



2022 Annual Report of the Participant and Plan Sponsor Advocate

Pension Benefit Guaranty Corporation

December 30, 2022



Table of Contents

Introductory Comments by the Advocate	2
Participant Issues	5
Plan Sponsor Issues.....	10
Pension Plan Registry Project.....	15
Outlook	17
ERISA § 4004.....	19



It is hard to believe that ten years have passed since Congress created the position of the Pension Benefit Guaranty Corporation (PBGC) Participant and Plan Sponsor Advocate. Over the years, the Advocate has helped numerous participants and plan sponsors resolve a wide variety of issues with PBGC. PBGC has made many changes and improvements over the years in response to the Advocate’s recommendations and observations, yet certain systemic issues persist, repeatedly presenting themselves in different forms through various participant and plan sponsor assistance requests. While PBGC has done good work in implementing its Special Financial Assistance Program, it is now time to refocus and dedicate resources to address these unresolved areas of concern.

On the plan sponsor side, the distress termination process remains a longstanding area in need of improvement – an observation that has appeared in almost every single Advocate Annual Report. Complex and atypical participant cases also present continued challenges for PBGC, especially when they involve policy interpretations, the exercise of discretion, and questions about decision-making authority.

These participant and plan sponsor issues share common themes involving inefficient and broken processes, communication issues, technology challenges, and concerns about the level of supervision from managers. Problems are often exacerbated when multiple departments must interact with each other to fully address the sponsor or participant issue, but they do not, leading to delays that prompt parties to contact the Advocate.

To that end, the Advocate has recommended in several Annual Reports that the agency establish a “Chief Executive Officer” position responsible for overseeing the agency’s day-to-day operations, much like a conductor of a symphony orchestra who ensures that all instrument ensembles play together and understand how each affects the other.

This position would require a general management skillset, and the agency’s department heads would report to it, enhancing leadership’s understanding of where internal inefficiencies exist and how interdepartmental coordination can be maximized to benefit participants and plan sponsors. A hands-on Chief Executive Officer position would also address the inefficiencies associated with many of PBGC’s administrative functions, which are currently handled by internal departments preferring a “self-service model” that is convenient for their own staff but not for the internal PBGC constituencies they serve. Without better oversight to ensure that departments receive proper administrative support, small administrative tasks – such as hiring and onboarding a new employee, filing expense statements, and making travel arrangements – become too time-consuming, detracting from the time customer-facing staff can spend on mission-related work.

Most importantly, these inefficiencies undermine the ability of PBGC's staff to focus on its important statutory mission to encourage the continuation and maintenance of private sector defined benefit plans. What has the agency done, and what can it do now and in the future, to support that statutory mission?

On the plan sponsor front, sponsors of defined benefit plans are systematically and efficiently moving from defined benefit to defined contribution structures, and many have undertaken some form of de-risking, choosing to shed their liabilities and eventually exit the defined benefit system. The result is an insured universe with more troubled companies and fewer healthy plan sponsors. How will PBGC's role evolve as fewer plan sponsors maintain their defined benefit plans?

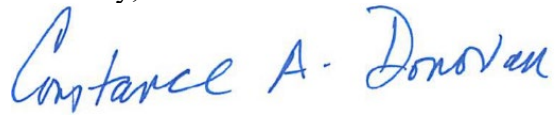
One thing the agency can do right now to help promote retirement security is improve its Missing Participants Program in accordance with recommendations outlined in a January 2022 report on the topic by the PBGC Inspector General. Currently, PBGC relies on an agreement the Advocate facilitated between PBGC and the Department of Labor's Employee Benefits Security Administration (EBSA), under which EBSA regional office benefits advisors help PBGC locate and connect participants with their unclaimed benefits held as part of PBGC's Missing Participants Program. There is much more that PBGC could be proactively doing to locate the many missing participants not captured by this activity.

PBGC's records and pension expertise can also help participants find information about defined benefit plans they haven't been able to locate. The agency has many old defined benefit plan-related records that can be used to trace the history of a plan. The Office of the Advocate's Pension Plan Registry Project (Registry Project) is exploring options for building a registry database using this data and is currently testing a prototype registry tool. This important project aligns with PBGC's mission statement and demonstrates the value of the agency's historical data, particularly as more and more defined benefit plans disappear and it becomes increasingly difficult to locate historical information about old plans. The Office of the Advocate's Registry Project will also complement efforts by the Department of Labor to stand up the Retirement Savings Lost and Found recently authorized by the Secure 2.0 Act.

The future of the defined benefit system and what it means for retirement security in America is an issue of interest to the Office of the Advocate. This year's report includes a special section on retirement security and raises questions that could be addressed so that all generations can enjoy a secure retirement. PBGC is in a unique position to preserve the defined benefit structure and it is curious that the agency has not done more. Further, there are lessons to be learned from the past and from other countries who have grappled with retirement security for many years, and we can use our collective knowledge to make a path forward.

Respectfully, I submit the 2022 PBGC Participant and Plan Sponsor Advocate Annual Report in accordance with my reporting duties under section 4004 of the Employee Retirement Income Security Act (ERISA).

Sincerely,



Constance A. Donovan
PBGC Participant and Plan Sponsor Advocate
December 30, 2022

cc: Camille M. Castro, Senior Associate Participant and Plan Sponsor Advocate
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PARTICIPANT ISSUES

Benefits administration is the agency's core function, as PBGC made payments of over \$7 billion to more than 960,000 participants in 2022. There are multiple parties involved in the payment of benefits, which involves the trusteeship process, calculating and administering participant benefits, and other benefits administration activities. The Office of the Advocate frequently coordinates with PBGC's Office of Benefits Administration (OBA) when it receives participant assistance requests, as this department is the business unit responsible for calculating and paying benefits.

That said, many participant cases often involve other departments, such as the Office of the General Counsel (OGC) and the Disclosure Office, especially when they raise complex or atypical issues such as overpayment recovery procedures, documentation requests, and policy interpretation questions. Each department operates in its own distinct silo, leading to delays when there is no clear case owner or process to facilitate communications between the parties. The Advocate has repeatedly identified inefficiencies resulting from the stove-piped nature of these departments and, while OBA has made an effort to meet more frequently with OGC and other departments, there is an urgent need to reassess and update the agency's internal processes so that each department knows its role in bringing a case toward resolution. This reassessment must involve reviewing outdated policies and procedures and resolving outstanding questions about case ownership and responsibility for making benefits administration decisions. Every benefit determination does not need to become a legal question that only OGC can answer.

Customer Service Improvements

During the first half of 2022, the Office of the Advocate experienced periods of high participant call volume involving issues with PBGC's Customer Contact Center. The Customer Contact Center is the agency's main customer service center for responding to participant and beneficiary assistance requests. It is entirely staffed by contractors and overseen remotely by staff from OBA. The Advocate heard complaints during the beginning of the year about long wait times, dropped calls, the inability to elevate matters to upper management, and other customer service-related issues when seeking assistance with basic benefits administration questions, such as address changes or requests for tax forms. Some of these issues stemmed from challenges with PBGC's rollout of its new customer relationship management (CRM) software and other information technology upgrades, while others related to a staffing shortage curtailing the number of customer service representatives.

OBA assured the Advocate that it was taking steps to improve staffing levels, onboarding times, training, and technology, enabling the Customer Contact Center to better handle large call volumes. While these changes took a while to fully implement, the Office of the Advocate has observed a consistent decrease in the number of participant complaints about the Customer Contact Center directly attributable to OBA's efforts throughout the second half of 2022.

Recommendation: OBA must maintain high levels of customer service, even during peak call volume periods, such as tax season. Customer service representatives should receive ongoing training so that they are familiar with basic benefits administration concepts and can address

participant issues or route them appropriately within the agency. OBA's new technology tools, such as its CRM system, will allow it to track case metrics and identify repeat areas of concern that could benefit from increased staff training, but these tools are not substitutes for active management and supervision of people.

Connecting Participants with Their Unclaimed and Lost Benefits

In addition to helping participants with pension tracing research to locate their lost defined benefit plans, the Advocate has been involved with larger initiatives to connect certain populations of missing participants with their unclaimed benefits held by PBGC. One notable matter involved an assistance request from a retiree representative for the Connecticut Bank and Trust (CBT) Alumni Club. The representative contacted the Advocate about the unclaimed benefits held by the agency from a CBT-related plan that terminated in the early 1990s. The representative had previously searched for participants using the unclaimed benefit listings posted on PBGC's website – information that the agency subsequently removed because of security concerns. The representative was concerned that participants would not realize they may be due a benefit if the information was not posted publicly. Although PBGC has not yet reposted participant information on its website, the Office of the Advocate helped facilitate a process for the representative to work directly with OBA, allowing her to continue her important work of helping locate missing participants. OBA also conducted a mailing outreach to the missing participants in the plan, further helping to connect individuals with their unclaimed benefits held at PBGC.

The Office of the Advocate also worked with OBA and the Pension Action Center (PAC) on a matter involving a "presumed dead" list of participants from a plan that ended in a standard termination in late 2001. The PAC had obtained a copy of the list while assisting two participants with their potentially omitted participant (POP) claims to PBGC. Both participants appeared on the list but were not dead. After locating yet another participant from the list who had only recently died, the PAC requested the Advocate's assistance to see whether the other participants were still living and potentially due a benefit.

Upon further review of the record, the Office of the Advocate found plan documentation indicating that the 33 participants on the "presumed dead" list were not dead but were put on this list because the plan did not have correct Social Security numbers and contact information. OBA subsequently verified that the participants were not included in the standard termination annuity contract, leading the agency to conclude that those on the list were likely missing participants due benefits. OBA is currently conducting participant outreach and working with the PAC to locate and reunite participants with their benefits. This matter is a good example of the agency working with an outside organization to help participants obtain benefits and shows the continued importance of PBGC's POP review process.

PBGC's ongoing interagency agreement with the Department of Labor Employee Benefits Security Administration (EBSA) continues to be a successful initiative for connecting individuals with their earned pension income. The agreement, which originated with the Office of the Advocate and the Chicago EBSA Regional Office in 2017, gives EBSA staff access to PBGC's missing participant data from trusted plans so that EBSA can help locate these

participants and connect them with their unclaimed benefits. Together, PBGC and EBSA connected participants and beneficiaries with over \$11 million in benefits in FY 2022, bringing the total amount of benefits recovered since the program's inception to over \$222 million. This initiative is an excellent example of successful data-sharing among federal agencies, particularly as the agreement contains numerous privacy protection and scope-limiting provisions, striking a strong balance between protecting participant information and achieving results.

Recommendation: While PBGC's recent initiatives to reconnect participants with their unclaimed benefits are commendable, it must continue to increase public awareness of the resources and assistance available for missing participants. Since PBGC no longer posts individual names of missing participants on its website, it should find another way to communicate to the public that it holds certain unclaimed benefits, such as by posting plan information or offering a secure portal where individuals can search for their names. Many states have missing money websites that allow individuals to search by name for unclaimed funds, which may provide models for PBGC to consider.

There is also more work to be done to proactively locate the 80,000 missing participants for whom PBGC currently holds benefits. Rather than waiting for these participants to contact the agency, PBGC should routinely conduct searches of its unclaimed pension database and take advantage of all available locator resources. The agency has an important role to play in connecting individuals with their lost benefits, but often falls short in the implementation of its programs, such as the Missing Participants Program, which was expanded a few years ago to include missing participants from terminated defined contribution plans.¹ External organizations and other countries' retirement systems provide other models and best practices for locating missing participants that may be useful for PBGC to review as it explores ways to improve its processes and procedures.

PBGC has made significant improvements in its POP claim processing over the years, but there are still opportunities to review the process and assess areas where participants face problems with their claims with the agency. Evaluating a POP case requires an appropriate exercise of discretion and judgment to grant or deny the benefit. It can be challenging to formalize standard review procedures because each case presents different facts and circumstances, though the process has become more consistent since OBA became responsible for reviewing POP cases in 2018.

Although OBA now takes a more holistic approach during the case review, it continues to impose evidentiary requirements that are often unnecessarily burdensome and impossible to fulfill, such as demanding that a participant produce 20-year-old tax returns to prove that the participant did not receive a benefit distribution. OBA is currently evaluating its POP review process and should use its years of experience in reviewing POP claims to revisit questions, such as what combinations of secondary documentation are sufficient to show a reasonable likelihood

¹ PBGC's Office of Inspector General has also identified multiple deficiencies in the Missing Participants Program, recommending multiple changes to improve procedures, performance metrics, data, and other ancillary issues related to the program. See PBGC Office of Inspector General Evaluation Report, "PBGC Can Improve the Effectiveness of the Missing Participants Program," Report No. EVAL-2022-04, Jan. 7, 2022, available at [PBGC Can Improve the Effectiveness of the Missing Participants Program](#).

that there was no benefit distribution. The Office of the Advocate supports ongoing evaluation efforts and looks forward to collaborating to answer these important process questions.

PBGC's data-sharing agreement with the Social Security Administration (SSA) is one important source of documentation for POP claims. The agreement allows a participant to grant written permission for PBGC to directly obtain the participant's SSA earnings reports at no cost to the participant. This information is useful to establish work history and identify former employers. However, the agreement contains language that restricts PBGC's ability to share the obtained earnings data with the participant, a request that often arises when the participant must continue to search if the agency determines that there is no PBGC-payable benefit. PBGC should develop a process with SSA for determining on a case-by-case basis when information can be released to the participant. PBGC should also explore whether it can revise the SSA agreement to include a narrow exception allowing the release of such information to the participant, and/or to allow PBGC to obtain participant notices of potential private retirement benefits, another piece of documentation that can support a POP benefit claim.

Involvement of Legal Departments in Benefits Claim Administration

Past Annual Reports have raised questions about how the agency handles complex participant disputes, since OGC is often involved in making the initial benefit determination. This involvement and influence raises doubt about the impartiality of the administrative review process, since the next step in the process involves appealing to PBGC's Appeals Board, which reports to the General Counsel. This issue is a direct result of an old PBGC policy, which gives OBA's Chief of Benefits Administration only limited authority to settle matters without involvement and approval from the General Counsel. The Advocate has long recommended reevaluating this settlement policy to give OBA greater autonomy over its own cases and, although there appears to be a consensus among agency leadership about the need for a change, the current policy remains unchanged.

A recent example of involvement by OGC in a matter that should have been resolved by OBA is that of a domestic partner's ongoing claim for a qualified pre-retirement survivor annuity (QPSA) from a plan trusted by PBGC. The 2021 Advocate Annual Report highlighted this case, which involved a participant in a registered domestic partnership in California, where domestic partnerships are recognized by state law. The participant died before commencing benefits, and the surviving domestic partner had been working with the Western States Pension Counseling Project to pursue a survivor benefit claim. The counseling project requested the Office of the Advocate's assistance after experiencing delays and other issues when working with PBGC on the matter.

The Office of the Advocate held extensive discussions with staff from OBA and OGC, during which the agency indicated its intent to deny the claim. It finally issued a formal benefit determination in March 2022, almost two years after the domestic partner first contacted the agency. The benefit determination, only three paragraphs long, denied the claim on the basis that PBGC only guarantees QPSA benefits for surviving spouses. The decision letter cited guidance from the Departments of Treasury and Labor but failed to mention PBGC's own policies on recognizing marriages, which require it to defer to state law. California state law grants domestic

partners the same rights, privileges, and financial benefits and obligations as spouses in a marriage, and the state has meticulously equalized the relationship form in its statutes and regulations, defining the term “spouse” to include “domestic partners.”

The domestic partner appealed the benefit determination in June 2022, and the matter is still pending with PBGC’s Appeals Board. The Office of the Advocate submitted a memo to the Appeals Board in support of the domestic partner’s claim and the case has garnered interest from the participant advocacy community.²

Recommendation: OGC’s involvement can cause a matter that should be a routine benefits administration question to be transformed into a legal question. OBA will defer to OGC, which can lead to delays since multiple departments are involved in the decision-making. There is a place for OGC when there is a question of law, such as an interpretation of conflicting case law or statutory history. However, OBA is the business unit responsible for paying benefits and making benefit determinations. OBA must be given appropriate settlement authority so it can take control of its own cases.

Does PBGC Have an Education Role?

PBGC is remarkably well-poised to play a role in educating the public about the benefits of the defined benefit structure. PBGC can proactively engage in education efforts to elevate awareness about the availability of PBGC resources, such as the Pension Plan Registry Project, as well as basic information about the agency. Additionally, attempts by PBGC to reach out to participants and beneficiaries due unclaimed benefits held by PBGC have been increasingly met with skepticism among a scam-wary public not already familiar with the agency. A strong public education presence can contribute to an increased overall awareness of the agency among participants and beneficiaries so that they understand it is trustworthy, and also has the potential to increase efficiency by reducing the number of inquiries to PBGC about basic questions. PBGC’s efforts should include partnering with government and non-profit organizations that have existing outreach networks among retired populations and leveraging social media and other electronic tools.

² See Brandolph, David, “Pension Rights Center Supports Domestic Partner’s Claim for Survivor Benefits,” June 30, 2022, available at [Pension Rights Center Supports Domestic Partner’s Claim for Survivor Benefits - Pension Rights Center](#). See also “Domestic Partnership and ERISA,” Pension Rights Center, available at [Domestic-Partnership-and-ERISA-final-version27.pdf \(pensionrights.org\)](#).

PLAN SPONSOR ISSUES

The Office of the Advocate has observed a notable shift in the volume and type of plan sponsor cases over the years. Part of this is attributable to PBGC addressing issues highlighted in past Advocate Annual Reports, such as the Early Warning Program and ERISA 4062(e). Additionally, many plan sponsors are taking steps to de-risk their existing pension liabilities, with many choosing to fully exit the defined benefit system. Risk transfer has far-reaching implications, especially for participants whose benefits lose PBGC's guarantee and protection as a result. De-risking also affects PBGC by potentially increasing the agency's overall risk and exposure if financially healthy plan sponsors reduce or eliminate their obligation and risk, causing less healthy sponsors with more poorly funded plans to make up a greater share of the defined benefit system.

This increase in de-risking is not surprising. The Office of the Advocate conducted a two-part study in 2017 and 2018 that examined drivers of risk transfer and what action PBGC and Congress could take to slow this activity and, at that time, the research findings indicated that most plan sponsors had already performed at least some degree of de-risking. Most importantly, the study's findings indicated that the overall de-risking trend showed no sign of slowing and that, with rising interest rates, the pace of de-risking can be expected to accelerate. The study also found that PBGC premiums were one large driver of de-risking. Although premiums are set by Congress, the study addressed actions that the agency could undertake to address premiums that rise exponentially, not at all linked to retirement security policy. Further, many plan sponsors that participated in the study indicated that unfavorable and difficult interactions with the agency often influenced the sponsor's decision to de-risk.

With a shrinking pool of premium-paying sponsors, PBGC must reevaluate how it works with plan sponsors seeking its assistance. There are still open issues related to the distress termination process, post-trusteeship expenses, and PBGC's payment of interest on premium overpayments—items which the Advocate has long called on PBGC leadership to address. Now is the time to at least address one of these issues on behalf of plan sponsors.

Need for Distress Termination Process Improvements

While plan sponsors still face uncertainty in the post-pandemic economy, legislative relief for single-employer plans has helped make funding and maintaining these plans more predictable and affordable, resulting in fewer plan sponsors seeking to end their plans through a distress termination. This low caseload presents an opportunity for PBGC to make substantive process changes now so that it will be able to better respond to future distress termination cases. The Advocate has observed inefficiencies throughout the process that often cause cases to linger for years without resolution. This timeline is highly detrimental when a plan sponsor is seeking termination under the business continuation test, which requires it to show it cannot pay its debts when due and continue operating unless the plan is terminated. A lengthy process rapidly depletes resources, forcing businesses already dealing with almost three years of pandemic-related financial challenges into an extended relationship with PBGC just so they can establish their right to terminate their plans in order to remain in business.

The structure of the current review process contributes to the amount of time it takes PBGC to review and close cases. PBGC must first review and evaluate the distress termination application, and then once an application is approved, the sponsor and agency move to the post-termination settlement negotiations. Since 2014, various types of plan sponsors have contacted the Advocate for assistance navigating different roadblocks and challenges related to this process. They often lack trust in the agency's ability to handle complex or time-sensitive issues, leading many sponsors to informally brief the Advocate in anticipation of problems and then later involve the Advocate once issues arise. The variety of issues these organizations have raised suggests that changes are needed to improve the overall experience.

While the Office of the Advocate received fewer distress termination-related requests for assistance in 2022, it continued to be involved with a post-termination settlement matter described in the Advocate's 2021 Annual Report until the case settled. This case exemplified the challenges sponsors face during distress termination. PBGC had been engaged in unproductive negotiations with the plan sponsor's 84-year-old owner for over a year before the owner's counsel requested the Advocate's involvement. PBGC's requests for the owner's personal financial information led to months of additional delays before the parties finally settled in early 2022, with the agency receiving a fraction of the amount it originally proposed during early discussions.

Given the amount of staff time the Office of the General Counsel (OGC) and the Office of Negotiations and Restructuring (ONR) spent on this case, it seems likely that the resources the agency expended significantly outweighed its recovery, particularly since it involved a small plan sponsor with plans covering only 160 participants. Multi-year distress termination cases indicate the absence of any cost-benefit analysis and call into question the value of lengthy negotiations yielding little recovery, particularly in small plans where participants' benefits, even if well above the PBGC guarantee level, are generally not affected by PBGC's recovery from the plan sponsor.

Worthy of note, however, is that the Office of the Advocate does receive numerous informal consultations from plan sponsor advisors participating in the distress termination process on behalf of their plan sponsor clients. These consultations invariably describe delays, unreasonable and outsized demands for unfunded benefit liabilities, and other approaches by the agency that seem obstructive rather than constructively aimed toward prompt settlement for all concerned. During these informal consultations, we are asked to not get involved at that time, and the plan sponsor advisor often goes back to agency staff and explains that they are considering the involvement of the Advocate. We are told that when this scenario occurs, there is a rather immediate "about face" change for the better regarding the negotiations, frequently leading toward case settlement.

Recommendation: The Advocate has repeatedly raised suggestions to agency senior leadership for distress termination process improvements, recommending regular status meetings with the plan sponsor, greater oversight and supervision of the case team, streamlining procedures for charity and not-for-profit plan sponsors, and obtaining feedback directly from plan sponsor advisors familiar with the process. In early 2022, the Office of the Advocate organized a roundtable discussion with practitioners and PBGC staff from OGC and ONR to discuss

potential improvements to the distress termination process. During this forum, practitioners provided suggestions involving enhanced communications, more frequent and routine meetings, and greater case oversight and supervision. The practitioners noted that the agency has made some positive enhancements, like offering an optional pre-filing consultation with PBGC staff before a plan submits a distress termination application. However, larger issues remain related to transparency, communications, and consistency.

One valuable practitioner suggestion is that PBGC provide initial feedback on the distress termination filing within two to four weeks of submission, with regular updates on a monthly basis thereafter. Practitioners note that the pre-filing consultation is helpful because PBGC staff gives substantive feedback and suggestions, resulting in a more thorough application from the plan sponsor. Further, providing a higher level of nonbinding feedback within a reasonable amount of time after the complete distress termination filing will also increase plan sponsors' ability to provide PBGC the information it needs to review the matter. Quick turnaround by PBGC once a plan sponsor applies for a distress termination is essential to avoiding unnecessary costs to the sponsor, especially in business continuation test cases where time is critical to the sponsor's ability to stay in business. Practitioners have also suggested automatically streamlining the post-termination liability negotiations directly after the distress termination application is approved, ensuring that negotiations continue immediately. Setting time milestones and standards for reaching certain parts of the process will provide a more satisfactory resolution of cases.

Another related practitioner suggestion is to establish a schedule of calls between the PBGC case team and the plan sponsor so the parties meet at routine intervals until the case is closed. While there has been some resistance by the agency to this suggestion, the Office of the Advocate has heard positive feedback about the distress termination process when the case team and plan sponsor routinely communicate, such as in a recent matter involving a hospital. PBGC moved quickly to review the hospital's distress termination application and negotiated a settlement within a few months of its approval, allowing the hospital to survive and continue providing much needed care to the community. This type of efficient case review should be routine since it is in all parties' interest to resolve cases timely, and often results in a larger settlement for the agency. Protracted cases harm companies' chances for survival and contradict the very purpose of distress terminations, particularly those involving the business continuation test.

Improving the supervisory oversight of cases in the distress termination process is another area of suggested improvement. PBGC has stated it conducts periodic case reviews to ensure that matters are not open too long, yet plan sponsors still report extensive case delays to the Advocate. PBGC's case team includes staff from both ONR and OGC, and it is often unclear which department is the lead, often contributing to the amount of time that elapses without any substantive progress on the case. One practitioner suggestion to better improve management oversight is to appoint a "Distress Termination Officer" role to track, monitor, and appropriately elevate open distress termination cases. It is the optimal time to create this role since PBGC's current distress termination case inventory is low. It would also be prudent to have someone in this position who can oversee and address these longstanding distress termination process-related issues so that the agency is prepared to handle future increases in case volume.

Creating a streamlined process for charities and not-for-profit organizations is another longstanding Advocate and practitioner process improvement suggestion. These organizations have materially different business structures than for-profit plan sponsors and are often subject to funding constraints that present challenges during post-termination liability negotiations, as the sponsor may only have limited funds or certain types of assets available for settlement. It would be beneficial for PBGC to seek outside expertise to assess and determine what parts of the process can be streamlined and improved for charities and not-for-profit organizations.

Post-Trusteeship Expense Reimbursement Process

Multiple plan sponsors have contacted the Advocate about challenges when working with PBGC to obtain reimbursement for required post-termination plan filing expenses. These expenses, which include the final Form 5500 filing to the Department of Labor (DOL) and the reporting of deferred vested retirement benefits to the Internal Revenue Service, are not settlor expenses and are often incurred after PBGC has terminated and trustee the plan, yet they remain the responsibility of the plan.

Recommendation: The reimbursement process involves multiple departments at PBGC and can also require coordination with staff from DOL's Employee Benefits Security Administration. PBGC must formalize its internal workflow for reimbursement requests and improve external communications about reimbursements to set plan sponsor expectations about timing. This is a new area in which the Office of the Advocate will continue to assist OBA and OGC in developing a process for paying these expenses out of plan assets, even after the agency assumes responsibility for the plan.

Payment of Interest on Premium Overpayments

The Pension Protection Act of 2006 amended ERISA to authorize PBGC's payment of interest on premium overpayments. While the Advocate has long recommended that PBGC act on this authority, the agency's position is that it must first issue regulatory guidance. PBGC included a proposed rule on premium overpayments in its Fall 2007 regulatory agenda, but subsequently withdrew it in May 2007, citing reforms to the premium payment process. However, these process changes only addressed some premium overpayment scenarios, and overpayments requiring premium refunds persist in many other situations, such as when PBGC determines that a plan no longer covered under Title IV of ERISA or when a sponsor makes a premium calculation error and overpays.

Recommendation: Given that PBGC routinely collects interest on premium underpayments, it is inequitable to not pay interest on overpayments when PBGC has authority to do so per ERISA § 4007(b)(2). This section states how to calculate the interest (in the same rate and manner as premium underpayments), and that its authorization to pay interest is self-executing, although it also provides PBGC with regulatory authority. Rather than going through the formal rulemaking process, PBGC should explore issuing agency guidance, such as a technical update, to provide a method for plan sponsors to apply for interest on overpayments. Since premium overpayments occur in only a few situations and sponsors would likely not undertake the interest request

process unless the amount is significant, it seems unlikely that the agency would be unduly burdened by a high volume of requests.

PENSION PLAN REGISTRY PROJECT

As plan sponsors shed their pension liabilities and exit the defined benefit system, it is increasingly important to preserve and centralize historical plan data that can help participants locate their missing benefits. Many sources of plan information are rapidly disappearing, especially as plans de-risk and offload existing liabilities onto private insurance providers. As the Office of the Advocate's study on pension de-risking found, this trend shows no signs of slowing, so the need to preserve data is immediate.

PBGC holds some of this valuable information, as the agency collects and retains various data elements from plan sponsors that can be used to construct the history of a plan. The Office of the Advocate uses these various data sources for historical tracing research, as it frequently receives pension tracing requests from participants who cannot locate their plans and have exhausted other resources.³ It is pursuing a larger initiative as part of its Pension Plan Registry Project (Registry Project) to build a plan registry database using this PBGC-housed information.

In 2022, the Office of the Advocate partnered with the General Service Administration's Centers of Excellence to develop a technology roadmap and system architecture with proposed steps and options for creating a larger defined benefit plan registry, including developing a data warehouse with information from various PBGC systems. In preparation to implement the roadmap and its recommendations, the Office of the Advocate is testing an internal prototype registry tool PBGC has developed. The prototype is populated solely with information from PBGC's premium filings, limiting its functionality and scalability, but it provides a basic template for a registry database.

The Office of the Advocate is now working with PBGC's Quality Management Division (QMD) to review and assess the prototype and identify additional data sources and fields that can be incorporated into a more robust pension plan registry tool. Additionally, the Office of the Advocate plans to conduct a mid-year assessment of the prototype tool in 2023, which will involve further exploring new data and enhancements that could eventually be integrated in a larger registry database. This mid-year assessment will be integral to the project since the larger registry database will likely include data from the prototype, as well as other PBGC sources.

The Office of the Advocate anticipates continued collaboration with PBGC as it continues reviewing the prototype and implementing the registry system architecture, as this initiative involves almost every department at the agency. In addition to its current work with QMD, The Office of the Advocate also anticipates coordinating with PBGC's Office of Information Technology to identify any information technology requirements and develop a total cost of ownership for the project.

In addition to building the Registry, the Office of the Advocate is also exploring ways to centralize and increase awareness of pension search resources for participants. It frequently collaborates with other organizations as it assists participants with pension tracing requests.

³ Individuals seeking defined benefit pension plan tracing research assistance can contact the Office of the Advocate at PensionTraceService@pbgc.gov.

Internally, it works with PBGC's Office of Benefits Administration when a tracing matter involves a trustee plan or a potentially omitted participant from a standard termination. The Office of the Advocate also refers participants to outside resources, such as EBSA's Benefits Advisor Program and the various federally funded pension counseling projects, for help with their claims and additional tracing research, particularly for ongoing or non-PBGC covered plan assistance. The Advocate's Registry Project is exploring ways to promote and increase awareness of valuable pension tracing resources for participants.

Throughout the year, the Office of the Advocate received over 30 pension tracing requests, which it researched using the prototype tool and other various PBGC data sources. Many of these tracing requests reunited participants with their lost pensions, such as one elderly participant who had been searching for her benefit for over seven years. The participant had a notice of potential private retirement benefit from the Social Security Administration, but PBGC previously told her that the agency was not responsible for the plan. The Advocate's tracing found that it was a cash balance plan that had merged into another pension plan eventually trustee by PBGC. Upon review of the tracing research, PBGC determined that the participant was entitled to a PBGC-payable benefit, finally ending the participant's search for her lost pension. This is just one example of the value that PBGC's data brings to the lost pension search process when it is analyzed in a way that reconstructs the history of a plan.

PBGC's statutory mission is to preserve and protect the defined benefit system, and one of the best ways to maximize that system's impact is using PBGC-housed data to connect participants them with their missing benefits, ensuring that all of the system's participants receive what they earned. The Office of the Advocate's pension plan registry will utilize the agency's existing data to create a registry with meaningful plan information for participants and beneficiaries. Further, the Advocate's current work on the Registry Project may provide a helpful foundation for the Retirement Savings Lost and Found. The Office of the Advocate stands ready to assist with these larger initiatives.

OUTLOOK: What Does Retirement Security Look Like in America?

The Office of the Advocate shares PBGC’s mission to encourage the continuation and maintenance of private sector defined benefit plans. While there are numerous collective and economic factors contributing to the erosion of the defined benefit retirement system, plan sponsor issues identified in past Advocate Annual Reports, as well as increased premiums and other expenses plan sponsors incur when interacting with PBGC, contribute to plan sponsors’ desires to de-risk or terminate their pension plans. PBGC process improvements that are considerate to plan sponsor concerns and that reduce their costs when interacting with the agency can help mitigate the growing threat to Americans’ retirement security precipitated by the loss of private sector pension plans.

As demographics change, people live longer, and more lifetime annuity options disappear from the landscape, a major policy question faces our nation: what does retirement security look like in America beyond the baby boomer generation, and for the many Americans who do not have access to a defined benefit plan? Can defined contribution plans really be made to have the same features of defined benefit plans? Can retirees survive comfortably in retirement solely with savings, assets they must draw down from a defined contribution plan, and a Social Security benefit? If an annuity is offered under the terms of the defined contribution plan, what protections and safeguards exist in helping a participant purchase such an annuity? Should we shift the proposition, and consider what features of a defined contribution plan can be part of a defined benefit plan?

These are crucial questions and PBGC, in accordance with its mission to encourage the continuation and maintenance of defined benefit plans, has an important role to play in facilitating a dialogue about the future of retirement security, particularly as the fiftieth anniversary of the agency approaches.

Such a dialogue would need to consider long-term systemic questions about the defined benefit system as a whole, while also exploring concrete actions PBGC can take now to shore up the defined benefit system and eliminate factors that motivate sponsors to give up their pension plans. Included discussions should consider topics such as current premium levels and whether PBGC can or should raise the question regarding whether the high level of premiums undermines its mission to maintain the defined benefit system.

Consider the following quotes from plan sponsors when asked about PBGC premium levels as part of the Office of the Advocate’s 2018 Pension De-Risking Study:⁴

“The PBGC premiums have inflated way higher and way faster than anything that would be considered reasonably acceptable.”

⁴ The Office of the Advocate Pension De-Risking Study: Plan Sponsor Focus Group (July 2018), available at https://www.pbgc.gov/sites/default/files/appendix_i_de-risking_study-2018.pdf.

“[T]he higher the premiums go, the threshold for where we’ll de-risk, it just gets closer. It’s purely [an] economic thing.”

“For us, if we freeze our plan, it will be no question because of the PBGC premiums.”

“We justified our [retiree annuity purchase] strictly on PBGC premium savings.”

Unless solutions are identified to enhance retirement security, a growing number of older Americans lacking benefits from defined benefit plans will face dire resultant financial challenges, including an inability to afford housing and long-term care post-retirement. Later generations, charged with supporting relatives who are no longer able to work, will also feel the economic reverberations of the shift away from the defined benefit retirement system to a savings-based system in which participants bear the responsibility of ensuring adequate funds for retirement.

Recently, the World Economic Forum noted that, “For the first time in human history, people aged 65 and over outnumber children aged five and younger.”

So, where do we stand as Americans when it comes to protecting and ensuring retirement security for our seniors, who have given a lifetime of service to our economy, our society, and our democratic values?

PBGC can play a role in the national conversation around retirement security, as the agency offers unique expertise, perspective, and data on the strengths of the defined benefit system, which are sometimes overlooked as retirement industry stakeholders seek to envision a secure retirement future for the United States. Much current discussion regarding the future of America’s retirement system focuses on defined contribution plans, as industry experts are acutely aware of defined benefit plans’ ongoing decline and are hopeful that defined contribution plans will provide a sufficient alternative. While defined contribution plans will, no doubt, play an important future role, the defined benefit system offers retirees ease in securing guaranteed lifetime income and other economic protections that cannot be replaced. It is essential that improvements to, and new variations of, defined benefit plans are considered alongside defined contribution plans as thought leadership regarding this issue progresses. PBGC is well-positioned to drive this discussion.

ERISA § 4004: PARTICIPANT AND PLAN SPONSOR ADVOCATE

DUTIES

The Participant and Plan Sponsor Advocate shall—

- (1) Act as a liaison between the Corporation, sponsors of defined benefit pension plans insured by the Corporation, and participants in pension plans trusted by the Corporation;
- (2) Advocate for the full attainment of the rights of participants in plans trusted by the Corporation;
- (3) Assist pension plan sponsors and participants in resolving disputes with the Corporation;
- (4) Identify areas in which participants and plan sponsors have persistent problems in dealings with the Corporation;
- (5) To the extent possible, propose changes in the administrative practices of the Corporation to mitigate problems;
- (6) Identify potential legislative changes which may be appropriate to mitigate problems; and
- (7) Refer instances of fraud, waste, and abuse, and violations of law to the Office of the Inspector General of the Corporation.

ANNUAL REPORT

- (1) In general—Not later than December 31 of each calendar year, the Participant and Plan Sponsor Advocate shall report to the Health, Education, Labor, and Pensions Committee of the Senate, the Committee on Finance of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Ways and Means of the House of Representatives on the activities of the Office of the Participant and Plan Sponsor Advocate during the fiscal year ending during such calendar year.
- (2) Content—Each report submitted under paragraph (1) shall--
 - (a) Summarize the assistance requests received from participants and plan sponsors and describe the activities, and evaluate the effectiveness, of the Participant and Plan Sponsor Advocate during the preceding year;
 - (b) Identify significant problems the Participant and Plan Sponsor Advocate has identified;
 - (c) Include specific legislative and regulatory changes to address the problems; and
 - (d) Identify any actions taken to correct problems identified in any previous report.
- (3) Concurrent Submission—The Participant and Plan Sponsor Advocate shall submit a copy of each report to the Secretary of Labor, the Director of the Corporation, and any other appropriate official at the same time such report is submitted to the committees of Congress under paragraph (1).