

LAURA MULLANE

Strengthening the PBGC and Multiemployer Pension Plans

NCCMP Puts Forth Recommendations in Hopes of Turning the Tide

RECENT NEWS for the Pension Benefit Guaranty Corp. (PBGC) has not been good. At the end of FY 2012, the PBGC's multiemployer pension plan insurance program had a \$5.2 billion deficit, nearly double its 2011 deficit of \$2.77 billion. "Based on these projections, and assuming no changes either in multiemployer plans or in PBGC's multiemployer program, there is about a 35 percent probability that the assets of PBGC's multiemployer insurance program will be exhausted by 2022 and about a 90 percent probability of exhaustion by 2032," according to the PBGC's five-year report delivered to Congress in January.

How the PBGC Got Here

The PBGC safeguards the retirement income of about 10 million workers and retirees in roughly 1,500 multiemployer defined benefit pension plans. Today, these plans collectively represent about \$450 billion in assets.

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Pension Committee Responds to IRS Notice Requirements for Benefit Limitations

THE ACADEMY'S PENSION COMMITTEE sent a **letter** to the IRS on Feb. 5 on notice requirements for funding-related benefit limitations in single-employer defined benefit pension plans. Specifically, the committee praised the common-sense approach of Notice 2012-46, which requires notification only to those participants who would be directly affected by a benefit restriction. Often, restrictions apply only to a small group of participants, and

notifying everyone can confuse the situation for those not affected.

The committee commented on several other aspects of Notice 2012-46, such as requiring notices that limitations no longer apply; requiring notices for new participants, beneficiaries, or alternate payees; and requiring earlier notification of restrictions for certain unpredictable contingent event benefits (UCEBs).

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Private Employers Should Have the Option for Higher Normal Retirement Age

IN AN **ISSUE BRIEF** released on March 7, the Academy's Pension Committee suggests that private pension plans be allowed to increase their normal retirement age from the mandated age 65 to 67, which would match Social Security requirements for workers born after 1960.

Rethinking Normal Retirement Age for Pension Plans details why ERISA should allow this approach. The age Americans think of as the beginning of retirement was set in 1935. At that time, age 65 made sense, based on a limited number of private and state pension plans and an actuarial analysis of life expectancy consistent with the times. ERISA continued the precedent in 1974 when it set age 65 as the maximum normal retirement age for private plans.

Much has changed since then—the life expectancy of a 65-year-old American has increased 40 percent. Essentially, 65-year-old men have seen their life expectancy increase 5.9 years (46 percent) since 1940; a 65-year-old woman has gained 6 years (40 percent). Social Security has taken steps to address this shift by increasing the normal retirement age to 67 for those born after 1960.

Allowing private employer defined benefit plans to follow suit would benefit the overall American workforce in several ways. When employees delay retirement for two more years, they not only build up savings and add to their retirement accounts, but also reduce

the expected plan pay-down period. A shorter retirement period leads to higher payouts.

The more people retire at 67 as opposed to 65, the more the general age expectations for retirement will change in this country. Such altered expectations would make it more likely that workers will work longer.

Workers who expect to remain employed until age 67 would be less inclined to take early retirement at age 62 and experience the accompanying decline in benefits. Currently, workers who choose to retire early take a 20 to 30 percent benefit penalty for doing so. Workers who expect to work until age 67 and do so will have a higher retirement standard of living.

Despite these overall benefits, such a change is not without certain administrative challenges, and not all plans would want to take advantage of this opportunity because of their particular industry. Some industries require lower plan retirement ages because of the physical demands of the work or because of little change in participant longevity. A Social Security 2007 **issue brief** noted that lower-wage workers have not experienced the same gains in longevity that higher-wage workers have.

Additionally, raising the retirement age requires plans to adjust many factors, including how to treat those nearing the current retirement age versus those who have more time to make adjustments, how benefit accruals will be affected, and how to choose the best transition scenario. ▲

IRS Issues Guidance for 403(b) Plan Document Compliance

ON MARCH 28, the IRS issued Revenue Procedure 2013-22, which creates a preapproved document program for 403(b) plans. On June 28, eligible employers can begin submitting plan documents for approval. The IRS estimates it will be two years before it issues opinion and advisory letters for these initial submissions.

Effective April 29, the revenue procedure outlines how the IRS issues opinion and advisory letters for 403(b) and volume submitter plans that comply with 2007 final regulations for Section 403(b). Certain retroactive issues also are covered, including adoption of remedial amendments. However, the IRS is not establishing a determination letter program with this procedure. ▲

2013 Pension Symposium: Outlook for Private Sector Pension Funding

PENSION FUNDING ISSUES get their due as part of the Enrolled Actuaries Meeting 2013 Pension Symposium. Attendees at these special sessions will examine issues surrounding private sector single and multiemployer pension plans, the Pension Protection Act (PPA), and the Pension Benefit Guaranty Corp. (PBGC).

Since 2005, the Pension Symposium has enabled a limited group of attendees to have an in-depth discussion on pension issues. This year's program will be directed by leading pension actuaries and other experts deeply involved in various aspects of the private pension system, including the PBGC.

The Pension Symposium begins Wednesday, April 10, with the closing general session of the 2013 Enrolled Actuaries Meeting and continues Wednesday afternoon and Thursday morning with the following presentations.

*11:15 a.m. to 12:45 p.m.
Wednesday, April 10
Panel Discussion: Principles of
Pension Funding
(EA Meeting, General Session 3)*

The closing session of the Enrolled Actuaries' Meeting serves as the opening session of the Pension Symposium.

In 2005, the Academy proposed a principles-based approach to pension funding. Shortly thereafter, the Pension Protection Act (PPA) of 2006 was passed. The PPA redefined the required minimum funding levels for private sector (single and multiemployer) pension plans. In the years since, plan sponsors have weathered severe economic and financial stresses and have often struggled to satisfy PPA's minimum contribution requirements and avoid PPA's benefit restrictions.



This session explores how the PPA is doing five years later. Panel members, who are experts in single-employer, multiemployer, and public plans, will discuss this as well as the Academy's 2005 funding principles.

*2 p.m. to 6 p.m., Wednesday, April 10
8 a.m. to noon, Thursday, April 11
Symposium: Limited-Attendance
Discussion Format*

The Wednesday afternoon and Thursday morning sessions are organized into several discussion segments that address topics on single employer pension plan funding, multiemployer pension plan funding, PBGC's status and liabilities, and the role of the profession. Experienced pension actuaries and other experts from outside the profession will

offer brief remarks on the various topics. Attendees then have the opportunity to participate in what has proved to be a highly interactive and effective learning environment and also to contribute to the profession's leadership efforts in this important national policy area.

Expert panelists include:

- Don Fuerst
- Bruce Cadenhead
- Dave Gustafson
- William R. Hallmark
- Ellen Kleinstuber
- Tonya Manning
- John Moore
- Andy Peterson
- Donald J. Segal
- Joshua A. Shapiro
- Joe Silvestri
- Tom Terry.



IRS Releases New Phone Number for VCP Submission Status Updates

AS OF APRIL 1, the phone number for checking Voluntary Correction Program submissions is this non-toll-free number: (626) 927-2011. The Appendix D **Acknowledgment Letter** reflects this change. The number listed in the older version of Rev. Proc. 2008-50 will no longer work.

If you would like to know more about your case, call the above number and leave a message containing:

- The plan name;
- Your name;
- Your phone number;
- The control number listed in the acknowledgment letter (if received).

Initially, the plans primarily depended on contribution income, but over time they have matured with only 39 percent of multiemployer plan participants being actively employed, which has meant that the plans have increasingly depended on investment income as a funding source. This funding shortfall was magnified by the impact of the huge stock market losses during the economic downturn in the early part of this century. For example, following the 2001–2002 downturn, multiemployer plans lost \$50 billion in asset values; after 2008, \$100 billion.

“The average funded ratios of these plans exceeded 90 percent in the 1990s, hovered in the mid-60 percent range in the mid-2000s, and fell below 50 percent after the 2008 market crisis,” said PBGC Director Josh Gotbaum in his testimony before the Health, Employment, Labor, and Pensions Subcommittee of the House Education and the Workforce Committee in March. Since 1980, the PBGC has provided financial assistance to 81 multiemployer plans, 49 of these during 2012 alone, although most plans are recovering from the 2008 financial crisis, Gotbaum said.

Congress enacted the Pension Protection Act (PPA) in 2006 to provide plans with tools for recovery. The PPA assigns a color zone to plans based on their financial health: the red zone for those in critical status (experiencing serious financial distress), the yellow zone for those that are endangered (experiencing some financial difficulty), and the green zone for those that are non-distressed.

The “Great Recession” of 2008 resulted in a median net investment loss among multiemployer plans of 22 percent. At the beginning of 2008, 76 percent of plans were in the green zone. By 2009, that had dropped to only 20 percent. Because of the PPA, hundreds of plans in yellow or red status were required to adopt funding improvement or rehabilitation plans to increase contributions and reduce costs. The average annual employer contributions to plans increased from \$4,300 per active participant to \$5,000 between 2008 and 2010. Additionally, in 2009 and 2010, in accordance with PPA rules, more than 350 plans reduced future-benefit accruals to limit costs and liabilities, and more than 250 plans in the red zone reduced certain benefits for participants who had not yet retired, thus erasing nearly \$3 billion in past benefit liabilities.

This flexibility in funding that allowed plans to extend their amortization period under PPA was particularly valuable in softening the negative effects of economic and financial market disruptions. By 2011, 60 percent of all plans certified fell into the green category from 32 percent in 2009, according to Gotbaum. Those plans in the red zone fell from 34 percent to 16 percent of all plans between 2009 and 2011, he said.

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ment losses that occurred during the 2008 crisis over a 29-year-period, as opposed to the shorter 15 years. More than 700 plans used the PRA relief, significantly reducing the annual amortization charges and minimum required contributions. “It has allowed plans to increase the actuarial value of their assets for funding purposes by recognizing 2008 investment losses over 10 years rather than the regular smoothing period of five years,” he said. Although Gotbaum acknowledged that lack of timely data means that the effects of funding relief on plans’ PPA funded status cannot be fully quantified, he said that “it seems clear that many plans enhanced their certified status as a result of the relief.”

In short, the PPA rules, coupled with the PRA, seem to be working. According to the February 2013 bulletin of Segal, the independent benefits and human resources consulting firm for multiemployer trust funds, the PPA rules “have allowed multiemployer plans to survive and, in some cases, thrive.”

Although many of the PPA’s multiemployer provisions are set to sunset in 2014, “no one really expects that to happen,” said Eli Greenblum, vice chair of the American Academy of Actuaries’ Pension Practice Council and chair of its Multiemployer Plans Subcommittee. “Even if that were the case, the rules are such that, if a plan is currently involved in a recovery program, it needs to continue that recovery plan. It’s expected that those rules would be beefed up to make it clear how those funding improvement and rehabilitation plans can continue.”

Multiemployer Plan Stakeholders Launch First Effort at Reform

On Feb. 19, the National Coordinating Committee for Multiemployer Plans (NCCMP) released a series of recommendations for reform. (The NCCMP represents itself as “a non-partisan, non-profit membership organization founded in 1974,” whose “regular membership is available to all other local, regional and national multiemployer plans, local unions, employer associations and individual companies that sponsor multiemployer plans.”) While not targeted specifically at the PBGC, the need for change is underscored by the PBGC’s deficit, according to Josh Shapiro, deputy executive director for research and education for the NCCMP, co-author of the report, and a member of the Academy’s Pension Committee. Thus, the recommendations proposed by the NCCMP focus on finding ways to improve the retirement security of plan participants and enhance the ability of plans to retain contributing employers, while preventing the need for future taxpayer assistance.

It’s a tall order, but with the sunset of the PPA provisions looming at the end of 2014, the time is ripe for action. The NCCMP determined, however, that simply adjusting the new PPA rules would not fully address those issues that have made it difficult for new employers to enter the system and would perhaps make some employers want to leave.

“I think it’s clear that the main theme of this report is we need to do something to keep plan sponsors interested,” said Greenblum, one of many who provided testimony to the NCCMP. “Likewise, we need to keep employees interested. In many cases, they’re the ones sacrificing take-home wages to pay into these pension plans but not seeing a lot of benefits.”

The NCCMP’s recommendations fall into three categories: preservation to strengthen the current system, remediation for deeply troubled plans, and innovation to foster new plan designs.

Preservation

The NCCMP recommends modifying the rules under the PPA to further strengthen plans by, for example, allowing those that are projected to enter critical status in the next five years to voluntarily enter critical (red zone) status in the current year. This proposal stemmed, according to Shapiro, from feedback that the NCCMP received that the yellow zone is “somewhat dysfunctional. The yellow zone is kind of the worst of all worlds, because it puts more requirements on plans, but doesn’t offer any additional flexibility,” he said.

The NCCMP further recommends that Congress explore proposed legislation that would encourage plans to join together to improve financial health either through alliances or through mergers. This would allow large plans to form a



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partnership with smaller plans without taking on responsibility for the smaller plan’s unfunded liability. Under the NCCMP approach, such a legislative remedy would also give the PBGC explicit authority to facilitate mergers and contribute assets from the multiemployer guaranty fund to the combined plan “if it reasonably concludes that doing so will reduce its long-term financial exposure,” according to the report.

In addition, it was recommended that pension plans be given the option of changing their normal retirement age from 65 to 67 to be consistent with Social Security.

Remediation

The report states that about 5 to 10 percent of plans are facing insolvency because of industry-specific factors, such as local economic erosion, reduced market share, overly optimistic income projections, and conflicting government policies. But the current rules are insufficient to help the most troubled plans recover because they place the entire burden for liability reductions on the active employee populations. The NCCMP asserts that those plans must have additional tools to protect the benefit payment stream and restore the financial integrity of the fund in the future. “Severely troubled plans facing inevitable insolvency must have the ability to intervene in advance of the plan’s insolvency,” according to the report.

Thus, the NCCMP recommended that the rules be modified regarding the suspension of accrued benefits for all categories of participants, including pensioners, so long as they include certain protections for vulnerable populations. The rules for the most troubled plans—those facing insolvency, in which all benefits would be cut to the relatively low PBGC guarantee levels—should be modified by suspending a portion of accrued benefits for all categories of participants, including pensioners, if they include certain protections for vulnerable populations.

“This is going to be tough,” said Greenblum. “The trick will be to do this in a manner that ensures everyone that pensioners will not be treated unfairly.”

The NCCMP makes clear that suspension of accrued benefits should not be used arbitrarily and must be restricted to plans that are facing inevitable insolvency. Further, it should be invoked only in situations in which the long-term benefit to participants as a group is improved. To exercise this option, plans must meet strict criteria and apply to the PBGC for approval, which will have 180 days to approve or deny the request.

Innovation

The report’s innovation recommendations focus on withdrawal liability, which, the NCCMP asserts, is an obstacle for participation by both existing contributing employers and potential new employers. And that, it argues, is something multiemployer plans can’t afford. “If a plan gradually loses contributing employers and is unable to attract new ones,” the report states, “then over time it will ultimately fail regardless of how well funded it might be.”

Under current law, a multiemployer defined benefit plan must include the concept of withdrawal liability. Yet the “widespread confusion” in the financial community on withdrawal liability is hurting, not helping, the plans. This is exacerbated by the plans’ growing maturity over the past several decades. Although this maturity was expected, it makes an employer’s potential withdrawal liability much greater during an investment loss. According to the NCCMP, “This represents an increase in the level of risk to which employers are exposed without any corresponding ability to respond to the potential negative consequences of this risk.” Other issues add to the confusion, such as recent financial turbulence leading to sudden funding shortfalls and a lack of understanding among accounting and ratings agencies about how multiemployer plans calculate their liabilities and how plans allocate any unfunded vested benefits to contributing employers.

Given all this, the NCCMP proposes more flexible laws for multiemployer plans that allow plan designs that either create no withdrawal liability, or greatly reduce the potential for it to develop, and still protect retirement income. The NCCMP evaluated several alternative pension designs in Canada and Europe that do this, including variable annuity plans and target benefit plans.

Variable annuity plans reduce contributing employers’ exposure to withdrawal liability; a “target” benefit plan requires no extended employer financial exposure beyond the contractually negotiated contributions, thereby eliminating the concept of withdrawal liability. Although the NCCMP did not endorse a specific model, it encouraged plan sponsors to rethink plan designs and explore innovations that allow more flexibility with “reasonable and appropriate participant protections for the more vulnerable participant populations.”

The Path Forward

Although Josh Shapiro is “very optimistic” about the positive responses the report’s recommendations have garnered, he hastened to add that much of what the NCCMP proposes requires congressional action, which can be unpredictable. Currently, the report is being widely circulated, and supporters are meeting with congressional staff in both the House and Senate with the hope that eventually these recommended changes will be introduced as legislation. “But that’s a ways down the road,” said Shapiro. “Right now, we’re in the education phase of the process.”

Part of the challenge, Shapiro added, is that Congress has not been actively involved in major pension plan legislation recently. “No work in Congress has really been done on this since the PPA was passed seven years ago,” he said. But the hope is that, because the NCCMP recommendations don’t ask for government funding assistance, Congress will be likely to move to enact the recommendations and allow multiemployer pension plans to move forward and thrive. ▲

LAURA MULLANE is a freelance writer who has written for Actuarial Update.

Links of interest

Retirement Security Review Commissions’

recommendations: http://lib-cdn.s3.amazonaws.com/279/59/b/39/1/Solutions_Not_Bailouts.pdf

PBGC director’s congressional testimony:

<http://www.pbgc.gov/Documents/PBGC-Testimony-Multiemployer-Plans.pdf>

PBGC’s five-year report on multiemployer pension plans

to Congress: <http://www.pbgc.gov/documents/pbgc-five-year-report-on-multiemployer-pension-plans.pdf>

PBGC Seeks Public Comment on Information Collection

THE PENSION BENEFIT GUARANTY CORP. (PBGC) issued a **notice** on March 29 that asks the Office of Management and Budget (OMB) to extend approval of collection of information requirements under its rules for requesting reconsideration of an initial determination. The PBGC is seeking public comments through May 31, as published in the April 1 *Federal Register*.

Currently, OMB has approved an information form for those seeking reconsideration of their cases under Section 4003.1, which focuses on determinations involving premiums,

interest, late payment penalties, voluntary terminations, allocation of assets, or other penalties. The form will expire after July 31, unless OMB extends its approval for an additional three years.

PBGC seeks public comment to evaluate whether the agency needs to collect this information and if its burden estimates are accurate. It also seeks to enhance the quality, utility, and clarity of collected information and to minimize the burden on those responding by allowing electronic and other technical streamlining processes. ▲

◀PENSION COMMITTEE, FROM PAGE 1

Should notices be required when a limitation ceases to apply?

The committee does not think this is necessary, because many plans will issue notices without being required to do so in any event. Notice 2012-46 does not generally require notification, except for plans that lift restrictions on accelerated payment forms and allow participants who were originally restricted in their choices to make a new election. The committee believes this approach strikes the right balance by letting affected participants who need to make immediate decisions know about the change. Those not immediately affected will be notified when they must make a decision related to their benefit options.

Should periodic notices be required when benefit restrictions continue?

The committee said no. Participants already know about the restrictions and the reasons they were put in place. Participants also know that the restrictions will be lifted when the plan's funded status improves, and they have a contact person if they have questions. Benefit statements

will keep them informed about accruals, and those who want to begin benefits will be reminded of any payment form restrictions when they apply for benefits. A mention in the Annual Funding Notice given to participants would be a good option if the IRS and Treasury believe plan participants need continuing notification.

Should notices be required for new participants, beneficiaries, or alternate payees?

The committee does not believe such notices are necessary. Benefit statements will keep new participants informed of the benefits they are accruing. Those beginning benefits will be notified of their options. Should the IRS and Treasury want more direct notification for this group, plans could notify them through an insert to the summary plan description (SPD). If the IRS and Treasury require a mention in the Annual Funding Notice, these participants would also receive that notice.

Should earlier notice be required for certain unpredictable contingent event benefits (UCEBs)?

The committee does not believe Notice

2012-46 should impose an earlier deadline than the statutory deadline for some UCEB notices. In many cases, plan sponsors would not be able to meet this earlier deadline because the UCEB notice would be due before the event occurs that triggers the need for such a notice or before the plan sponsor is able to determine the effect of the event on restrictions. Circumstances in which this could happen include layoffs, plant closings and relocations, and involuntary terminations, particularly if the plan is funded at 60 percent with little or no cushion.

Plan sponsors are more likely to be able to comply in situations that involve Worker Adjustment and Retraining Notification (WARN); plan sponsors will need to know who is affected to provide the WARN notice, but plan sponsors still may not know whether restrictions will apply. If the rule remains in effect, the committee suggests that it be limited to such WARN cases and that the plan sponsor be allowed to let participants know that UCEBs may be restricted if it is unable to determine by the time the notice is due that they will be restricted.

Additionally, the committee asked for clarification of certain issues: range certifications, effective date, and deadline for furnishing notices. ▲