THE PBGC LOOKING FORWARD

A U.S. Chamber Position Paper on the Pension Benefit Guaranty Corporation

U.S. CHAMBER OF COMMERCE
Labor, Immigration & Employee Benefits

U.S. CHAMBER OF COMMERCE

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

Summary of Recommendations

The Pension Benefit Guaranty Corporation (PBGC) should strengthen its commitment to encourage plan sponsors to continue to maintain defined benefit plans.

- The PBGC should recommit itself to the goal of fostering private sector defined benefit plans.
- The PBGC should be a conduit between employers and Congress for conveying concerns and gathering information. For example, while the Financial Accounting Standards Board (FASB) is not under the jurisdiction of the PBGC, the accounting rules issued by FASB have a significant impact on defined benefit plans. As such, the PBGC could be a valuable liaison between plan sponsors and Congress.
- The PBGC could play a larger role in helping reduce the plan termination rate.

Changes in PBGC governance are needed to ensure its ongoing viability.

- The PBGC should adopt written governance procedures.
- The number of members on the board of directors should be increased.
- The board should include plan sponsors. The Chamber recommends representatives for small and large businesses and sponsors of multiemployer plans.
- Board member terms should overlap to encourage smooth transition periods.

PBGC premiums should be affordable, administrable, fair, consistent, and predictable. Premiums should not be increased except as part of a long-term plan to address the future of private sector defined benefit plans and the PBGC.

- Decisions to increase PBGC premiums should be part of a comprehensive discussion of changes needed at the PBGC, including governance and methodology.
- Congressional approval of PBGC premium increases should continue to be required.

The PBGC Participant and Plan Sponsor Advocate should be a liaison between the business community and the PBGC.

- The Participant and Plan Sponsor Advocate should promote the following issues within the PBGC:
    - A corrections program at the PBGC that is similar to corrections programs within other agencies of jurisdiction.
    - Resolution of plan sponsor concerns with ERISA Section 4062(e).

The PBGC should be more transparent about the modeling systems and assumptions used to calculate its deficit.

- The PBGC should implement a forum to allow the modeling systems and their results to be publicly discussed with interested parties.

STATEMENT OF PURPOSE

As sponsors of defined benefit plans and professionals in the retirement plan arena, Chamber members have a vested interest in the ongoing viability of the Pension Benefit Guaranty Corporation (PBGC) and an abiding concern about the PBGC's ability to adequately insure defined benefit plans for sustainable premiums. The PBGC is the final backstop for participants in the defined benefit plan system. Therefore, it is necessary to ensure that the PBGC remains a viable and credible institution.

In the last several years, the defined benefit plan system has faced several significant challenges—industry bankruptcies, an overhaul of the funding rules, demographic changes, and a financial crisis affecting every type of industry and investment. The Chamber believes that this is the appropriate time to review the governance, policies, and practices of the PBGC to ensure that the PBGC and the defined benefit plan system are able to withstand additional challenges in the future.

BACKGROUND

The Pension Benefit Guaranty Corporation (PBGC) was created in 1974 by the Employee Retirement and Income Security Act (ERISA) to guarantee private single and multiemployer defined benefit pension plans, to ensure prompt and uninterrupted benefit payments to plan participants when plans become distressed or are terminated, and "to maintain premiums . . . at the lowest level consistent with [the PBGC] carrying out its obligations."[1] ERISA's enactment and its creation of the PBGC were prompted by the 1963 collapse of the Studebaker Company. Studebaker's pension plan was so underfunded that only about one-third of the 11,000 eligible employees received full pension benefits, about a third received about 15% of the benefits they had earned, and about a third received nothing.[2]

The PBGC is completely self-financed and finances itself using four types of revenue streams: (1) insurance premiums imposed on single-employer and multiemployer defined benefit pension plans, (2) terminated pension plan assets, (3) recoveries from terminated plan sponsors, and (4) investment earnings on those premiums, assets, and recoveries.[3] Although the PBGC is wholly owned by the federal government, its liabilities are not backed by the full faith and credit of the federal government.[4]

The PBGC currently protects approximately 42 million participants in more than 24,000 defined benefit pension plans.[5]

CHAMBER CONCERNS AND RECOMMENDATIONS

Given the PBGC's role and the greater emphasis being placed on retirement security generally, this is the perfect time to reexamine the role of the PBGC and its policy objectives. Since the implementation of ERISA, there has been confusion over the lines of jurisdiction between the Department of Labor (DOL) and the PBGC. Officially, by statute, the

PBGC exists within the DOL, although there has been disagreement among the DOL and the PBGC on whether the PBGC was intended to operate as a separate entity.[6] Initially, the Secretary of Labor was empowered by ERISA to direct operations, personnel, and the budget as chairman of the board for the PBGC. However, the Pension Protection Act of 2006 (PPA) established an independent director of the PBGC, who must be confirmed by the Senate.[7]

The Chamber believes that clarifying this jurisdiction would be beneficial in setting PBGC policy goals and objectives. Having a clear delineation of jurisdiction would also be beneficial in determining how to structure the PBGC's governing operations and the best people to fill leadership roles. Given the very significant role that the PBGC is playing as the custodian of billions of dollars in pension assets and the greater emphasis being placed on retirement security generally, this is the perfect time to reexamine the role of the PBGC and its policy objectives.

The PBGC should strengthen its commitment to encourage plans sponsors to continue to maintain defined benefit plans. Even though one of the PBGC's primary goals is "to encourage the continuation and maintenance of voluntary private pension plans,"[8] the Chamber is concerned that the PBGC focuses too much on its insurer role and not on encouraging private employers to establish and maintain employee benefit plans. For example, during the debate over the Pension Protection Act of 2006, many employers felt that the PBGC ignored the adverse impact of excessively burdening employers and, instead, weighed in with policymakers to come down hard on what it regarded to be scofflaw employers.

The PBGC's Strategic Guidance Plan states that safeguarding the pension insurance system is a strategic priority.[9] The Chamber believes that it is at least equally important for that plan to explicitly give a high priority to the continuation of the private pension system. By supporting and encouraging the private system, the PBGC is safeguarding the insurance system by decreasing the number of participants who would otherwise depend on the PBGC for benefits. Not only did Congress list that first among the goals it established for the PBGC, but it is essential to the sound working of the PBGC's insurance program. Premiums are levied only on active plans. As the defined benefit plan universe shrinks, the PBGC premium base shrinks, causing the PBGC to continually increase premiums for the shrinking number of active plans.

Moreover, ERISA requires this as a priority for the PBGC. ERISA Section 4002 states that the purpose of the organization is "to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants." While the Strategic Guidance Plan as a whole is aimed at this directive, there is no explicit recognition of this statutory goal. Consequently, we encourage the PBGC to explicitly include this directive.

Recently, the PBGC has made significant efforts aimed at addressing employer concerns.[10] Nonetheless, the Chamber believes that by explicitly making a commitment in the Strategic Guidance Plan of encouraging plan sponsors to continue to maintain defined benefit plans, the PBGC would deter further erosion of that commitment in future administrations.

Recommendations:

- The PBGC should recommit itself to the goal of fostering private sector defined benefit plans.
- The PBGC should be a conduit between employers and Congress for conveying concerns and gathering information. For example, while FASB is not under the jurisdiction of the PBGC, the accounting rules issued by FASB have a significant impact upon defined benefit plans. As such, the PBGC could be a valuable liaison between plans sponsors, Congress, and FASB.
- The PBGC could play a larger role in helping reduce the plan termination rate.

Changes in PBGC governance are needed to ensure its ongoing viability. The PBGC's board does not have any formal, written governance procedures. Until recently, the board was not required to meet any certain number of times annually and met infrequently over the past three decades. During the period between 1980 and 2010, the board met only 23 times—less than annually.[11] In 2003, the board agreed to meet twice a year, although a review of meeting minutes indicates that the meetings usually only last about an hour, with no significant time being spent on operational and strategic issues.[12]

The PBGC's corporate governance structure has come under scrutiny by the Inspector General for the PBGC and the Government Accountability Office (GAO), citing several perceived flaws in its system of governance.[13] Even with changes made in the last several years, the GAO continues to express concern about the PBGC's governance structure. In a 2010 report, the GAO stated that "while the current PBGC board is meeting more frequently than in prior years, its members still have little time to devote to PBGC governance and the board remains vulnerable to disruptive transitions during future changes of administration."[14]

In 2012, Congress passed several PBGC reforms in the Moving Ahead for Progress in the 21st Century Act. Generally, the provisions address board meetings, voting requirements, PBGC general counsel responsibilities, board employee compensation, and director and board member conflicts of interest. In addition, the law establishes the position of Participant and Plan Sponsor Advocate, whose duties include acting as a liaison between PBGC, plan sponsors, and participants; advocating for the rights of participants in PBGC-trusteed plans; and helping plan sponsors and participants resolve disputes with the PBGC. The law also requires the PBGC to contract with an agency or organization to conduct an annual peer review of agency pension insurance modeling systems; develop review policies and procedures for all modeling and actuarial work performed by PBGC's Policy, Research, and Analysis Department; and submit to Congress a timetable for addressing recommendations by the Office of the Inspector General.

These reforms were taken from legislation introduced by Chairman Tom Harkin in the Rebuild America Act (S. 2252) earlier in 2012. The one substantive provision that was not passed into law was the increase in the number of board members. The Rebuild America Act increases the number of board members from 3 to 7; members are to be appointed by the president; and no more than 2 members of the board (beyond the Labor, Treasury, and Commerce secretaries) may be members of the same political party. Moreover, it would have required that at least one member be an enrolled actuary or other financial expert and at least one member to have experience with the issues unique to retired plan participants.

Despite the recent reforms, the Chamber remains very concerned about the PBGC's lack of formal governance rules. In general, the Chamber supports the recommendations laid out in the 2010 GAO report and the principles in Senator Harkin's 2012 Rebuild America Act.

***Recommendations**:*

- The PBGC should adopt written governance procedures.
- The number of members on the board of directors should be increased.
- The board should include plan sponsors. The Chamber recommends representatives for small and large businesses and sponsors of multiemployer plans.
- Board member terms should overlap to encourage smooth transition periods.

PBGC premiums should be affordable, administrable, fair, consistent, and predictable. Premiums should not be increased except as part a long-term plan to address the future of private sector defined benefit plans and the PBGC. Since the establishment of the PBGC in 1974, it has most often operated at a deficit.[15] This ongoing deficit has led to many concerns about whether the PBGC can continue as a viable entity on its own or if a federal bailout will be necessary in the future. For FY 2013, the PBGC had a total deficit of $35.6 billion.[16]

The PBGC's single-employer program reported a $27.3 billion deficit, which is a $1.7 billion decrease from FY 2012.[17] This decrease was due in part to an increase in premium payments and a decrease in the liability calculation due to higher interest rates.[18] The single-employer program currently covers approximately 32 million participants in about 23,000 pension plans.[19]

The multiemployer program reported an $8.2 billion deficit, which is an increase of $3.2 billion from FY 2012.[20] This increase is mainly due to the net addition of 22 new probables. However, it is also due, in part, to actuarial adjustments that combine the effects of a lower interest factor with new mortality table assumptions that project longer lives for participants. The PBGC paid $89 million in financial assistance to 44 insolvent plans that cover approximately 71,000 participants.[21] The multiemployer program currently covers approximately 10 million participants under about 1,400 multiemployer plans.[22]

There is considerable debate around the PBGC deficit number for the single-employer program. Many in the business community, including the U.S. Chamber, argue that a substantial portion of the deficit is due to historically low interest rates that are also plaguing defined benefit plans. The low interest rates are exacerbated by conservative discount rate assumptions used by the PBGC to calculate future liabilities and conservative assumptions on investment gains to calculate future assets. Moreover, the PBGC's single-employer deficit is not an immediate crisis. Even the PBGC acknowledges that there is no crisis. In its 2013 annual report, the PBGC states that the "PBGC still has very substantial assets, and the day when we run out of money is years away." Moreover, in its 2012 Exposure Report, the PBGC states that "[i]n the 5,000 scenarios simulated in SE-PIMS, there are none in which PBGC assets are completely exhausted within the 10-year projection horizon." Nonetheless, discussions about the deficit often lead to proposals to increase premiums.

For 2014, the flat-rate premium for single-employer plans is $49 per participant, and the variable rate premium is $14 per $1000 of underfunded vested benefits.[23] These premiums are due to further increase under the Bipartisan Budget Act of 2013.[24] Additionally, there is a termination premium of $1,250 per participant for plan sponsors that enter into bankruptcy and then are later discharged.[25] For 2014, the premium for multiemployer plans is $12 per participant (indexed to wages).[26]

The debate over premiums generally hinges on whether the PBGC is viewed as purely an insurance agency, where premiums should be directly associated with risk, or if it is viewed as a quasi-insurance agency, where premiums are based on various considerations. In either case, both of these issues directly impact plan sponsors and can impact the way employers decide to structure their retirement plans.

The business community has consistently opposed measures that increase PBGC premiums for the sole purpose of decreasing its deficit.[27] For example, during the PPA debate, the business community opposed proposals that would allow the PBGC to raise premiums without congressional authorization. The business community felt it was important that Congress—as a neutral third party—determine whether premium increases were appropriate in the context of the defined benefit system as a whole and not just the PBGC deficit. The Chamber continues to support this position.

Increases to PBGC premiums are occurring more and more frequently. Most recently, PBGC premium increases were included in the Bipartisan Budget Act of 2013 as a revenue raiser.[28] It seems that premium increases will continue to be viewed as a revenue raiser in future legislation (e.g., tax reform). The Chamber opposes PBGC premium increases outside the context of comprehensive retirement reform. Without full consideration of the policy implications, the increase in premiums amounts to a tax on employers that sponsor defined benefit plans. Before the recent $9 billion increase in PBGC premiums, employers were already paying more than $2.23 billion in premiums annually for the pension benefits they provide to 33 million participants. Every additional dollar that employers must pay to the PBGC is one less dollar that can be used to fund participant benefits, expand the business, create jobs, and grow the economy. Only employers that provide defined benefit pension plan benefits have this tax burden. It is one of the government-imposed burdens that has caused so many employers to avoid maintaining defined benefit plans.

Recommendations:

- Decisions to increase PGBC premiums should be part of a comprehensive discussion of changes needed at the PBGC, including governance and methodology.
- Congressional approval of PBGC premium increases should continue to be required.

The PBGC Participant and Plan Sponsor Advocate should be a liaison between the business community and the PBGC. In September 2013, the board of directors of the PBGC selected a Participant and Plan Sponsor Advocate. Legislation did not clarify the exact duties of the advocate, so the PBGC has reached out to interested parties for input. The Chamber appreciates the efforts of the agency to ensure that this new position meets the needs of all stakeholders. As a start, the Chamber believes that the advocate is uniquely positioned to be a liaison between plan sponsors and the PBGC. In addition, there are several issues that the advocate could promote within the PBGC and the administration generally.

Recommendations:

- The Participant and Plan Sponsor Advocate should promote the following issues within the PBGC:
  - A corrections program at the PBGC that is similar to corrections programs in other agencies of jurisdiction.[29]
  - Resolution of plan sponsor concerns with ERISA Section 4062(e). In December 2012, the PBGC announced that it would change its enforcement efforts with respect to ERISA Section 4062(e) to alleviate enforcement burdens for 92% of companies sponsoring defined benefit pension plans.[30] Nevertheless, for those plan sponsors that must deal with ERISA Section 4062(e), it remains a significant burden. The advocate could promote a forum for all interested parties to discuss this issue and work on further reforms.

The PBGC should be more transparent about the modeling systems and assumptions used to calculate its deficit. The PBGC uses its own proprietary modeling system, the Pension Insurance Modeling System (PIMS), to model its potential financial position and risk exposure. The PBGC has developed a single-employer (SE-PIMS) and multiemployer (ME-PIMS) version of its modeling system.

ME-PIMS and SE-PIMS both project long-term exposure by running many simulations, each modeling year-by-year changes over 10 years. Each simulation starts with known facts about the economy, the world of insured plans, and the PBGC's financial position. Then, the program introduces random year-by-year changes (within certain bounds) to model economic fluctuations, producing new outcomes a year at a time. Neither the single-employer nor the multiemployer PIMS are predictive models. SE-PIMS does not attempt to anticipate companies' behavioral responses to changed circumstances. Although ME-PIMS mathematically models the likelihood of mass withdrawal from a given plan or plan insolvency prior to mass withdrawal, it does not anticipate behavioral responses by individual employers.[31]

While the PBGC has attempted greater transparency in this modeling system, there is still significant confusion surrounding these systems.[32] Due to the technical nature of determining and implementing a modeling system, the Chamber does not believe that it is its place to weigh in on the specific methodologies used in the system. Nonetheless, the Chamber does believe that the PBGC could make the information around the modeling systems more accessible. For instance, rather than just issuing a technical report, the PBGC could implement a forum (e.g., conference call or roundtable) that would allow interested parties to discuss the modeling systems and ask questions directly.

Recommendation:

- The PBGC should implement a forum to allow the modeling systems and their results to be publicly discussed with interested parties.

CONCLUSION

The PBGC is an important part of the private defined benefit pension system. Chamber members are committed to the ongoing viability of the private pension system and the PBGC. The PBGC has made positive steps, and the Chamber looks forward to continuing to work with it to ensure the continued success of the entire private defined benefit system.

[1] ERISA Section 4002.
[2] J.A. Wooten, *The Employee Retirement Income Security Act of 1974: A Political History*, 76–77 (2004).
[3] ERISA Section 4005.
[4] *Id*. However, there is a general belief—particularly given the Department of the Treasury's bailout of two other government corporations during the financial crisis, Freddie Mac and Fannie Mae—that the federal government would step in if the PBGC became insolvent.
[5] Pension Benefit Guaranty Corporation, *Annual Report 2013*, 4 (2013) http://www.pbgc.gov/res/reports/ar2013.html.
[6] Government Accountability Office, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, 19, GAO-07-808 (2007). http://www.gao.gov/assets/270/263367.pdf.
[7] ERISA Section 4002(a).
[8] ERISA Section 4002(a)(1).
[9] Pension Benefit Guaranty Corporation Strategic Guidance Plan FY 2011–2016, 8. http://www.pbgc.gov/Documents/2011-2016strategicplan.pdf.
[10] In 2013, the PBGC reissued a previously proposed rule on reportable events under Section 4043 of ERISA. 78 FR 20039, April 3, 2013. The reproposed rule is substantially revised from the original proposal and removed many of the burdens that the Chamber had identified as unduly burdensome on plan sponsors without providing a corresponding benefit to the PBGC. Also in 2013, the PBGC issued a rule that simplified premium payments by requiring a single filing deadline for all plans. 78 FR 44056, July 23, 2013. The Chamber supported these efforts and encourages further actions in this vein.
[11] Government Accountability Office, *Pension Benefit Guaranty Corporation: Improvement Needed to Strengthen Governance Structure and Strategic Management,* 9, GAO-11-182T (2010). http://gao.gov/assets/130/125403.pdf.
[12] *Id*.
[13] Office of the Inspector General (OIG), *Semiannual Report for the Pension Benefit Guaranty Corporation (PBGC), April 1, 2011, through September 30, 2011, and October 1, 2011, through March 31, 2012* (SARC-45) http://oig.pbgc.gov/pdfs/SARC45.pdf. Government Accountability Office, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, 3, GAO-07-808 (2007). http://www.gao.gov/assets/270/263367.pdf. The reports detail several recommendations for improving the PBGC's governance structure, including the following:

- Holding more frequent board meetings.
- Establishing of formal guidelines clarifying administrative authority, responsibility, and oversight.
- Expanding the board of directors to include members with expertise in key areas relevant to the PBGC's mission.
- Establishing standing committees to deal effectively with issues facing the corporation.

[14] Government Accountability Office, *Pension Benefit Guaranty Corporation: Improvement Needed to Strengthen Governance Structure and Strategic Management*, 9, GAO-11-182T (2010). http://gao.gov/assets/130/125403.pdf .
[15] The single-employer program has operated primarily in deficit except from 1996 to 2001 when the PBGC's surplus ranged from $8 million to $9 billion. In contrast, the multiemployer program has operated primarily with a surplus until fairly recently. Insurance Data Pension Benefit Guaranty Corporation. *Insurance Data Book 2011* (2011) http://www.pbgc.gov/documents/pension-insurance-data-tables-2011.pdf. While issues within the single-employer and multiemployer pension systems differ, the Chamber believes that premium increases in either program must be part of a comprehensive review of the PBGC and the private retirement system.
[16] Pension Benefit Guaranty Corporation, *Annual Report 2013*, 26 (2013). http://www.pbgc.gov/res/reports/ar2013.html.
[17] Pension Benefit Guaranty Corporation, *Annual Report 2013*, 28 (2013). http://www.pbgc.gov/res/reports/ar2013.html. PBGC's single-employer program realized a net gain of $1.7 billion compared with a net loss in FY 2012 of $5.8 billion.
[18] *Id.* at 26. The primary factors in the single-employer program's net income included $2.981 billion in net premium income and other income, $2.7 billion in investment income, and a credit of $401 million from actuarial adjustments. These factors were offset by $3.3 billion in charges due to expected interest on accrued liabilities, $468 million in losses from completed and probable terminations, $439 million of administrative, investment, and other expenses, and a charge of $67 million due to a reduction in interest factors (this represents a $10.6 billion decrease from the prior fiscal year).

[19] *Id.* at 4.
[20] *Id.* at 28. The multiemployer program reported a negative net position of $8.2 billion in FY 2013 compared with a negative net position of $5.2 billion in FY 2012.
[21] *Id*. at 37.
[22] *Id.* at 4.
[23] Pension Benefit Guaranty Corporation, *Insurance Data Tables 2010*, Table S-39 (2010) http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.
[24] H.J. Res. 59. The flat-rate premium will increase as follows:

- 2015— $57 per participant
- 2016— $64 per participant
- 2017 and beyond indexed to wage growth

The variable-rate premiums will increase as follows:

- 2015—Approximately $24 per $1000 of underfunding (2014 rate plus $10; could go up as part of indexing)
- 2016—Approximately $29 per $1000 of underfunding (2015 rate plus $5; could go up as part of indexing)

[25] The Deficit Reduction Act of 2005.
[26] http://www.pbgc.gov/prac/prem/premium-rates.html.
[27] *See The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform*, 41, http://www.fiscalcommission.gov/sites/fiscalcommission.gov/files/documents/TheMomentofTruth12_1_2010.pdf (recommending that the PBGC's board be given authority to raise the premium rate to restore solvency).
[28] http://www.gpo.gov/fdsys/pkg/BILLS-113hjres59enr/pdf/BILLS-113hjres59enr.pdf .
[29] Both the Treasury and Labor departments have successful correction programs. The Chamber believes that a similar program at the PBGC to deal with filing and other errors would be extremely beneficial.
[30] http://www.pbgc.gov/news/press/releases/pr12-32.html.
[31] Pension Benefit Guaranty Corporation, FY 2012 Exposure Report, p. 15, http://www.pbgc.gov/documents/2012-exposure-report.pdf.
[32] MAP-21 instructs the PBGC to contract with an outside agency to conduct annual reviews of the modeling systems. In addition, the PBGC is charged with developing policies for internal reviews of its actuarial work, management, and record keeping.

U.S. CHAMBER OF COMMERCE
Labor, Immigration & Employee Benefits

1615 H Street, NW | Washington, D.C.
uschamber.com/labor-immigration-and-employee-benefits