

# Chapter 12 – Pension Benefit Guaranty Corporation

## *Legislative History*

### SINGLE-EMPLOYER INSURANCE PLAN

The PBGC was established under the Employee Retirement Income Security Act of 1974 (ERISA, P.L. 93-406) for the purpose of insuring benefits under defined benefit pension plans. As originally structured, in the case of a single-employer plan, termination of a plan triggered the PBGC insurance mechanism. The contributing employer was liable to the PBGC for unfunded insured benefits up to 30 percent of the net worth of the employer. If unfunded insured liability exceeded this amount, the PBGC had to absorb the excess and spread the loss over insured plans. Employers generally faced no restrictions on their ability to terminate an underfunded plan.

#### *The Single Employer Pension Plan Amendments Act of 1986 (SEPPAA)*

Congress passed SEPPAA (title XI of P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985) in response to rapidly growing PBGC deficits. SEPPAA raised the per-participant premium from \$2.60 to \$8.50, established certain financial distress criteria that a sponsoring employer and every member of the employer's controlled group must meet in order to terminate an underfunded plan, expanded PBGC's employer liability claim, and created a new liability to plan participants for certain nonguaranteed benefits.

#### *Omnibus Budget Reconciliation Act of 1987 (OBRA 1987)*

The Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203) contained additional measures to strengthen the PBGC's long-term solvency. The act increased the PBGC's basic per-participant premium for single-employer plans to \$16 and added a variable rate premium for these plans tied to the degree of plan underfunding (capped at \$53 per participant). The act also expanded the PBGC's employer liability claim to include all plan benefit liabilities, provided that the PBGC share a portion of its recoveries from employers with plan participants, and required faster funding of plan benefits to reduce the PBGC's exposure in the event of plan termination. The act also contained other provisions relating to the plan termination distress criteria, the bankruptcy treatment of unpaid employer contributions, PBGC's lien authority, and various pension funding requirements.

#### *Retirement Protection Act of 1994 (RPA)*

In response to the persistent growth in pension underfunding, Congress passed significant reforms in the Retirement Protection Act (RPA, enacted December 8, 1994) as part of the GATT legislation (the Uruguay Round Agreements (P.L. 103-465)). The RPA strengthened the pension funding rules for underfunded plans by accelerating funding, eliminating double counting of certain funding credits, and constraining the assumptions that may be used to calculate pension contributions. RPA also required severely underfunded plans to maintain minimum levels of liquid assets. The RPA phased out the \$53 per-participant cap on the variable rate premium over a 3-year period as an incentive to improve funding in underfunded plans and made certain changes to the interest rate and mortality assumptions used to calculate plan underfunding. The RPA established a program under which the PBGC serves as a clearinghouse for benefits of missing participants in plans terminating in a standard (fully funded) termination.

#### *The Trade Act of 2002*

The Trade Act of 2002 (P.L. 107-210) provided individuals aged 55 to 64 who are receiving pensions from either program of the PBGC with a tax credit equal to 65 percent of the cost of their health insurance premiums.

*The Deficit Reduction Act of 2005*

The Deficit Reduction Act of 2005 (P.L. 109-171) increased the per capita premium for single-employer plans from \$19 to \$30 for 2006 and indexed the premium to the annual rate of growth in the national average wage, beginning in 2007. The DRA also created a new per-participant premium of \$1,250 per participant to be assessed on any underfunded single-employer plan that undergoes a distress termination or is involuntarily terminated by the PBGC, to be paid annually for each of the three years beginning the month following the date of termination and each anniversary, or if later, the employer's exit from bankruptcy. This premium is in addition to any other PBGC premiums that are due for the plan year. As enacted by the DRA, the special premium would not have applied to plans terminated after December 31, 2010.

*The Pension Protection Act of 2006 (PPA)*

Under prior law, a plan was exempted from the variable-rate premium of \$9 per \$1,000 of underfunding if it was not underfunded in any two consecutive years out of the previous three years. The Pension Protection Act of 2006 (P.L. 109-280) requires the variable premium to be assessed on all underfunded plans, regardless of the plan's funding status in earlier years.

The PPA prohibits shut-down benefits and other "contingent event benefits" from being paid by pension plans that are funded at less than 60% of full funding unless the employer makes a prescribed additional contribution. The PBGC guarantee for such benefits will be phased in over a five-year period commencing when the event occurs. This provision is not applicable for the first five years of a plan's existence.

The PPA made permanent the surcharge premium of \$1,250 per participant for certain distress terminations, which was added by the Deficit Reduction Act of 2005 and was to expire in 2010. The PPA also authorizes the PBGC to pay interest on overpayment of premiums. The PPA requires the director of the Pension Benefit Guaranty Corporation to be appointed by the President, subject to confirmation by the Senate Committee on Finance and Senate Committee on Health, Education, Labor and Pensions.

*The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010*

The funding obligations for pension plans increased sharply in 2008 as a result of the economic recession that began in December 2007. Three factors have contributed to the increase in DB pension plans sponsors' funding obligations: (1) the PPA changed some of the methods that plan sponsors use to value plan assets and liabilities; (2) the decline in the stock market in 2008 caused the value of pension plan assets to decrease because many pension plans hold part of their portfolios in equities; and (3) the decline in interest rates caused the value of pension plan benefit obligations to increase. Congress provided funding relief to DB pension plan sponsors in 2010 in The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192). The law allowed pension plan sponsors to amortize their funding shortfalls either over nine years, with the first two years of payments consisting of interest only on the amortization charge and the next seven years consisting of interest and principal, or over 15 years. The law also contained provisions that required plan sponsors that chose one of these amortization schedules to make additional contributions to the plan if the plan sponsors pay excess compensation or declare extraordinary dividends.

**MULTIEMPLOYER PLAN INSURANCE PROGRAM**

#### *Multiemployer Pension Plan Amendments Act of 1980*

Coverage for multiemployer plans under ERISA was structured similarly to that of single-employer plans. However, the PBGC was not required to insure benefits of multiemployer plans that terminated before July 1, 1978. Congress extended the deadline for mandatory pension coverage several times, until enactment of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA, P.L. 96-364). The MPPAA required more complete funding for multiemployer plans, especially those in financial distress. It also improved the ability of plans to collect contributions from employers. The MPPAA changed the insurable event that triggers PBGC protection to plan insolvency, rather than plan termination. Thus, if a multiemployer plan becomes financially unable to pay benefits at the guaranteed level when due, the PBGC will provide financial assistance to the plan, in the form of a loan. Finally, MPPAA imposed withdrawal liability on employers who ceased to contribute to a multiemployer plan.

#### *Consolidated Appropriations Act of 2001*

The Consolidated Appropriations Act of 2001 (P.L. 106-554) increased the benefit guarantee in multiemployer plans to the product of a participant's years of service multiplied by the sum of (1) 100 percent of the first \$11 of the monthly benefit accrual rate and (2) 75 percent of the next \$33 of the accrual rate.

#### *Trade Act of 2002*

The Trade Act of 2002 (P.L. 107-210) provided a tax credit equal to 65 percent of the premiums they pay for health insurance as an additional benefit available to plan participants aged 55 to 64 who are receiving pensions from either program of the PBGC.

#### *Deficit Reduction Act of 2005*

The Deficit Reduction Act of 2005 increased the flat-rate per participant premium for multiemployer defined benefit plans from \$2.60 to \$8.00. For the 2007 plan year and later plan years, the premium is indexed to the rate of growth of the national average wage.

#### *The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010*

Under the PPA, multiemployer pension plans can amortize their investment losses over 15 years. Under The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192) multiemployer plans could have (1) elected to amortize their net investment losses from 2008 and 2009 over 30 years if the plan sponsor can certify the plan's solvency over the amortization period; and (2) used asset valuation methods that result in asset values that range from 80% to 130% of market value.