



2020 Annual Report of the Participant and Plan Sponsor Advocate

Pension Benefit Guaranty Corporation

December 31, 2020



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Office of the Participant and Plan Sponsor Advocate

This statutorily required 2020 Annual Report discusses the activities of the Office of the Pension Benefit Guaranty Corporation (PBGC) Participant and Plan Sponsor Advocate (Office of the Advocate), and is submitted to the Health, Education, Labor and Pensions Committee of the Senate, the Committee on Finance of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on Ways and Means of the House of Representatives no later than December 31 of each calendar year. A copy of this report is concurrently submitted to the Secretary of Labor, the Director of the Corporation, and other appropriate officials.

In retrospect, 2020 has been a year like no other, presenting unprecedented challenges and uncertainty for participants and plan sponsors contacting the Office of the Advocate for assistance. Many plan sponsors faced financial losses and rising pension liabilities, leading them to seek relief and assistance from PBGC. Participants, worried about turbulent financial markets and their own future security, reached out to the Office of the Advocate with concerns about their benefits and questions about the stability of the defined benefit system, particularly multiemployer pensions. PBGC and the Office of the Advocate also adapted to changes, as the agency switched to a mostly-telework environment while continuing to seamlessly pay benefits to over 984,000 retirees.

The Office of the Advocate's 2020 Annual Report reflects the unique nature of this year. Many of the activities described in this year's Report are the culmination of years of collaboration between the Office of the Advocate and PBGC. These changes came slowly over the last six years as a result of much hard work by PBGC Directors and my colleagues at the agency, assistance from PBGC's Board agencies, and backing from Congressional staff in support of PBGC and the Office of the Advocate.

Today, our PBGC Director listens and promptly responds to address the issues participants and plan sponsors bring to the Office of the Advocate. Some of the concerns discussed in this Report, such as breakdowns in processes and procedures, have been satisfactorily resolved through diligent efforts by PBGC, prompting fewer participants and plan sponsors to contact the Office of the Advocate for assistance. However, there are still certain areas which require immediate action by PBGC, such as the management of aging cases and the use of a cost-benefit analysis in longstanding matters where dollars expended by the agency far exceed the value of the benefit or the amount of recovery.

Given that aging and protracted cases represent an ongoing breakdown in the agency's interactions with both participants and plan sponsors, there may be value in considering some type of business re-engineering that provides specific deliverables to assess PBGC business

practices, procedures, and decision-making processes. Personal accountability must be at the core of this assessment so that participants and plan sponsors can get in and out of the PBGC orbit in a reasonable amount of time.

Despite longstanding and aging cases, the Office of the Advocate is optimistic about the agency's capability to mitigate the problem. For example, the Office of Benefits Administration is in the process of upgrading its customer relations management system which should make it easier for PBGC to track and manage aging cases. This change coupled with active management oversight will go a long way toward improving customer interactions with PBGC and bringing finality to enduring cases.

In addition to describing participant and plan sponsor activities, this Report discusses the Office of the Advocate's latest initiative, the Pension Plan Registry Project (Project). The Project seeks to create a tool which will allow participants to search for information about the genealogy and history of a pension plan. Participants and their advisors frequently contact the Office of the Advocate for assistance tracing the history of a pension plan. These participants vested in a benefit, but they left employment prior to retirement and cannot locate information about the plan or plan sponsor to make a claim for benefits.

The Office of the Advocate, using information held by various departments at PBGC such as historical premium filing information retained by PBGC's Financial Operations Department, assists participants by tracing the history of a plan which often involves name, plan sponsor, and employer identification number changes. The Office of the Advocate collaborated with PBGC during 2020, meeting with various departments and stakeholders to discuss different aspects of the Project. This Project has the support of both the participant advocacy groups and the plan sponsor trade groups and furthers PBGC's mission to encourage the continuation of voluntary private pension plans for the benefit of their participants.

We commend recent legislative proposals that help participants find and secure unclaimed benefits and the Office of the Advocate will work as appropriate with Congressional colleagues that bring such proposals to fruition. In the meantime, the Office of the Advocate looks forward to continuing to advance the Pension Plan Registry Project in 2021 with the assistance of our PBGC colleagues.

Respectfully, I submit for your consideration the 2020 PBGC Participant and Plan Sponsor Advocate Annual Report in accordance with my reporting duties under ERISA Section 4004.

Sincerely,



Constance A. Donovan
PBGC Participant and Plan Sponsor Advocate
December 31, 2020

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

STATUTORY AUTHORIZATION – ERISA § 4004

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).

PENSION PLAN REGISTRY PROJECT

As the defined benefit landscape evolves, many participants may be in a situation where they cannot locate their former employer or plan sponsor to make a claim for previously earned benefits. Bankruptcies, mergers, spinoffs, plan terminations, or other corporate events often impact the pension plan by causing it to change names, plan sponsors, or employer identification numbers (EINs). Multiple federal agencies, including PBGC, hold relevant plan information and other data which may be helpful to a participant's search about what happened to a plan, but there is currently no centralized location for participants to obtain the information.

In the absence of a consolidated repository for plan information, many participants and their representatives, such as counselors from the U.S. Administration on Aging's Pension Counseling Projects (Pension Counseling Projects), contact the Office of the Advocate for assistance. These individuals often worked for a company long enough to vest in the benefit but separated from service prior to retirement. In many cases, participants are unable to locate their plan, former employer, or plan sponsor to make a claim for benefits. Recognizing the need for a system or central location that assimilates various data elements regarding a pension plan's history to assist these participants with their search, the Office of the Advocate is pursuing a Pension Plan Registry Project (Project) to help participants trace and locate information about a defined benefit plan. The Project also includes developing a searchable Pension Plan Registry tool containing historical pension plan information to assist with lost pension searches. The Advocate first introduced this Project in the Advocate's 2019 Annual Report and has continued to pursue the initiative throughout 2020.

The Pension Plan Registry Project seeks to combine data currently only available internally at PBGC into a tool that can be used to trace a plan's history. PBGC's records include a variety of information that can be useful to participants in their lost pension searches, but only some of the information is readily accessible to the public. For example, PBGC's website provides searchable listings of trustee and insured plans, and the agency also maintains a historical summary plan description (SPD) collection with SPDs filed from 1975 to 1991 which can be searched for free upon request.¹ However, these databases need to be searched separately and they often do not yield enough information on the plan's history.

PBGC's internal records often provide even more useful historical plan information for a participant's search. For example, PBGC's Financial Operations Department's (FOD) premium filing records include information about plan name, plan sponsor, and EIN changes—data which is very valuable when tracing the history of a pension plan. The Standard Termination Compliance Division's standard termination database and files and the Office of Benefits Administration's trustee plans records may also contain useful information for a participant's search. However, a participant may not necessarily know who to contact to search these records or even that this information exists at PBGC. Combining this data into one location would facilitate the participant's search.

¹ See Insured Plan and Trustee Plan Search, available at <https://www.pbgc.gov/search-all>. See also "Requesting a Summary Plan Description" for more information about obtaining historical SPDs from PBGC, available at <https://www.pbgc.gov/about/pg/other/requesting-a-summary-plan-description>.

Currently, the Office of the Advocate utilizes multiple sources when it receives a request for information about a missing pension, including coordinating with FOD to search the historical premium filing records and searching the historical SPD collection. The information found in these sources is helpful to a participant's search, particularly in situations where these changes occurred many years ago and limited records are available. The Office of the Advocate is continuing to assist participants and their advisors in locating information about lost and missing pensions as it develops the Pension Plan Registry Project.

Throughout 2020, the Office of the Advocate worked with various departments within PBGC on the Project. The most notable development is FOD's creation of a demo Registry tool, populated from information from PBGC's records, that allows users to search for and view a pension plan's history. The Office of the Advocate is collaborating with various departments within PBGC on the further development of the Registry tool.

Concurrently, the Office of the Advocate will continue to offer pension tracing assistance as part of a pilot tracing service, with a focus on helping the Pension Counseling Projects, as they frequently represent clients searching for information about a missing benefit. As part of the pilot tracing service, the Office of the Advocate will search the Registry tool and other data sources, such as the historical SPD collection, upon request. The pilot tracing service, which is expected to run for at least six months, will help the Office of the Advocate gain experience with the tool and gather information about its effectiveness and demand. The Office of the Advocate looks forward to the continued advancement of the Pension Plan Registry Project and the development of the Registry tool in collaboration with our PBGC colleagues during 2021.

PARTICIPANT ISSUES

As you read the below participant activities involving the Office of the Advocate, you will undoubtedly notice great strides and improvements in the agency's handling and processing of participant cases and the types of questions/issues that participants bring to us for our help. These improvements are the result of much hard work, particularly by the Office of Benefits Administration (OBA) which made staff, management, and process changes to improve its interactions with participants. OBA also continued to focus on past areas of improvement, including sustained handling of potentially omitted participant (POP) claims and the continuation of a small but fruitful project between the Department of Labor's Employee Benefits Security Administration (EBSA) and PBGC. The EBSA/PBGC data-sharing agreement provides for PBGC to share select missing participant data from the agency's unclaimed database with the appropriate EBSA Regional Offices based on geographic location. EBSA's Employee Benefits Law Specialists then search and locate the missing participants to reunite them with their missing benefits. Since inception of the program in 2017 to date, EBSA Employee Benefits Law Specialists have reunited participants and beneficiaries with \$163.6 million in previously unclaimed benefits.

While OBA's efforts are commendable, there are still program and process areas that would benefit from a review and purposeful refocusing of efforts to improve the experience of participants with the agency. Such actions include a vigorous review of standard participant written communications that do not always suit certain participant cases, and a reevaluation of PBGC's data-sharing agreement with the Social Security Administration (SSA) to ensure that data provided by SSA, which participants authorize PBGC to obtain, can also be shared with the participant. Finally, the process for providing information to participants needs attention in terms of what requires a Freedom of Information (FOIA) or Privacy Act request, and what may be shared without going through PBGC's Disclosure office. For example, asking a participant to submit a FOIA request for information that PBGC relied on to make a decision, such as a procedure or internal policy, should be reconsidered so that participants are able to readily obtain such information without making a request to the Disclosure office.

POSITIVE IMPROVEMENTS

Increased Supervision and Oversight Lead to Fewer Participant Complaints

Throughout 2020, the Office of the Advocate worked closely with OBA to address concerns related to the unusually high number of participants contacting the Office of the Advocate about difficulties when resolving routine matters with OBA's Call Center and Field Benefit Administration (FBA) offices. These types of participant requests for assistance differed from the Advocate's past cases since they involved matters that are part of routine benefits administration, such as questions about survivor benefits and requests for benefit estimates, instead of cases that present complex questions requiring judgment and discretion. Participants seeking assistance from the Advocate often described how they called PBGC's Call Center and FBA offices multiple times yet were unable to satisfactorily resolve their issues.

The Advocate's 2019 Annual Report identified this troubling trend in case activity as a priority issue for OBA's leadership. One main concern from the Advocate related to the structure and supervision of the FBA offices, as these offices consist entirely of contractors with no full-time federal staff on site. The Advocate recommended increased oversight by OBA, such as daily check in calls with FBA contractor supervisors and OBA management to discuss routine participant cases that require further escalation and areas with increased participant complaints which may benefit from a review of processes and procedures. The Advocate also recommended increased training by OBA to educate FBA staff on when it is appropriate to escalate a case and seek guidance from upper-level management within PBGC.

After a series of conversations with the Office of the Advocate and OBA leadership, including a joint meeting with upper management and supervisors from the FBA contractor, OBA implemented significant changes to improve its oversight of the FBA offices and enhance coordination between FBA and federal staff on routine and complex issues. OBA management is now meeting more frequently with FBA staff to identify and address case and procedural breakdowns as well as matters that should be escalated to federal staff for decision and resolution. As a result of these changes, the Office of the Advocate experienced a decline in the number of routine participant inquiries involving problems with the FBA offices throughout 2020. This positive trend is attributable to the dedication of OBA's leadership team and was not easy to accomplish.

However, OBA must sustain its robust oversight to ensure that participant cases are properly and satisfactorily handled by the Call Center and FBA offices so participants are not required to seek further assistance from the Advocate. This continued oversight and supervision should include reevaluating processes and procedures based on case experiences, regular training, and refining the escalation process. For example, it may be beneficial for OBA to identify participants that may be likely to contact the agency with questions, such as when PBGC issues a benefit determination letter with a final benefit amount that is materially different than the prior estimated benefit and develop an escalation process so the participant can speak with someone who can answer questions about the difference in benefit amounts. OBA must conduct an inventory of its aging cases, particularly matters where a participant has contacted the Call Center or FBA multiple times regarding the same issue and evaluate this case data to determine what steps it can take to mitigate problem areas. These changes, especially the ongoing inventory and purposeful action on aging cases, will go a long way toward ***enduring and long-lasting*** improvements to participants' experiences with the Call Center and FBA offices.

Improvements to Procedures and Participant Communications

Participant issues brought to the attention of the Office of the Advocate often highlight areas where PBGC's processes and procedures are outdated and require review. The 2019 Advocate Annual Report discussed numerous cases involving PBGC's overpayment recovery, beneficiary claims, and death processing program areas. In these matters, gaps in processes and procedures coupled with confusing communication prompted the participants to seek assistance from the Office of the Advocate.

For example, an elderly participant contacted the Office of the Advocate regarding an aging recovery matter involving a very small benefit overpayment. Despite the participant's request for a hardship waiver, PBGC referred the debt to the U.S. Department of the Treasury's Centralized Receivables Service (CRS) for collection. Eventually, CRS began to garnish the participant's monthly Social Security benefits to pay down the debt which had increased further due to interest and penalties associated with referring the debt to CRS, resulting in further financial hardship to the participant. After the Office of the Advocate brought the case to the attention of OBA leadership, PBGC considered negotiating a repayment plan with the elderly participant but wisely decided to waive the outstanding debt after reviewing the participant's financial information and the circumstances surrounding the debt collection and case history. This case, as well as other overpayment recovery cases brought to the attention of the Advocate, prompted OBA to review its processes, procedures, and communications in the overpayment recovery process and identify areas for improvement.

As a result of this review, OBA implemented changes to address deficiencies in the overpayment recovery process. It improved its communications to provide more information about the cause of the overpayment, describe how to request a financial hardship waiver, and provide contact information for further questions. OBA management also provided training to the FBA offices and modified its procedures for responding to participants' questions about overpayments and recovery. OBA continues to work with CRS to improve the debt referral and servicing processes.

OBA's changes have enhanced the way PBGC interacts with participants seeking assistance with overpayment recovery matters and as a result, fewer participants contacted the Office of the Advocate with overpayment recovery-related issues during 2020. However, the long-term effectiveness of these changes remains to be determined, and OBA must evaluate its inventory of aged overpayment recovery cases to ensure that they benefit from the revised processes and procedures. Given recently introduced legislation addressing recovery of retirement plan overpayments, OBA should continue to explore ways to adjust its processes and procedures to align with the best practices for handling overpayment matters within the law.

OBA also modified its processes, procedures, and communications in other program areas identified as needing improvement in the Advocate's 2019 Annual Report. For example, OBA revised its potential beneficiary communications to include detailed information on the supporting documentation needed for a claim for benefits as a beneficiary. This communication change is responsive to a case detailed in the Advocate's 2019 Annual Report regarding challenges faced by a beneficiary when trying to prove paternity for a benefit claim. In that matter, PBGC's communications contributed to the participant's confusion since they repeatedly stated that the individual was the child of the deceased participant, yet PBGC refused to approve her claim without the individual providing more information about her paternity. The revised communications are clearer and set expectations so that participants know what documentation is needed for a claim.

OBA continues to review and evaluate other areas where it can improve its participant communications. As OBA has hundreds of form letters, it must routinely conduct a review of various program areas and the associated communications to ensure they are in plain English and provide a full and satisfactory explanation of the issue. One size does not fit all, particularly in

special circumstances where the case calls for a more personalized communication given the facts and circumstances of the issue.

Continued Success of Consolidated Potentially Omitted Participant Case Review

The Advocate's 2018 and 2019 Annual Reports commended PBGC for its decision to act on a longstanding Advocate recommendation to consolidate the review of POP cases into one department. Prior to this change, both OBA and the Standard Termination Compliance Division (STCD) shared responsibility for reviewing POP cases. Now, all POP claims are reviewed by OBA with research assistance from STCD as needed, providing uniformity to the process from a department that routinely makes benefit determinations. This positive change also helped POPs and their advisors as they now only need to contact one department at PBGC, resulting in the Office of the Advocate receiving fewer POP assistance-related requests.

In FY 2020, about 2,240 POPs completed PBGC's Benefit Inquiry Questionnaire, a form which collects information about an employee's past work history and documentation in order to help PBGC determine whether the person may be entitled to a benefit as a POP. Many of these inquiries resolved quickly, such as if PBGC had a record of an annuity purchased for the participant as part of a standard termination. Others required further analysis and review by OBA. Overall, OBA's dedicated POP team reviewed over 90 cases in FY 2020, many involving complex benefit calculations and little information. Based on this data, it is critical that OBA allocate sufficient resources to the POP team since reviewing these complex cases takes significant time and effort. As the defined benefit landscape continues to change, POP inquiries to PBGC may increase as companies and plans no longer exist and individuals who left employment many years ago enter retirement age and begin to seek lost benefits.

PBGC must review its records retention policies to ensure it is not destroying information that may later prove useful when evaluating a POP claim for benefits. For example, PBGC's standard termination files contain distribution and other information that may help determine whether an individual may be entitled to a benefit. Under PBGC's current records retention schedule, these files are often destroyed after a certain amount of time since PBGC generally only oversees the standard termination and does not trustee the plan. However, many POP claims are from participants who were inadvertently omitted from the standard termination, so it is in PBGC's interest to keep standard termination records for longer amounts of time since it may eventually have responsibility for paying these participants' benefits. A longer records retention period will ensure that PBGC retains relevant records that may be used to determine an individual's eligibility for a benefit.

Sustained Routine Communication with Participant Advisors and Advocacy Groups

The Advocate's 2014 Annual Report recommended that PBGC engage with participant organizations to build a regularized, continuing practice of meeting and communication. PBGC acted on this recommendation in 2015 and continues to hold regular meetings with participant and retiree advocacy groups. PBGC's Office of Policy and External Affairs (OPEA) has been instrumental in organizing these meetings, which provide a forum for the parties to exchange information and discuss topics of concern with the agency. The meetings also give PBGC an

opportunity to provide updates on participant and retiree-focused areas of interest, such as multiemployer pension reform and PBGC's financial status and current activities.

OBA and OPEA continue to regularly communicate with the U.S. Administration on Aging's Pension Counseling and Information Program's Counseling Projects (Pension Counseling Projects), providing useful information to assist with participant matters before the agency. The Pension Counseling Projects are frequently in contact with PBGC as they represent and assist participants with their benefit claims. PBGC's communications to the Pension Counseling Projects have helped facilitate these claims by providing news and updates on items of interest, such as contact information for POP claims and information on how to send files securely to PBGC.

PBGC's recent communications have also addressed its requirements for letters of representation, which is a relevant topic as the Pension Counseling Project attorneys are required to have their letters of representation approved by PBGC before it will communicate with them about their clients' claims. The Advocate's 2019 Annual Report identified concerns from the Pension Counseling Projects regarding PBGC's refusal to accept certain letters of representation, as well as situations where PBGC continued to communicate solely with the participant despite the existence of a previously approved and valid letter of representation. The Advocate recommended that PBGC periodically coordinate with the Pension Counseling Projects to request and review copies of their letters of representation to ensure that they satisfy PBGC's requirements. The Advocate also suggested that PBGC communicate immediately with the participant and representative if it receives a letter of representation that does not include the language needed for PBGC to communicate with and release information to the representative.

PBGC acted on both recommendations and has communicated with the Pension Counseling Projects regarding its requirements for letters of representation. It has also made necessary process improvements to ensure that it communicates with the attorney if a participant is represented by counsel. These modifications and improvements to the letter of representation process go a long way toward facilitating a prompt resolution of cases by eliminating delays and confusion and show the value of continued communications with the Pension Counseling Projects. However, as the Pension Counseling Projects attorneys are not the only attorneys who represent participants, PBGC may want to consider creating a form letter of representation, similar to its existing Power of Attorney Form, for use by attorneys in representing participants in PBGC-related cases.

Interagency Coordination Yields High Recovery Numbers

Past Advocate Annual Reports have highlighted the continued success of the interagency data-sharing agreement between PBGC and select EBSA regional offices. The agreement, which originated with the Office of the Advocate and EBSA's Chicago regional office, involves sharing information from PBGC's Unclaimed Pension database with the regional offices so EBSA's Employee Benefits Law Specialists may actively search for participants and beneficiaries to connect them with their missing benefits.

In Fiscal Year 2020, EBSA regional offices connected over 1,000 individuals with benefits valued at almost \$46 million. These impressive numbers bring the total recovery for the program

since its start in 2017 to \$163.6 million reunited with participants and beneficiaries who did not know they were entitled to a benefit. Participants who receive these unexpected benefits tell our EBSA colleagues how coming into these benefits made a difference in their lives such that they no longer choose between buying groceries or filling prescriptions or having the financial wherewithal to now visit their grandchildren, and other heartbreaking accounts.

PBGC recently renewed its data-sharing agreement with EBSA to continue this successful program. The Office of the Advocate is delighted to be a small part of this initiative, which is a good example of data-sharing among and between federal agencies to meet the common goal of reuniting participants and beneficiaries with their missing benefits.

PARTICIPANT ISSUES AND RECOMMENDATIONS

PBGC's Data-Sharing Agreement with the Social Security Administration

PBGC's data-sharing agreement with SSA allows PBGC to request and obtain a participant's earnings history directly from SSA. A participant's earning history is helpful information when evaluating a claim for benefits, as it can show past employers and work history. PBGC requests and obtains the earnings history information directly from SSA after obtaining authorization from the participant. This request is free of charge to the participant. However, the data-sharing agreement limits the use of the earnings history data to determining a PBGC-payable benefit, and as detailed in the Advocate's 2017 Annual Report, there are situations where it appears that PBGC cannot provide a participant with his or her own records obtained through the agreement.

Recommendation: PBGC is currently in the process of renewing its data-sharing agreement with SSA, which presents an opportunity to review the agreement for outstanding issues. PBGC is aware of the Advocate's concerns regarding a participant's access to SSA earnings obtained through the agreement. PBGC is reviewing the issue and will address it with SSA as part of the renewal process. PBGC is also requesting an expansion of the agreement to include a participant's "Notice of Potential Private Pension Benefit" information. This information is not currently included under the existing data-sharing agreement and participants must request it and provide the documentation to PBGC. It is useful when evaluating a claim for benefits since it includes deferred vested benefit information reported from the plan sponsor and lists the plan name, employer identification number, and estimated benefit amount.

This agreement between PBGC and SSA is a good example of information sharing between federal agencies to help participants since it provides a direct way for PBGC to obtain data about a participant's earning history which is needed to support a claim for benefits. As part of its process for evaluating POP claims, PBGC often requests earnings information under the agreement and this documentation can be used to support a claim for benefits. PBGC should take advantage of the opportunity to review the agreement prior to finalizing its renewal to ensure that the agreement meets the corporation's needs while also allowing disclosure of information obtained under the agreement to participants in select circumstances.

Disclosure Challenges Related to Qualified Domestic Relations Orders

The Office of the Advocate received multiple inquiries from alternative payees facing difficulties when trying to communicate with PBGC and obtain information for their domestic relations orders (DROs). One alternate payee received a letter from PBGC stating that the agency did not trustee the plan and as such, it could not qualify the DRO. However, PBGC had trustee the plan many years ago but the alternate payee did not include the name of the main plan on the DRO, instead listing a subset of the trustee plan. PBGC's letter, which it also sent to the alternate payee's attorney, advised the alternate payee to make a FOIA request to obtain the correct name of the plan. However, PBGC's letter ironically listed the correct plan name and case number, so it was unclear as to what information the alternate payee needed to request through FOIA. These confusing communications prompted the alternate payee to contact the Advocate for assistance.

Recommendation: Federal privacy laws and regulations protect and place restrictions on the disclosure of certain information. As such, individuals must make FOIA or Privacy Act Requests to obtain documents, such as records from a plan trustee by PBGC or information about a participant's benefit. However, some information is public and should be disclosed to an individual without a FOIA request. The Advocate's 2017 Annual Report addressed this issue in the context of summary plan description (SPD) requests. The Advocate noted that PBGC required a FOIA request to obtain certain SPDs but disclosed others without a formal FOIA request. After bringing these disclosure-related issues to the attention of OBA, OBA began engaging with PBGC's Disclosure Office to discuss how to improve existing communications and procedures, within the context of the law, to make the process to obtain documents easier and more transparent for participants.

Business Decisions Need Not Be Transformed into Legal Decisions

The Office of the Advocate has been involved with multiple cases that present novel facts and issues for PBGC. In many situations, OBA has referred such issues to PBGC's Office of the General Counsel (OGC), treating matters like legal issues when they are instead benefits administration questions requiring a business decision and the exercise of discretion based on the facts and circumstances of the case.

One such case detailed in the Advocate's 2019 Annual Report involved a beneficiary's struggle to prove paternity and OBA's reluctance to make a decision on the case based on the circumstances of the matter and available information, instead referring the matter to OGC for legal analysis and decision. Due to a complicated family situation and limited records, the beneficiary could only provide PBGC with limited information supporting her paternity claim. Despite sending the beneficiary multiple communications over the years stating that she was the child of the deceased participant in a plan trustee by PBGC, the agency refused to grant the beneficiary a lump sum benefit and instead conducted multiple legal analyses regarding the claim. In the end, PBGC ended up paying the beneficiary her benefit, as it later discovered documentation in its own files which supported the beneficiary's claim that she was indeed the child. The benefit ultimately paid was a modest one-time lump sum which far exceeded PBGC's costs in resisting this claim.

In another matter, PBGC attempted to recover overpayments made to a participant based on the agency's own error. The participant, through her attorney from the Pension Action Center, requested a compromise of the debt amount to satisfy her liability. OBA immediately involved OGC in the matter, and the agency rejected the initial offer and instead demanded more financial information yet was unable to fully explain its standards for review or identify who was making a decision on the matter. After significant involvement by the Office of the Advocate, PBGC ultimately decided to accept the participant's initial compromise offer. However, throughout the process, it was unclear who was the decision maker—OBA or OGC.

Recommendation: Benefits administration often requires exercising discretion and making a business decision on a case's disposition. This is particularly important when cases like the matters discussed above require benefits administration analysis and skill in using secondary information effectively and efficiently to make a benefit determination or decision. This longstanding practice of transforming a business matter into a legal matter by referring it to OGC must be reevaluated and changed. While OBA should seek guidance from OGC regarding a matter when appropriate, the overall decision on a case resides with the business unit, as it is responsible for benefits administration. PBGC should reevaluate its settlement procedures to ensure OBA has the authority to make such decisions and revisit the referral procedure between OBA and OGC to ensure that business decisions stay with the program office.

Further, the Office of the Advocate has observed other situations where OBA is unwilling to fully analyze a complicated matter and instead issues a denial letter without describing its rationale for denying the benefit claim, sending the participant to seek further relief from the Appeals Board which is an office within OGC. For example, a participant contacted the Office of the Advocate after unsuccessfully trying to obtain information regarding his benefit from PBGC. PBGC told the participant that he received a lump sum and was not eligible for a benefit. When the participant asked for documentation regarding the lump sum payment, as he had not received it, PBGC was unable to provide any information or answer his questions. In response, PBGC requested the participant's tax records and instead of addressing his question about the lump sum, sent him a letter denying the claim and directing him to appeal the matter to PBGC's Appeals Board for further relief—a process that can add significant time to the participant's claim. After the Office of the Advocate became involved with the matter, OBA determined that the participant had not received a lump sum and was eligible for a benefit. While the Appeals Board provides an important function, OBA should attempt to satisfactorily resolve participant cases earlier in the administrative process, alleviating the need for unnecessary appeals which are burdensome to the participant and ultimately, the agency.

MULTIEMPLOYER PENSION ISSUES

As the multiemployer pension system faces enduring financial difficulties and uncertainty about its future sustainability, participants in multiemployer plans continue to contact the Office of the Advocate with questions and concerns about their benefits. Participants in newly insolvent funds often raise questions about the security of their future benefits and what happens when a plan goes insolvent, requiring financial assistance from PBGC and benefits cut back to the PBGC guarantee level. Other participants pose questions related to the Multiemployer Pension Reform Act of 2014 (MPRA), such as the effect of a benefit suspension on spousal benefits. The Office of the Advocate is grateful for the assistance provided by the U.S. Department of the Treasury, PBGC's Multiemployer Program Division, and PBGC's Office of the General Counsel (OGC), to address these participant inquiries.

Under MPRA, the Advocate has a consultative role in PBGC's partition and merger application review processes. During 2020, the Advocate participated in consultations with PBGC regarding the corporation's review of two partition applications, discussing whether the plan sponsor took all reasonable measures to avoid insolvency. As part of these consultations, the Advocate met with staff from OGC to discuss the funds' partition applications. OGC staff provided responsive information, such as the history of the plan, economic conditions leading to financial difficulties, and other information about the plans' expenditures including administrative expenses, in response to the Advocate's questions about the plans' measures to avoid insolvency.

With the many challenges facing the multiemployer system, partition, merger, and benefit suspension options under MPRA are often the last resort to help struggling multiemployer plans manage their liabilities. However, the benefit cuts permitted under MPRA can be detrimental to participants, particularly those who are on a fixed income. These participants often face difficulties when trying to reenter the workforce to supplement their financial losses caused by benefit cuts. Similarly, participants in insolvent plans face challenges when their benefits are cut back to the PBGC guarantee level, often leaving participants with a fraction of the benefit that was previously promised to them. This loss of retirement income trickles down and can have an adverse impact on the larger national economy, ultimately affecting tax revenues, jobs, and revenues in various industries, among other things.²

The Advocate is supportive of legislation and reform that will stabilize PBGC and the multiemployer system while providing financial security for participants in these plans. The Office of the Advocate stands ready to assist with such reform and its implementation. There must be action to find a solution to ensure a secure retirement for the over 10 million participants, beneficiaries, and retirees who are entitled to benefits under the multiemployer system. These participants relied upon promises negotiated on their behalf, and overseen by plan advisors, actuaries, accountants, counsel, trustees, and government regulators, to secure their fair and just retirement. Time is long overdue to address multiemployer pension reform on their behalf.

² In 2016, every dollar paid to multiemployer retirees supported \$2.13 in total output throughout the United States. See Diane Oakley & Ilana Boivie, *Pensionomics 2018: Measuring the Economic Impact of Multiemployer DB Pension Expenditures*, National Institute on Retirement Security (Jan. 2019), available at https://www.nirsonline.org/wp-content/uploads/2019/05/Multiemployer2018_Pensionomics21.pdf.

PLAN SPONSOR ISSUES

The past year has been difficult for many plan sponsors, as they face unprecedented financial challenges and uncertainty due to the pandemic. The economic environment has led to an increase in activity at PBGC, as companies evaluate their financial capabilities and liabilities, including their defined benefit plan obligations which are rising to unaffordable levels for many plan sponsors due to historically low interest rates.

While the Coronavirus Aid, Relief, and Economic Security (CARES) Act³ provided limited relief for plan sponsors in the form of a deferral (with interest) of contributions due in 2020 until the beginning of 2021, the Office of the Advocate heard concerns from well over a dozen plan sponsors regarding the need for additional funding relief legislation. These plan sponsors represented all business sectors in our economy and included both public and private business entities and not-for-profit organizations. The plan sponsors described their financial circumstances in detail, withholding nothing, and emphasized the financial effects of rising and debilitating pension obligations, which include rising PBGC premiums.

The need for funding stabilization and an extended amortization period remains real and necessary, and without such relief, companies may face layoffs and other adverse consequences such as being unable to invest in their businesses since these resources are instead consumed by pension costs, limiting their ability to get their businesses back on track. PBGC will likely see more activity in bankruptcy and distress terminations as plan sponsors move to shed their pension obligations, leaving PBGC with substantial financial commitments to single employer plans insured by the corporation.

The Office of the Advocate has long heard about the struggles faced by plan sponsors as they manage their increasing defined benefit liabilities, particularly due to rising PBGC premiums. The Office of the Advocate conducted a two-part study on de-risking which evaluated, among other things, the drivers of pension de-risking with a focus on PBGC-related actions that may slow de-risking.⁴ The Office of the Advocate's De-Risking study found that de-risking is top of mind for plan sponsors and a majority have taken at least some steps to de-risk their pension plans. Both parts of the study reflected the consensus among plan sponsors that rising PBGC premiums are the most significant PBGC-related factor driving risk transfer activity.

Although it does not set the premium levels, PBGC must be cognizant of the burden of these rising premiums, particularly as plan sponsors navigate significant losses of revenue and other financial challenges due to the pandemic. PBGC must adapt how it interacts with plan sponsors, with a view toward assisting companies when they come to us for help while also being watchful of the costs associated with longstanding matters. De-risking has far-reaching implications for participants, plan sponsors, and regulatory bodies, and PBGC should be mindful of the role it can play in helping preserve and protect pensions while helping sponsors when they seek assistance.

³ See Sec. 3608, Public Law 116-136 (Mar. 27, 2020).

⁴ The Office of the Advocate Pension De-Risking Study: Analyzing the Drivers of Pension De-Risking Activity (Dec. 2017), available at https://www.pbgc.gov/sites/default/files/appendix_i_-_de-risking_study.pdf; 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.

POSITIVE IMPROVEMENTS

PBGC Relief Aligns Variable Rate Premium with the CARES Act

The CARES Act provided relief for plan sponsors by delaying the 2020 funding deadlines and extending the due date for contributions to January 1, 2021 (now January 4, 2021 pursuant to Internal Revenue Service guidance). PBGC issued guidance on its website addressing the CARES Act legislation's effect on plan sponsor obligations, such as premiums and other reporting obligations. Under the guidance, companies could not take advantage of the full CARES Act extension because any contribution made after the variable rate premium (VRP) deadline (generally October 15th) would not be counted, resulting in a higher premium for plan sponsors choosing to delay their contributions.

After PBGC issued the guidance, numerous companies contacted the Office of the Advocate expressing concern with PBGC's position regarding when contributions for 2019 must be made in order to be taken into account for determining the 2020 VRP. These plan sponsors viewed PBGC's position as unnecessarily imposing a penalty on employers who used the delay provided in the CARES Act since the sponsors would end up paying a larger VRP. The Office of the Advocate spoke with multiple employers who described circumstances, especially at year end, where the delayed contribution could provide the companies with financial flexibility and relief.

At the encouragement of the Advocate, PBGC met with a plan sponsor trade group and listened to the group's concern about how PBGC's interpretation would have a negative effect on companies by hindering their ability to take advantage of the relief provided in the CARES Act. The Office of the Advocate also relayed information from its meetings with plan sponsors to PBGC, echoing concerns about PBGC's guidance. In response, PBGC reversed its original position and issued a technical update providing relief for sponsors by allowing them to amend their premium filings to include contributions received by the plan after the premium is filed but before the due date provided in the CARES Act.⁵ PBGC's willingness to work with the plan sponsor community resulted in a solution that embodies the spirit of the relief provided in the CARES Act. Many plan sponsors expressed their gratitude to PBGC for listening to their concerns about the guidance and finding a workable accommodation that provides sponsors with the flexibility to delay their contributions as allowed under the law without incurring a large penalty in the form of an increased PBGC premium.

Coordination with PBGC's Plan Sponsor Problem Resolution Specialist

The Office of the Advocate continues to work with PBGC's Plan Sponsor Problem Resolution Specialist on certain plan sponsor inquiries. The Plan Sponsor Problem Resolution Specialist is particularly helpful in situations where the plan sponsor has a question about a PBGC matter and there is not yet a true "dispute" with the agency. For example, a plan sponsor's advisor contacted the Office of the Advocate regarding an erroneously missed premium payment. The plan sponsor ended its plan in a standard termination and miscalculated the premium, underpaying by one

⁵ PBGC later amended its guidance to clarify that contributions made by January 4, 2021 are timely under the CARES Act, consistent with Internal Revenue Service guidance. See PBGC Technical Update 20-2, available at <https://www.pbgc.gov/prac/other-guidance/extended-due-date-inclusion-prior-year-contributions>.

month. Months after the completion of the standard termination, the plan sponsor's advisor reached out to the Office of the Advocate looking for information on how to pay the missed premium. As the plan sponsor's issue did not rise to the level of a dispute, since it required more information from the Financial Operations Department which handles premium issues, the Office of the Advocate coordinated with the Plan Sponsor Problem Resolution Specialist to resolve the matter. The Office of the Advocate has also assisted the Plan Sponsor Problem Resolution Specialist with various plan sponsor cases, and it looks forward to maintaining this mutually beneficial collaboration.

PLAN SPONSOR ISSUES AND RECOMMENDATIONS

Distress Termination Case Review Process

The Advocate's 2019 Annual Report detailed the continued success of PBGC's pre-filing consultation programs which provide plan sponsors with the opportunity to informally discuss certain filings with the agency. In particular, the Advocate received positive feedback from plan sponsors regarding PBGC's distress termination pre-filing consultation program. This informal discussion is beneficial, particularly for companies facing financial distress, as it may result in time and cost savings since the plan sponsor can discuss the application and filing process informally with PBGC to make sure that it is appropriate given the sponsor's specific circumstances. The consultation also assists PBGC and the plan sponsor in exploring whether a waiver of one or more filing obligations is appropriate and identifying potential issues preventing a distress termination of a particular plan.⁶ This pre-filing consultation process is even more important now that companies are dealing with uncertainty and making decisions as to how to manage their liabilities, so any time and cost savings are valuable.

While the pre-filing consultation is a helpful part of the distress termination process for those sponsors who choose to use the program, the Advocate has heard concerns from plan sponsors and their advisors regarding the time it takes PBGC to evaluate a distress termination application. These sponsors indicated to the Advocate that PBGC should be able to make a decision regarding a distress termination application in a fairly short amount of time, yet cases linger without resolution or a decision by the agency for one, two, or even three or more years. This becomes costly to the plan sponsor, as expended resources increase with the amount of time it takes to resolve a matter. Prolonged cases adversely affect the sponsor, as unresolved pension issues lead to business challenges such as issues with lending and credit which may result in permanent harm to the company and its employees through job loss.

Recommendation: PBGC should evaluate its distress termination application review process for efficiency and establish standards for the timing of review of these cases. Regular communication with plan sponsors is also necessary to move cases forward since the distress termination application process involves exchanging information between parties. No later than 30 days after receiving a distress termination filing, PBGC should be able to tell the plan sponsor whether the filing is complete or if it requires additional information or documentation for its review. PBGC should also offer to schedule a regular series of calls with the plan sponsor throughout the duration of the distress termination application review process. These calls will

⁶ See 82 Fed. Reg 45912 (Oct. 2, 2017).

ensure that PBGC and the plan sponsor communicate regularly to resolve issues in a timely manner. Scheduling these calls and putting time limits on certain milestones will provide assurance to the plan sponsor that the case will move forward.

As more plan sponsors evaluate ways to manage their defined benefit liabilities, it is important for PBGC to review its processes and procedures regarding distress termination application review. This review will help PBGC determine whether it is using its resources efficiently, a valuable exercise given the increase in PBGC's case activity due to the uncertain economic environment.

Longstanding and Costly Case Requires Supervision for Resolution

Past Advocate reports have highlighted plan sponsor cases where matters have languished at the agency for long periods of time without resolution. While PBGC has improved its case tracking by conducting routine reviews and using a system to monitor open cases, there are still longstanding cases that fall through the cracks, particularly when a matter involves multiple departments. When cases go on for long periods of time, the cost to PBGC and the plan sponsor increases greatly, and it takes additional time and resources to untangle the matters which become more complicated over time.

The Office of the Advocate received a request for assistance from a small company who had been dealing with PBGC for years regarding settling a termination liability. The company applied for a distress termination in December 2012 and PBGC trustee the small plan in 2014. The company and PBGC engaged in negotiations intermittently over the years, with discussions taking on a greater urgency in early 2019 due to an approaching statute of limitations. Negotiations stalled and the parties unsuccessfully tried to resolve the matter using PBGC's mediation program. During this time, the company experienced a decline in revenue and customers which accelerated during the pandemic. Upon the involvement of the Office of the Advocate, the company and PBGC restarted their negotiations and eventually reached a reasonable settlement, allowing the company to end its long relationship with the agency.

Recommendation: PBGC must evaluate its inventory of aging cases. While the case review measures implemented by PBGC are a good start, there are still situations where cases languish at the agency for years without resolution. PBGC should identify these cases and prioritize resolution, as the costs associated with these continued cases can quickly add up and often result in very little return for the agency. The cost to the company is also high, as delays in resolution can cause job losses and other adverse financial consequences. Past Advocate Reports have recommended that PBGC conduct a cost-benefit analysis as a routine part of its case review and good practice. This type of analysis is important, particularly in long-running cases, so PBGC can be mindful of the resources it expends to pursue these matters.

While the Office of the Advocate supports the continued use of PBGC's mediation program to resolve outstanding plan sponsor matters, introducing and encouraging its use during a negotiation must be timely and thoughtful, as mediation may add additional time and expense to a dispute that has already consumed considerable time and resources. PBGC must come ready to negotiate with the plan sponsor during the mediation, as it is not a helpful exercise if the parties

are not willing to work toward resolution. In addition, ensuring that the appropriate level of staff with settlement authority is part of the case team will make a tremendous difference in successful resolution through mediation.

Payment of Interest on Plan Sponsor Premium Overpayments

The Pension Protection Act of 2006 gave PBGC authority to pay interest on premium overpayments on a retroactive basis back to August 17, 2006. However, PBGC has taken the position that it cannot act upon this authority until it issues regulatory guidance. While PBGC originally added interest on premium overpayments as a proposed rule in its Fall 2007 Regulatory Agenda, it subsequently designated the item as a long-term action in its Fall 2008 through 2016 Regulatory Agendas and withdrew the action in May 2017.

PBGC's May 2017 withdrawal stated that it "reformed the premium payment process that gave rise to most overpayments ... and also instituted a process to rectify identifiable premium overpayments promptly. As a result, overpayments have declined significantly since the institution of this project, and it is no longer necessary or cost-effective."⁷ While PBGC's changes to the premium payment process may have partially addressed the issue on a prospective basis, there are still situations where a plan sponsor may overpay premiums. In addition, as premiums continue to rise, the amount of this premium overpayment can be significant. For example, plan sponsors may pay premiums while waiting for a coverage determination from PBGC which could result in overpayments if the plan is not covered under Title IV. Overpayments can also occur if the plan sponsor makes a mistake that affects the premium calculation. Without regulatory action, these plan sponsors do not receive any interest on the premium overpayments even though PBGC routinely charges interest on premium underpayments.

Recommendation: The Advocate recommends that PBGC reinstate the regulatory project to promulgate guidance allowing it to pay interest on premium overpayments. Paying interest as permitted under the Pension Protection Act of 2006 may be cost-effective when all factors are considered. PBGC collects interest on premium underpayments and it would be equitable for the agency to calculate and pay interest on premium overpayments in the same manner as interest is calculated for the underpayments. More importantly, PBGC has had almost 15 years to consider how payment of interest to plan sponsors on overpayments should be implemented, so it should promulgate regulations to act the on authority now.

⁷ See PBGC's current and historical Regulatory Agendas and Plans, available at <https://www.pbgc.gov/prac/pg/other/guidance/regulatory-agendasplans>.