PBGC Multiemployer Update

Bruce Perlin, Assistant General Counsel

NCCMP Annual Meeting
September 25, 2019

The opinions of Mr. Perlin do not necessarily reflect the views of the PBGC.

PBGC

Overview

- PBGC Multiemployer Program Financials
- PBGC Projections Report
- PBGC Final Rule – Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors
- PBGC Proposed Rule – Methods for Computing Withdrawal Liability/MPRA
- Partitions – Local 805 Pension and Plasterers & Cement Masons Local 94 Pension
- Amicus Briefs – Sun Capital and New York Times

PBGC Multiemployer Program Financials

ME Program Financials – 2018

Net Position September 30, 2017	**($65.1 billion)**
2018 Snapshot:	
Premium Income	$292 million
Investment Gain	($52 million)
Assets	$2.3 billion
Liabilities	($56.2 billion)
Net Position September 30, 2018	**($53.9 billion)**

Probable Plans

- As of September 30, 2018, PBGC expects 184 multiemployer plans will exhaust plan assets and need financial assistance to pay guaranteed benefits and reasonable plan administrative expenses.

- The present value of non-recoverable future financial assistance for these 184 plans is $56.2 billion, compared to $67.3 billion for 187 plans in 2017.

- The 184 plans in 2018 fall into three categories:

  1. Plans currently receiving financial assistance (78 plans, $2.4B);
  2. Plans that had terminated but had not yet begun receiving financial assistance from PBGC (64 plans, $1.7B); and
  3. Ongoing plans (not terminated and within 10 years from projected date to exhaust plan assets) that PBGC expects will require financial assistance in the future (42 plans, $52.1B)

Financial Assistance to Insolvent Multiemployer Plans

PBGC Financial Assistance to Insolvent ME Plans (1981-2018)		
Year	**Plans Receiving Financial Assistance[1]**	**Total Amount of Financial Assistance (in thousands USD)**
1981	1	311
1985	3	1,300
1990	3	1,000
1996	12	4,022
2001	22	4,526
2006	33	70,097
2012[2]	49	95,000
2014[2]	53	96,520
2018[2]	78	153,000

Sources: https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf

(1) A number of plans received financial assistance in more than one year.

(2) 2012, 2014, 2018 figures rounded; total number of plans receiving assistance.

PBGC Projections Report

Projections Report

- Issued August 5, 2019
- Illustrates the estimated future financial condition of the Single-Employer and Multiemployer Programs
- https://www.pbgc.gov/sites/default/files/fy-2018-projections-report.pdf

Projections Report

- Single-Employer Program is likely, but not assured, to remain out of deficit over the next decade. The Report shows a mean projected present value net position of $26.7 billion for FY 2028.

- Multiemployer Program shows a mean projected present value of the deficit of $66.2 billion for FY 2028. This is a slight improvement from the prior year’s Report and is due to a change in the discount rates.

Pension Benefit Guaranty Corporation

Projections Report

- The PBGC Multiemployer Program is estimated to have a 99% likelihood of insolvency by FY 2025 due to more and larger claims for financial assistance.

- The expected future use of suspensions and partitions under MPRA should not have much impact on the likelihood of PBGC Multiemployer Program insolvency.

PBGC Multiemployer Fund Projected to Be Drained by End of FY 2025

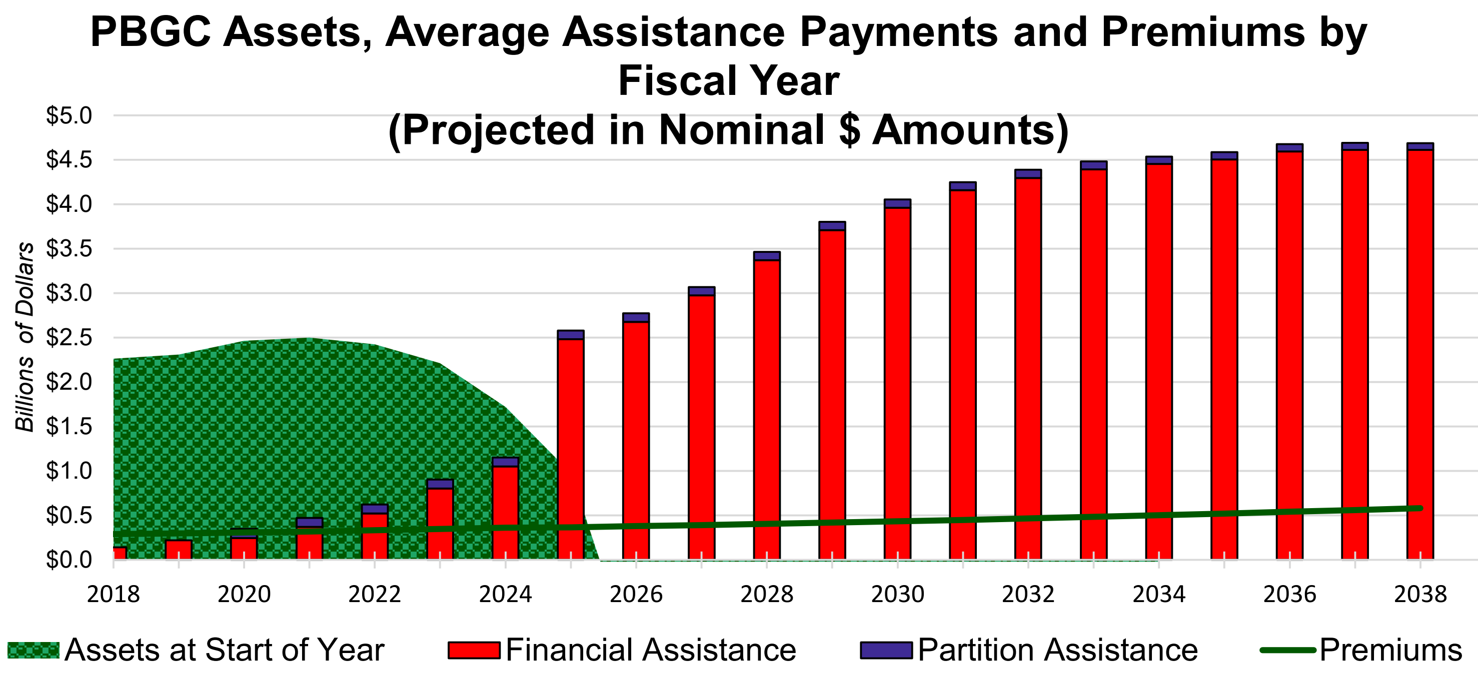

Figure 4: FY 2018 Projections Report

PBGC Final Rule – Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors

Terminated and Insolvent Plans – Final Rule

- Final Rule published at 84 FR 18715 (May 2, 2019) (Effective July 1, 2019)
- Insolvency Notices and Updates – The old rule required a plan that is insolvent or is expected to be insolvent for a plan year to provide a notice of insolvency to PBGC and to participants and beneficiaries. For each insolvency year, the plan had to provide a notice of insolvency benefit level to PBGC and participants and beneficiaries in pay status or reasonably expected to be in pay status.
- New Rule – The plan can provide one combined notice for the same insolvency year. And most of the annual updates to the notice of insolvency benefit level are no longer required.
- Instructions for notices and filing requirements for terminated and/or insolvent plans are posted on our e-filing portal website.

Terminated and Insolvent Plans – Final Rule

- Annual Actuarial Valuation – The old rule required a plan terminated by mass withdrawal to have performed an annual actuarial valuation of plan assets and liabilities. A plan could perform an actuarial valuation every 3 years if the present value of the plan's nonforfeitable benefits is $25 million or less.

- New Rule – Terminated plans and insolvent plans can file annual actuarial valuations with PBGC once every 5 years if the present value of the plan's nonforfeitable benefits is $50 million or less.

- Plans with nonforfeitable benefits of $50 million or less receiving financial assistance from PBGC can comply with the actuarial valuation requirement by filing alternative information specified in valuation instructions on the e-filing portal on PBGC.gov.

Terminated and Insolvent Plans – Final Rule

- Withdrawal Liability Payments – Terminated plans and insolvent plans file information with PBGC about withdrawal liability in the aggregate and by employer regarding employers assessed and not yet assessed withdrawal liability.

  - For each employer not yet assessed, information would include the name of the employer and the reasons the employer has not been assessed.

  - For each employer assessed, information would include the name of the employer and whether there are scheduled periodic payments or a lump sum settlement.

  - Information would need to be filed within 180 days after the earlier of the end of the plan year in which the plan terminates or becomes insolvent and each plan year thereafter, unless there is no updated information to file.

  - Withdrawal liability information for plan years ending before July 1, 2019 is not required to be filed.

PBGC Proposed Rule – Methods for Computing Withdrawal Liability/MPRA

Methods for Computing Withdrawal Liability/MPRA

- Proposed Rule published at 84 FR 2075 (February 6, 2019)
- For purposes of calculating withdrawal liability, a plan is required to disregard adjustable benefit reductions, benefit suspensions, contribution increases, and surcharges.
- How does it work? Say a suspension has an effective date within the plan's 2017 plan year. The plan would include the value of the suspended benefits in determining UVBs for withdrawals in 2018 to 2027.
- After the 2027 plan year, the plan would not include the value of suspended benefits in determining UVBs.

Methods for Computing Withdrawal Liability/MPRA

- Contribution increases – These 3 types of contribution increases should be included when calculating withdrawal liability.

    1. Increases in contributions associated with increased levels of work, employment, or periods for which compensation is provided.

    2. Additional contributions used to provide an increase in benefits, including an increase in benefit accruals – so a contribution increase that funds an increase in accruals (benefit bearing) is not disregarded and must be determined actuarially.

    3. The withdrawal occurs after the expiration of the employer's collective bargaining agreement in the plan year the plan is no longer endangered or critical.

Partitions – Local 805 Pension and Plasterers & Cement Masons Local 94 Pension

Local 805 Pension (Teamsters)

- Partition order signed Nov. 16, 2018, and effective Jan. 1, 2019
- Plan covered about 2,000 participants in the New York, NY area
- Plan was about 25% funded and expected to become insolvent in the PY ending Mar. 31, 2022
- Benefits for about 500 participants were not reduced because of the statutory protections for older and disabled participants or were less than 110% of the PBGC guarantee amount
- The remaining participants will see future benefit reductions to 110% of the PBGC guarantee amount, an average reduction of 41% in benefits

Plasterers & Cement Masons Local 94 Pension

- Partition order signed Dec. 20, 2018, and effective May 1, 2019
- Plan covered about 100 participants in the Harrisburg, Pa. area
- Plan was about 45% funded and expected to become insolvent in the PY ending April 30, 2027
- Benefits for about 30 participants were not reduced because of the statutory protections for older and disabled participants or were less than 110% of the PBGC guarantee amount
- About 70 participants will see an average reduction of 38% in benefits

Amicus Briefs – Sun Capital and New York Times

Amicus Briefs

- *Sun Capital v. New England Teamsters Pension Fund*, No. 19-1002 (1st Cir. – appeal pending)(Amicus filed July 5, 2019)
- Scott Brass withdrew from the New England Teamsters Pension Fund; District Court held that two Sun Funds were under common control with Scott Brass because they were co-venturers in a joint venture.
- PBGC argued that: 1) the court should interpret ERISA's controlled group provisions consistent with broad statutory language, the statutory context, and ERISA's purpose; 2) the district court's conclusion that the Sun Funds formed a partnership is supported by the record and the controlled group liability provisions; and 3) the district court's determination that the partnership was a trade or business for purposes of ERISA liability is consistent with and furthers the goals of ERISA.

Amicus Briefs

- *New York Times v. Newspaper and Mail Deliverers Pension Fund*, No. 18-1140 (2d Cir. appeal dismissed) (Amicus filed Nov. 7, 2018)(case settled).
- The New York Times incurred two partial withdrawals and was assessed withdrawal liability; among other things it challenged the interest rate assumption on the basis that it was lower than the funding interest assumption.
- PBGC argued that: 1) the district court correctly held that ERISA does not require a plan's actuary to value vested benefits for withdrawal liability purposes using the funding interest assumption and 2) the district court failed to apply the ERISA presumption that the plan actuary's determination of the plan's unfunded vested benefits was correct, which impermissibly shifted the burden of proof from the employer to the fund – in so doing contradicting the correct holding that the funding interest assumption need not be applied.

Thank You