its regulations and policies on small entities. PBGC attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, and assist plans to comply with applicable requirements. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

Open Government and Public Engagement

PBGC encourages public participation in the regulatory process. For example, PBGC's "Federal Register Notices Open for Comment" webpage highlights when there are opportunities to comment on proposed rules, information collections, and other Federal Register notices. PBGC encourages comments on an ongoing basis as it continues to look for ways to further improve the agency's regulations. PBGC staff also actively participate in conferences focused on employee retirement benefits and engage with plan participant advocacy groups to understand where there may be concerns with PBGC regulations. Efforts to reduce regulatory burden in the projects discussed below are in substantial part a response to public comments and engagement.

American Rescue Plan

The American Rescue Plan (ARP) Act of 2021 added a new section 4262 of ERISA to create a program to provide funding to severely underfunded multiemployer pension plans to ensure that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.

Under new section 4262 of ERISA, PBGC was required within 120 days to prescribe in regulations or other guidance the requirements for SFA applications. To implement the program, on July 9, 2021, PBGC released an interim final rule (RIN 1212-AB53) adding a new part 4262 to its regulations, "Special Financial Assistance by PBGC," which was published in the Federal Register on July 12, 2021. Part 4262 provides guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, and restrictions and conditions on plans that receive SFA. PBGC received over 100 public comments on many provisions of the interim rule including the methodology plans must use to calculate the amount of SFA, permissible investments of SFA funds, and the conditions imposed on plans that receive SFA. PBGC published a final rule on July 8, 2022, that makes various changes to part 4262 in response to public comments. The provisions of the final rule became effective on August 8. PBGC included a 30-day public comment period solely on the change to the condition to require a phased recognition of SFA assets for purposes of computing employer withdrawal liability. In response to comments received, PBGC added an exception process for the withdrawal liability conditions that apply to a plan that receives SFA, which was published in a final rule that was effective on January 26, 2023.

Multiemployer Plans

PBGC published a proposed rule on October 14, 2022, that would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability (RIN 1212-AB54). Section 4213(a) of ERISA permits PBGC to prescribe by regulation such assumptions.

Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs

allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

The rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates. PBGC plans to publish a final rule that responds to the public comments received on the proposed rule.

PBGC also plans to propose a rulemaking that would add a new part 4022A to PBGC's regulations to provide guidance on determining the monthly amount of multiemployer plan benefits guaranteed by PBGC ("Multiemployer Plan Guaranteed Benefits," RIN 1212-AB37). For example, the proposed rule would explain what multiemployer plan benefits are eligible for PBGC's guarantee, how to determine credited service, how to determine a benefit's accrual rate, and how to calculate the guaranteed monthly benefit amount.

Rethinking Existing Regulations

Most of PBGC's regulatory/deregulatory actions are the result of its ongoing retrospective review to identify and correct unintended effects, inconsistencies, inaccuracies, and requirements made irrelevant over time. For example, PBGC is proposing miscellaneous updates, clarifications, and improvements (RIN 1212-AB51) to its regulations that are in part a response to frequently asked questions and comments received from stakeholders, such as to annual financial and actuarial information filings (part 4010) and filings for termination of single-employer plans (part 4041). This action also addresses SECURE Act changes affecting premium rates (part 4006), benefits payable in terminated single-employer plans (part

4022), and part 4044 (allocation of assets in single-employer plans). PBGC's regulatory review also identified a need to improve PBGC's recoupment of benefit overpayment rules ("Improvements to Rules on Recoupment of Benefit Overpayments," RIN 1212-AB47). Other rulemakings would modernize PBGC's regulations and policies by adopting up-to-date assumptions and methods that are more consistent with best practices within the pension community. For example, PBGC is considering modernizing the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans) and for determining mass withdrawal liability payments (for multiemployer plans) (RIN 1212-AA55) among other purposes.