PENSION BENEFIT GUARANTY CORPORATION (PBGC)

Statement of Regulatory and Deregulatory Priorities

PBGC Insurance Programs

The Pension Benefit Guaranty Corporation administers two insurance programs under title IV of the Employee Retirement Income Security Act of 1974: a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. PBGC protects the pensions of nearly 42 million working men and women in about 55,000 private defined benefit plans, including about 2,000 multiemployer plans.

Under the single-employer program, PBGC pays guaranteed, and certain other, pension benefits to participants and beneficiaries if their plan terminates with insufficient assets (distress and involuntary terminations). At the end of fiscal year 1995, PBGC was trustee of about 2,000 plans, and paid $763 million in benefits to more than 182,000 people during 1995. Another 210,000 people will receive benefits when they retire in the future.

Most terminating defined benefit plans terminate with sufficient assets to pay all benefits. PBGC has administrative responsibility for these terminations (standard terminations), but its role is limited to seeing that proper procedures are followed and participants and beneficiaries receive their plan benefits.

The multiemployer program (which covers about 8.7 million workers and retirees in about 2,000 insured plans) is funded and administered separately from the single-employer program and differs in several significant ways. The multiemployer program covers only collectively bargained plans involving more than one unrelated employer. PBGC provides financial assistance (in the form of a repayable loan) to the plan if the plan is unable to pay benefits at the guaranteed level. Guaranteed benefits are generally less than a participant's full benefit under the plan (and less than the single-employer guaranteed benefit). PBGC financial assistance occurs infrequently.

PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums, investment income, assets from pension plans trusteed by PBGC, and recoveries from the companies formerly responsible for the trusteed plans.

To carry out these functions, PBGC must issue regulations interpreting such matters as the termination process, establishment of procedures for the payment of premiums, and assessment and collection of employer liability.

Objectives and Priorities

PBGC regulatory objectives and priorities are developed in the context of the statutory purposes of title IV: (1) to encourage voluntary private pension plans, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain the premiums that support the insurance programs at the lowest possible levels consistent with carrying out the PBGC's statutory obligations (ERISA section 4002(a)).

PBGC implements its statutory purposes by developing regulations designed (1) to assure the security of the pension benefits of workers, retirees, and beneficiaries, (2) to improve services to participants, (3) to ensure that the statutory provisions designed to minimize losses for participants in the event of plan termination are effectively implemented, (4) to facilitate the collection of monies owed to plans and to the PBGC, while keeping the related costs as low as possible, and (5) to simplify the termination process.

Legislative Initiatives

On December 8, 1994, the Retirement Protection Act of 1994 was enacted. The Retirement Protection Act (1) accelerates the funding of underfunded single-employer pension plans, (2) phases out the cap on the variable rate portion of the premium paid to PBGC by underfunded single-employer plans, (3) provides PBGC with better tools to prevent employers from escaping their plan funding obligations through corporate transactions, (4) requires better information to participants in underfunded plans on plan funding status and PBGC guarantees, and (5) helps assure that workers do not lose pensions because they have lost contact with a terminating pension plan covered by PBGC.

In May 1996, the President submitted the Retirement Savings and Security Act to Congress. The RSAA would have expanded coverage, increased portability and worker protection, and simplified pension law. The proposal included a doubling of the guarantees in the multiemployer insurance program to address inflation since 1980, and expansion of PBGC's missing participant program to include terminating defined contribution plans and non-PBGC covered defined benefit plans. The Small Business Job Creation Act of 1996, signed by the President on August 20, 1996, included many of these provisions. It did not include the doubling of the multiemployer guarantee or the expansion of the missing participant program. These changes remain legislative objectives.

Regulatory and Deregulatory Initiatives

To implement the new requirements of the Retirement Protection Act, PBGC issued regulations:

- Requiring plan administrators of underfunded plans to annually notify participants and beneficiaries about the plan's funding status and the limits on PBGC's guarantee of benefits (final rule, June 30, 1995).
- Creating a clearinghouse in PBGC to locate and pay benefits to missing participants in terminating fully funded pension plans (final rule, December 1, 1995).
- Requiring certain corporate groups with large underfunded pension plans to provide annually to PBGC financial and actuarial information (final rule, December 20, 1995).
- Requiring plans administrators and sponsors to report to PBGC certain ''reportable events'' that may jeopardize workers' pensions and the pension insurance system (proposed rule, July 23, 1996). This rule was developed using a negotiated rulemaking process for the first time.

These regulations seek to facilitate compliance. Regulations on participant notice and corporate reporting allow use of information prepared for other purposes. The reportable events regulation waives reporting in many cases to minimize the number of plans affected and uses existing information for reporting thresholds. Both the reportable events and participant notice regulations include optional notice forms. The missing participants regulation ties reporting to forms and deadlines already provided for under the termination regulations.

In July 1996, PBGC reduced the volume of its regulations by 20 percent. It reorganized and renumbered all of its regulations to make them more accessible, and ''reinvented'' a number of its regulations to eliminate unnecessary rules and simplify those that are needed. The regulations are now keyed to the numbering system of the statutory sections they implement. PBGC is continuing to review its regulations to look for further simplification opportunities.

The PBGC's regulatory plan for October 1, 1996, to September 30, 1997, consists of two significant regulatory actions.

PBGC

PROPOSED RULE STAGE

142. CALCULATION AND PAYMENT OF UNFUNDED NONGUARANTEED BENEFITS

Priority:

Other Significant

Legal Authority:

29 USC 1302(b)(3); 29 USC 1322(c)

CFR Citation:

29 CFR 4022 subpart C

Legal Deadline:

None

Abstract:

In the Pension Protection Act, Congress created a scheme by which to channel employer liability recoveries to plan participants and beneficiaries (amended ERISA section 4022(c)). Under section 4022(c), participants no longer have a direct claim for employer liability. Instead, the PBGC's claim covers both its shortfall (unfunded guaranteed benefits) and participants' losses (unfunded nonguaranteed benefits (UNBs)). In turn, the PBGC is to pay a portion of its employer liability recovery to pay UNBs to participants and beneficiaries.

Statement of Need:

Section 4022(c) contains several ambiguities and also leaves to the PBGC the development of specific rules and procedures necessary to make this system work. Thus, a regulation is needed to implement these statutory provisions.

Summary of the Legal Basis:

The PBGC has the authority to issue rules and regulations necessary to carry out the purposes of title IV of ERISA.

Alternatives:

The statute provides that the amounts of UNBs that the PBGC will pay under terminated plans be based in most cases on the PBGC's recoveries on its statutory claims for employer liability with respect to plans that terminate during a prescribed time period. However, the statute does not prescribe when the PBGC is to determine its recovery experience during the applicable historical period. An earlier determination would mean that fewer recoveries would be included in the historical average. While the historical average could be updated when more recoveries can be included, this would result in differing payments depending on when the PBGC makes benefit determinations for a plan subject to the historical average. A later determination would ensure more complete data for inclusion in the historical average, but may delay benefit determinations.

Anticipated Costs and Benefits:

Because of the complexities involved, it may take a long time for the PBGC to determine what its recovery will be. In addition, it may be difficult to value a recovery in cases where the PBGC receives assets other than cash or readily marketable securities. Thus, the accuracy of the PBGC's computation of the amounts payable to participants would be enhanced by waiting longer to make that computation. However, long delays are not generally in the best interest of plan participants. The regulation will address these concerns in developing rules governing the calculation of the historical average.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
NPRM	03/00/97	
NPRM Comment Period End	05/00/97	

Small Entities Affected:

None

Government Levels Affected:

None

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PBGC

FINAL RULE STAGE

143. REPORTABLE EVENTS REQUIREMENTS

Priority:

Other Significant

Reinventing Government:

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

Legal Authority:

29 USC 1302(b); 29 USC 1343

CFR Citation:

29 CFR 4043

Legal Deadline:

None

Abstract:

Section 4043 of ERISA requires reporting to the PBGC of certain events that may indicate a need for the PBGC to take action to protect pension plan participants and the plan termination insurance program. The Retirement Protection Act of 1994 amended the reportable event requirements in ERISA section 4043 by: (1) applying to contributing sponsors (as well as plan administrators) the requirement to notify the PBGC of a reportable event within 30 days after a person knows or has reason to know of its occurrence; (2) specifying four additional types of events for which notice is required (except as waived by the PBGC); and (3) requiring that, under limited circumstances, a contributing sponsor must notify the PBGC in advance of the occurrence of an event specified in the RPA or prescribed by PBGC regulations.

The PBGC issued a proposed regulation to implement these statutory changes. The regulation contains extensive waivers and reporting extensions. In developing the proposed regulation, the PBGC for the first time used a negotiated rulemaking committee.

Statement of Need:

RPA significantly amended the reportable events requirements in ERISA section 4043. A new regulation is needed to implement these statutory provisions, as well as to reduce and simplify reporting requirements where possible.

Summary of the Legal Basis:

The PBGC has the authority under ERISA section 4043 to prescribe regulations waiving any statutory reportable events requirements and requiring the reporting of any event not specified in the statute that may be indicative of a need to terminate a plan.

Alternatives:

In developing the consensus on which the proposed regulation is based, the negotiated rulemaking committee attempted to strike a balance between the interest of plan administrators, contributing sponsors, and the PBGC in avoiding undue reporting and report processing, and the interest of the PBGC and plan participants in ensuring PBGC's timely receipt of sufficient information to enable it to take action when necessary to protect benefits and the termination insurance program.

Anticipated Costs and Benefits:

The benefits of the proposed regulation result from the PBGC's receiving timely notice of events that indicate plan or contributing sponsor financial problems. The PBGC will use the information to determine what, if any, action it needs to take to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The costs of the proposed regulation are the costs to plan administrators and contributing sponsors of providing the information and to the PBGC of reviewing the information. The regulation reduces the burden by providing many reporting waivers and extensions. In addition, the regulation provides for the use of optional reportable events forms calling for reduced initial information submissions.

Risks:

Not applicable.

Timetable:

Action	Date	FR Cite
Notice of Intent (Negotiated Rulemaking)	08/11/95	60 FR 41033
Notice of Intent Comment/ Application Period End	09/15/95	
Notice of First Meeting (Negotiated Rulemaking)	09/26/95	60 FR 49531
Notice of Establishment of Negotiated Rulemaking Advisory Committee	10/05/95	60 FR 52135
Notice of Meetings (Negotiated Rulemaking)	10/25/95	60 FR 54619
Notice of Meeting (Negotiated Rulemaking)	03/26/96	61 FR 13117
NPRM	07/24/96	61 FR 38409
NPRM Comment Period End	09/23/96	
Final Rule	11/00/96	

Small Entities Affected:

None

Government Levels Affected:

None

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