

Preliminary Plan for Regulatory Review

This document sets forth the Pension Benefit Guaranty Corporation's preliminary plan for the review of its existing regulations, pursuant to Executive Order 13563 on Improving Regulation and Regulatory Review.

PBGC has already begun implementing EO 13563 by reconsidering several regulations PBGC had previously proposed. In addition, PBGC will be making changes to provide for more extensive public participation in rulemaking by adding public hearings to its process.

Background

The Pension Benefit Guaranty Corporation (PBGC) protects the pensions of about 44 million people in about 29,000 private defined benefit plans. PBGC pays benefits when the sponsors of those plans cannot. PBGC receives no funds from general tax revenues. All operations are financed by insurance premiums, investment income, assets from pension plans trusted by PBGC, and recoveries from the companies formerly responsible for the trusted plans.

To carry out these functions, PBGC issues regulations interpreting such matters as the termination process for defined benefit plans, establishment of procedures for premium payments, reporting and disclosure of actions by plans and their sponsors that may affect plan liability, and assessment and collection of employer liability.¹

On April 1, 2011, PBGC requested public comments on developing its preliminary plan. PBGC received comments from four organizations representing employers or pension professionals and a pension consulting firm.² PBGC will continue to accept additional comments as it finalizes its preliminary plan and engages in the regulatory review.

Principles

PBGC makes every effort to issue regulations that implement the law in ways that do not impede the maintenance of existing defined benefit plans or the establishment of new plans. PBGC attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, provide relief for small businesses, and assist plans to comply with applicable requirements. Despite the inherent complexity of pensions and of PBGC's activities, PBGC is committed to issuing simple, understandable, flexible, and timely regulations to help employers, practitioners, and participants.

¹ PBGC's regulations are in 29 CFR Chapter XL.

² The Request is posted at <http://www.pbgc.gov/Documents/2011-7805.pdf>. Comments received to date are posted on PBGC's Web site at [http://www.pbgc.gov/Documents/reducing-regulatory-burden-comments\(5\).pdf](http://www.pbgc.gov/Documents/reducing-regulatory-burden-comments(5).pdf). Any additional comments will be posted as they are received.

PBGC's preliminary regulatory review plan is designed to ensure that PBGC's regulations remain consistent with these principles and to improve its regulatory program and processes. Many changes have occurred in the decades since PBGC was established and began its regulatory program, including new legislation, changes in technology, and shifts in the economy or relevant industries. PBGC's review of existing regulations will take such changes into account in order to improve its regulations, always striving to find better alternatives. Further, to the extent practicable, PBGC will seek to rely on information sources, reporting mechanisms, and performance standards that are already established and accepted by the regulated community, thereby reducing duplication and costs, as well as increasing regulatory coordination, simplicity, and flexibility.

Priorities for Review

Regulations that are not consistent with these principles will be prioritized for review to determine whether they should be modified, streamlined, expanded, or repealed as appropriate. PBGC will also prioritize regulations for review based on the following criteria³:

- Regulations affected by a fundamental change since originally promulgated, including new legislation, changes in technology, and shifts in the economy or relevant industry.
- Regulations that have raised concerns with PBGC's regulated community.
- Regulations identified through internal surveys of PBGC departments.

In the spirit of Executive Order 13563, PBGC will apply the retrospective review to all of its regulations, although it will focus on significant regulations.

Issues in Review

In reviewing a regulation, PBGC will compare the actual consequences of the regulation with the pre-promulgation projections and expectations about the regulation's effectiveness, benefits, and burdens. In each case, PBGC will ask:

- Is the regulation effective?
 - Is the regulation accomplishing its stated goals?
 - What has been the actual burden?
 - Are there unintended beneficial or costly side effects?
- Are there better alternatives?

³ If PBGC had regulations that were considered economically significant (under the terms of Executive Order 12866), these would be a priority.

PBGC will consider the full range of distributive impacts, rather than focusing exclusively on impacts to a single community, as well as impacts on PBGC's broader regulatory program.

Initial List of Rules for Review

Taking into account public comments on its April 1 Request and internal feedback, PBGC intends to review the following regulations:

- Reportable Events. In response to Executive Order 13563 and comments on its November 2009 proposed rule on Reportable Events,⁴ PBGC was already planning to re-propose this rule with an emphasis toward reducing the unnecessary burdens on employers and plans. For example, PBGC is considering whether and to what extent it can take advantage of other existing reporting requirements and methods to avoid burdening companies and plans, and how to implement industry's suggestion that different reporting requirements should apply in circumstances where the risk to PBGC is low or compliance is especially burdensome.
- ERISA section 4062(e). In light of industry comments, PBGC will also reconsider its 2010 proposed rule⁵ that would provide guidance on the applicability and enforcement of ERISA section 4062(e). The statutory provision provides for reporting of and liability for certain substantial cessations of operations by employers that maintain single-employer plans.
- Voluntary Correction Program. Two comments on regulatory review suggested that PBGC expand its current voluntary correction program for errors related to filings and other requirements. PBGC will consider this suggestion in conjunction with changes to its current premium and information penalty policies. Expansion of the program could potentially encourage compliance and reduce compliance costs.
- Premiums. One commenter indicated that some small plans with year-end-valuation dates have difficulty meeting the filing deadline because such plans traditionally do not have their actuarial valuation for the prior year completed by the due date (i.e., four months after year-end). In light of this concern, PBGC will review parts 4006 (Premium Rates) and 4007 (Payment of Premiums) to determine whether changes could be made that would enable small plans to streamline their premium and funding valuation procedures and in doing so reduce actuarial fees.
- Changes in other regulations to improve plan and PBGC administration. PBGC will review selected aspects of 29 CFR parts 4022 (Benefits payable in terminated single-employer plans) and 4044 (Allocation of assets in single-employer plans), and of Subchapter 1 (Withdrawal Liability for Multiemployer Plans) to eliminate obsolete

⁴ 74 Fed. Reg. 61247 (Nov. 23, 2009).

⁵ 75 Fed. Reg. 48283 (Aug. 10, 2010).

provisions, simplify language, and fill in gaps where guidance would be helpful to the public and the relevant operating departments. These steps could have the effect of reducing the overall burden on plan sponsors in determining how to comply with the applicable rules. Eliminating certain provisions may reduce the time and cost spent identifying items plan sponsors need to comply with. Simplifying language and developing gap-filling guidance could reduce the amount of time and cost spent on interpreting rule provisions. Improving PBGC administration allows PBGC to better allocate resources. PBGC may also in the future consider reviewing its regulations on annual valuation requirements for terminated multiemployer plans (Section 4041A.24) and reporting requirements for mergers between multiemployer plans (part 4231) to determine whether some requirements may be unnecessary, which could help reduce certain administrative costs and preserve plan assets for the benefit of participants.

- Elimination of obsolete regulation. PBGC will remove part 4011 (Disclosure to Participants) from its regulations, since that regulation does not apply to plan years beginning on or after January 1, 2007. Eliminating this regulation will reduce the amount of time and cost spent on identifying items that plan sponsors need to comply with.
- ERISA section 4010. In conformity with several comments on regulatory review, PBGC will review part 4010 (Annual Financial and Actuarial Information Reporting) and the filing application to see whether it can reduce burden while preserving its ability to receive critical information.

In addition, PBGC will review a regulation as soon as practicable following a fundamental change in circumstances that affects the regulation or in response to comments from stakeholders or relevant operating Departments. Significant regulations will be reviewed at least every ten years.

PBGC will prioritize regulatory changes resulting from this review in the context of its broader regulatory agenda, which includes regulations to implement statutory changes.⁶ Thus, this review will supplement that agenda, rather than displace it.

Structure and Staffing

Review of PBGC regulations will be conducted by an inter-departmental working group consisting of representatives from relevant operational, legal, and policy departments. The review project will be led by PBGC's Deputy Director for Policy – a high level official who can secure cooperation across the Corporation and is independent from operational departments.

⁶ In particular, a proposed regulation to implement Pension Protection Act of 2006's expansion of PBGC's Missing Participants program (part 4050) is far along in development and expected to be issued in 2011.

Coordination

Executive Order 13563 calls for greater harmonization and coordination within and across agencies. Accordingly, PBGC will review selected rules to analyze their impact on the pension termination insurance program and broader federal agency regulation of pensions. PBGC will coordinate its review with the other ERISA agencies (Department of Labor, Department of Treasury, Internal Revenue Service), its Board agencies (in addition to Labor and Treasury, the Department of Commerce), and the Office of Management and Budget.

Consultation and Public Participation

Executive Order 13563 calls for an “open exchange” of information among government officials, experts, stakeholders, and the public.

One commenter (an association of major employers that provide defined benefit plans) recommended that PBGC create a stakeholder advisory group that would meet regularly to review regulations and discuss other issues related to PBGC’s impact on plan sponsors. PBGC already has a statutory Advisory Committee, which includes persons from various constituencies, including employers, employees, and the public. PBGC will consult with the Advisory Committee to develop a useful role in regulatory activities.

In addition, PBGC is changing its traditional practices for review of its regulations and wants to involve the public more often in that process. Accordingly PBGC will:

- Hold public hearings on major regulations, rather than relying solely on written comments. PBGS also plans to provide additional means for public involvement, including on-line town hall meetings and continuing opportunity for public comment on PBGC’s Web site.
- Post this preliminary plan for regulatory review and the final plan on PBGC’s Web site for public comment, and also post all comments.
- Include information on review of specific regulations in PBGC’s semi-annual Regulatory Agenda and annual Statement of Regulatory and Deregulatory Priorities (both are available on www.reginfo.gov); PBGC plans to include an explanation of its review conclusions in information accompanying any such regulatory changes.

PBGC will review its final regulatory review plan from time to time or in response to public comment and make appropriate modifications as required to ensure its effectiveness.