

**GAO**

Report to the Chairman, Committee on  
Education and Labor, House of  
Representatives

---

October 2010

# PRIVATE PENSIONS

## Changes Needed to Better Protect Multiemployer Pension Benefits



**GAO**

Accountability \* Integrity \* Reliability

---

## Why GAO Did This Study

Thirty years ago Congress enacted protections to ensure that participants in multiemployer pension plans received their promised benefits. These defined benefit plans are created by collective bargaining agreements covering more than one employer. Today, these plans provide pension coverage to over 10.4 million participants in approximately 1,500 multiemployer plans insured by the Pension Benefit Guaranty Corporation (PBGC).

In this report, GAO examines (1) the current status of nation's multiemployer plans; (2) steps PBGC takes to monitor the health of these plans; (3) the structure of multiemployer plans in other countries; and (4) statutory and regulatory changes that could help plans provide participants with the benefits they are due. To address these questions, GAO analyzed government and industry data and interviewed government officials, pension experts and plan practitioners in the United States, the Netherlands, Denmark, United Kingdom, and Canada.

## What GAO Recommends

GAO is asking Congress to consider ways to eliminate duplicative reporting requirements and establish a shared database. GAO is also recommending that PBGC, IRS, and Labor work together to improve data collection and monitoring efforts. In commenting on a draft of this report, the agencies generally agreed to improve their coordination efforts.

View [GAO-11-79](#) or key components. For more information, contact Barbara D. Bovbjerg at (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov).

## PRIVATE PENSIONS

### Changes Needed to Better Protect Multiemployer Pension Benefits

## What GAO Found

Most multiemployer plans report large funding shortfalls and face an uncertain future. U.S. multiemployer plans have not been fully funded in aggregate since 2000 and the recent economic recession had a severely negative impact on the funded status of multiemployer plans. Annual data from the Internal Revenue Service (IRS) show that the proportion of multiemployer plans less than 80 percent funded rose from 23 percent of plans in 2008 to 68 percent of plans in 2009. While some plans may be able to improve their funded status as the economy improves, many plans will continue to face demographic challenges that threaten their long-term financial outlook—including an aging workforce and few opportunities to attract new employers and workers into plans.

PBGC monitors the health of multiemployer plans, but can provide little assistance to troubled plans until they become insolvent, at which point PBGC provides loans to allow insolvent plans to continue paying participant benefits at the guaranteed level (currently \$12,870 per year for 30 years of employment). PBGC receives more current information on plan status, but uses older plan data to determine which plans are at the greatest risk of insolvency, because these data are audited, comprehensive, and PBGC's monitoring system was designed for them.

The private pension systems in the countries GAO studied face short-term and long-term challenges similar to those that U.S. multiemployer plans currently face, including plan funding deficiencies and an aging workforce. The plans in these countries are subject to a range of funding, reporting, and regulatory requirements that require plans to interact frequently with pension regulators. Multiemployer plans in these countries have a number of tools available to improve and maintain their funded status, such as increasing contributions and reducing the rate of benefit accruals.

The statutory and regulatory framework for multiemployer plans is not structured to assist plans on an ongoing basis and promotes little interaction among the federal agencies responsible for monitoring and assisting plans and safeguarding participant benefits. The lack of timely and accurate information and interagency collaboration hampers efforts to monitor and assist plans, and to enforce plan requirements. The recent economic downturn revealed that these plans, like most pension plans, are vulnerable to rapid changes in their funded status. Plans in the worst condition may find that the options of increasing employer contributions or reducing benefits are insufficient to address their underfunding and demographic challenges. For these plans, the effects of the economic downturn, declines in collective bargaining, the withdrawal of contributing employers, and an aging workforce will likely increase their risk of insolvency. Without additional options to address plan underfunding or to attract new employers to contribute to plans, plans may be more likely to require financial assistance from PBGC. Additional claims would further strain PBGC's insurance program that, already in deficit, it can ill afford.

---

# Contents

---

<b>Letter</b>		1
	Background	3
	Multiemployer Plans Reported Large Funding Shortfalls and Face an Uncertain Future	11
	PBGC Monitors the Health of Multiemployer Plans, but Does Not Assist Troubled Plans on an Ongoing Basis	19
	Pension Structures in Other Countries Provide Multiemployer Plans with Options to Improve Funding	27
	Changes to U.S. Multiemployer Plan Framework Could Help to Protect Pension Benefits	34
	Conclusions	43
	Matters for Congressional Consideration	44
	Recommendations for Executive Action	44
	Agency Comments and Our Evaluation	45
<b>Appendix I</b>	<b>Objectives, Scope, and Methodology</b>	47
<b>Appendix II</b>	<b>Comments from the Department of Labor</b>	50
<b>Appendix III</b>	<b>Comments from the Department of the Treasury</b>	53
<b>Appendix IV</b>	<b>Comments from the Pension Benefit Guaranty Corporation</b>	56
<b>Appendix V</b>	<b>GAO Contact and Staff Acknowledgments</b>	59
<b>Tables</b>		
	Table 1: PPA Funding Zone Status and Reporting Requirements	5
	Table 2: Selected Differences between Single-employer Plans and Multiemployer Plans	7
	Table 3: Funding Zone Status of Multiemployer Plans, as Certified with IRS, Tax Years 2008 and 2009	14
	Table 4: Classification of Plans on PBGC's Contingency List	19

---

Table 5: Multiemployer Plan Information Filed with PBGC	24
Table 6: Comparison of Select Economic and Demographic Characteristics in the Studied Countries and the United States (2008)	28
Table 7: Comparison of Multiemployer Plan Structures in the Studied Countries and the United States	29
Table 8: Reporting Requirements for Multiemployer Plans in the Studied Countries	31
Table 9: Monitoring of Multiemployer Plans in the Studied Countries	32
Table 10: Recovery Periods and Tools Available to Improve Plan Funded Status in the Studied Countries	33
Table 11: Comparison of Multiemployer Plan Status Information Received by Federal Agencies, 2008 and 2009	35
Table 12: Experts' Suggestions to Improve PBGC's Assistance to Plans	38
Table 13: Experts' Suggestions to Improve the Multiemployer Framework	41

---

## Figures

Figure 1: PBGC-Insured Multiemployer Plans and Participants, 1980 through 2009	9
Figure 2: PBGC-Insured Multiemployer Plan Participants, by Industry, 2000 through 2008	10
Figure 3: Aggregate Funded Status and Funding Level of PBGC-Insured Multiemployer Plans, 1980 through 2007	11
Figure 4: Funded Status of PBGC-Insured Multiemployer Plans, by Industry, 2000 through 2007	13
Figure 5: PBGC-Insured Multiemployer Plan Participation, by Participant Status, 1980 through 2007	16
Figure 6: Private Sector Union Affiliation, by Industry, 2000 through 2009	17
Figure 7: PBGC Multiemployer Insurance Program Assets, Liabilities, and Net Position, Fiscal Years 1980 through 2009	18
Figure 8: PBGC-Insured Multiemployer Plans on PBGC's Contingency List, Fiscal Years 2000 through 2009	21
Figure 9: Multiemployer Plans Receiving PBGC's Financial Assistance and Amounts Received, 1981 through 2009	22

---

---

## Abbreviations

AFN	Annual Funding Notice
BLS	Bureau of Labor Statistics
DB	defined benefit
EBSA	Employee Benefits Security Administration
EPCU	Employee Plans Compliance Unit
ERISA	Employee Retirement Income Security Act of 1974
IRS	Internal Revenue Service
ME-PIMS	Multiemployer Pension Insurance Modeling System
MPPAA	Multiemployer Pension Plan Amendments Act of 1980
NLRA	National Labor Relations Act of 1935
OECD	Organisation of Economic Co-operation and Development
PBGC	Pension Benefit Guaranty Corporation
PIMS	Pension Insurance Modeling System
PPA	Pension Protection Act of 2006
WRERA	Worker, Retiree, and Employer Recovery Act of 2008

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office  
Washington, DC 20548

October 18, 2010

The Honorable George Miller  
Chairman  
Committee on Education and Labor  
House of Representatives

Dear Mr. Chairman:

Thirty years ago Congress enacted new protections for multiemployer pension plans to better ensure that they could fulfill their promise to pay benefits to plan participants in retirement. Today, these plans continue to constitute an important part of the nation's private employer pension system. For the purposes of this report, multiemployer plans are defined benefit (DB) plans established through collectively bargained pension agreements between labor unions and two or more employers.<sup>1</sup> In 2009, there were about 1,500 multiemployer plans covering more than 10.4 million workers and retirees—approximately 1 of every 4 workers and retirees in the United States covered by a private-sector DB plan. Multiemployer plans are distinct from single-employer plans, which are established and maintained by one employer, and multiple-employer plans, many of which maintain separate funding accounts for each employer. Multiemployer plans cover unionized workers in many industries, including trucking, retail food, construction, mining, and garment, and provide some portability of benefits. Workers in multiemployer plans can continue accruing pension benefits when they change jobs if their new employer is a contributing employer in the same plan. Such arrangements are particularly suited to workers in these industries, who change jobs frequently over the course of a career.

The Employee Retirement Income Security Act of 1974 (ERISA) created the Pension Benefit Guaranty Corporation (PBGC) as a U. S. government corporation to provide plan termination insurance for certain single- and multiemployer pension plans that become unable to provide pension benefits. For multiemployer plans, PBGC guarantees, within prescribed

---

<sup>1</sup>Collective bargaining has been the primary means by which workers can negotiate, through unions, the terms of their pension plan. The National Labor Relations Act (NLRA) required employers to bargain with union representatives over wages and other conditions of employment, and subsequent court decisions established that employee benefit plans can be among those conditions.

---

limits, participant benefits when a covered plan becomes insolvent and cannot pay such benefits when due for a plan year. PBGC provides loans to insolvent multiemployer plans to allow them to continue paying benefits at the PBGC guarantee level, which in 2010, was \$12,870 per year, based on 30 years of employment.

In 2004, we reported that the multiemployer system, in contrast with private single-employer plans, operates in a framework that redistributes risk toward employers and participants and away from the government and potentially the taxpayer.<sup>2</sup> This framework, we noted, can create important incentives for interested parties to resolve financial difficulties, such as plan underfunding. However, we also found that weak economic conditions in the early 2000s and declines in interest rates and equity markets had increased the financial stress on the overall multiemployer plan framework and each of its key stakeholders. We identified several challenges to the long-term health of these plans, including a lack of employer funding flexibility compared with single-employer plans and the national decline of collective bargaining. Earlier this year we testified that deterioration in economic conditions had increased stress on multiemployer plans, which continue to face funding shortages and other challenges.<sup>3</sup>

Given these ongoing concerns about multiemployer plans, this report addresses the following questions:

- (1) What is the current status of the nation's multiemployer pension plans?
- (2) What steps does PBGC take to monitor the health of these plans?
- (3) What is the structure of multiemployer plans in other countries?
- (4) What statutory and regulatory changes, if any, could help plans to continue to provide participants with the benefits due to them?

---

<sup>2</sup>GAO, *Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges*, [GAO-04-423](#) (Washington, D.C.: Mar. 26, 2004), and GAO, *Private Pensions: Multiemployer Pensions Face Key Challenges to Their Long-Term Prospects*, [GAO-04-542T](#), (Washington, D.C.: Mar. 18, 2004).

<sup>3</sup>GAO, *Private Pensions: Long-standing Challenges Remain for Multiemployer Pension Plans* [GAO-10-708T](#), (Washington, D.C.: May 27, 2010).

---

To identify the current status of the nation’s multiemployer pension plans, we analyzed data from PBGC, the Department of Labor’s Employee Benefits Security Administration (EBSA), and the Department of the Treasury’s Internal Revenue Service (IRS) and reviewed relevant industry studies. To determine the steps PBGC takes to monitor the health of these plans, we interviewed PBGC officials and reviewed PBGC’s multiemployer policies and procedures. We also reviewed relevant federal laws and regulations. To understand the structure of multiemployer plans in other countries, we conducted site visits to four countries—the Netherlands, Denmark, United Kingdom, and Canada—and we worked with U.S. State Department officials to identify and interview government officials and various pension experts in these countries. We did not conduct an independent legal analysis of foreign laws. To identify what changes, if any, are needed to help plans continue to provide participants with the benefits due them, we interviewed a diverse range of multiemployer plan experts and practitioners in the United States and abroad. We assessed the reliability of the data used in this report and determined that they were reliable for our purposes.

We conducted this performance audit from September 2009 through October 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I provides more detail on the scope and methodology used in developing this report.

---

## Background

The Taft Hartley Act of 1947 established terms for negotiating employee benefits in collectively bargained multiemployer plans and placed certain restrictions on the operation of these plans, including the placement of plan assets in a trust.<sup>4</sup> For example, the law required a collectively bargained plan and its assets to be managed by a joint board of trustees equally representative of management and labor. It further required plan assets to be placed in a trust fund, legally distinct from the union and the employers, for the sole and exclusive benefit of the plan beneficiaries. In 1974, Congress passed ERISA to protect the interests of participants and

---

<sup>4</sup>Pub. L. No. 80-101.



---

beneficiaries covered by private sector employee benefit plans.<sup>5</sup> Title IV of ERISA created PBGC as a U. S. government corporation to provide plan termination insurance for certain defined benefit pension plans that are unable to pay promised benefits. PBGC operates two distinct pension insurance programs, one for multiemployer plans and one for single-employer plans. These programs have separate insurance funds as well as different insurance coverage rules and benefit guarantees. The multiemployer insurance program and PBGC's day-to-day operations are financed by annual premiums paid by the plans and by investment returns on PBGC's assets.<sup>6</sup> In turn, PBGC guarantees benefits, within prescribed limits, when a multiemployer plan is insolvent and unable to pay the basic PBGC-guaranteed benefits when due for the plan year.

In 1980, Congress sought to protect worker pensions in multiemployer plans by enacting the Multiemployer Pension Plan Amendments Act (MPPAA).<sup>7</sup> Among other things, MPPAA (1) strengthened funding requirements to help ensure plans accumulate enough assets to pay for promised benefits, and (2) made employers, unless relieved by special provisions, liable for their share of unfunded plan benefits when they withdraw from a multiemployer plan. The amount owed by a withdrawing employer is based upon a proportional share of a plan's unfunded vested benefits.<sup>8</sup> Liabilities that cannot be collected from a withdrawing employer, for example, one in bankruptcy, are to be "rolled over" and eventually funded by the plan's remaining employers.<sup>9</sup> These changes were made to discourage employer withdrawals from a plan.

---

<sup>5</sup>29 U.S.C. § 1001 nt.

<sup>6</sup>The single-employer insurance program receives additional financing from assets acquired from terminated single-employer plans and by recoveries from employers responsible for underfunded terminated single-employer plans. PBGC receives no funds from federal tax revenues, but it is authorized under ERISA to borrow up to \$100 million from the federal treasury if it has inadequate resources to meet its responsibilities.

<sup>7</sup>Pub. L. No. 96-364.

<sup>8</sup>Vested benefits are benefits that are no longer subject to risk of forfeiture. Unfunded vested benefits are the difference between the present value of a plan's vested benefits and the value of plan assets as determined in accordance with Title IV of ERISA.

<sup>9</sup>These liabilities are frequently referred to as orphaned liabilities.

The Pension Protection Act of 2006 (PPA) established new funding and disclosure requirements for multiemployer plans.<sup>10</sup> (See table 1.)

**Table 1: PPA Funding Zone Status and Reporting Requirements**

Funding zone status	Funded percentage	Plan reporting requirements			
		Annual Funding Notice (AFN)	Annual actuarial certification of funded status	Notice of endangered or critical status	Funding improvement plan or rehabilitation plan
Safe	≥80	•	•		
Endangered	65-80	•	•	•	Funding improvement plan
Critical	<65	•	•	•	Rehabilitation plan
	<b>Filing requirements</b>	Within 120 days after the close of the plan year	Within 90 days after the start of the plan year	Within 30 days after actuarial certification	Adopted within 240 days after the deadline for actuarial certification
	<b>Recipients</b>	PBGC, participants, beneficiaries, participating unions and contributing employers	Secretary of the Treasury and trustees	PBGC, Department of Labor, participants, beneficiaries, participating unions and contributing employers	Participating unions and contributing employers must receive schedules within 30 days of adoption

Source: GAO analysis of the Pension Protection Act of 2006.

PPA requires trustees of plans certified in endangered or critical status to take specific actions to improve the plans' financial status, such as developing schedules to increase contributions or reduce benefits.<sup>11</sup> Plans certified as endangered must adopt a funding improvement plan, which

<sup>10</sup>Pub. L. No. 109-280.

<sup>11</sup>Under PPA, a plan is considered to be in endangered status if it is less than 80 percent funded or if the plan is projected to have a funding deficiency within 7 years. A plan that is less than 80 percent funded and is projected to have a funding deficiency within 7 years is considered to be seriously endangered. A multiemployer plan is considered to be in critical status if (1) it is less than 65 percent funded and has a projected funding deficiency within 5 years or will be unable to pay benefits within 7 years; (2) it has a projected funding deficiency within 4 years or will be unable to pay benefits within 5 years (regardless of its funded percentage); or (3) its liabilities for inactive participants are greater than its liabilities for active participants, its contributions are less than carrying costs, and a funding deficiency is projected within 5 years.

---

outlines steps the plan will take to increase the plan's funded status over a 10-year period or, in some cases, longer. Plans certified as critical must adopt a rehabilitation plan, which outlines actions, to enable the plan to cease to be in critical status by the end of a 10-year rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions.<sup>12</sup> To assist plans in critical status, PPA amended ERISA to allow these plans to reduce or eliminate adjustable benefits, such as early retirement benefits, post-retirement death benefits, and disability benefits. In addition, critical status plans are generally exempt from the excise taxes that IRS can assess on plans with funding deficiencies.<sup>13</sup>

The funding requirements of PPA took effect just as the nation entered a severe economic recession in December 2007. As a result, Congress enacted the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) to provide multiemployer plans with temporary relief from some PPA requirements by allowing multiemployer plans to temporarily freeze their funded status at the previous year's level.<sup>14</sup> The freeze allows plans to delay creation of, or updates to, an existing funding improvement plan or rehabilitation plan, or postpone other steps required under PPA.<sup>15</sup> WRERA also requires plans to send a notice to all participants and beneficiaries, bargaining parties, PBGC, and the Department of Labor indicating that the election to freeze the status of a plan does not mean that the funded status of the plan has improved. WRERA also provided for a 3-year extension of a plan's funding improvement or rehabilitation period.

---

<sup>12</sup>26 U.S.C. § 432(e).

<sup>13</sup>PPA specified that plans in critical status may include in their rehabilitation plans reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals, or increases in contributions.

<sup>14</sup>Pub. L. No. 110-458.

<sup>15</sup>Section 204(b) of WRERA provides a special rule for multiemployer plans that would be in critical status for the election year if they had not elected to freeze the plan's funded status. In particular, if the plan has been certified by the plan actuary to be in critical status for the election year, then the plan is treated as being in critical status for that year for purposes of applying the excise tax exception under section 4971(g)(1)(A) of the Internal Revenue Code.

Although both single-employer and multiemployer plans are subject to the rules outlined in Title IV of ERISA, there are several important differences between the plan types that affect the structure and stability of each type of plan. (See table 2.)

**Table 2: Selected Differences between Single-employer Plans and Multiemployer Plans**

<b>Plan characteristic</b>	<b>Single-employer plans</b>	<b>Multiemployer plans</b>
PBGC benefit guarantee levels	PBGC's guarantees benefits up to \$54,000 per year for a retiree at age 65. Benefit amounts are indexed for inflation.	PBGC guarantees benefits of \$12,870 per year, based on 30 years of employment. Benefit amounts are not indexed for inflation.
PBGC premium structure	In 2010, plans pay PBGC a flat rate premium of \$35 per participant that is indexed for inflation. Plans are also subject to a variable rate premium based on underfunding and termination premiums.	In 2010, plans pay PBGC an annual flat rate premium of \$9 per participant. The premium is indexed for inflation.
Insurable events	The insurable event is generally termination of an underfunded plan, after which PBGC assumes responsibility and pays benefits directly to participants.	The insurable event is plan insolvency.
Provision of financial assistance	PBGC provides no financial assistance to plans but instead takes over terminated underfunded plans as trustee.	PBGC provides loans to plans when they become insolvent, and a multiemployer plan need not be terminated to qualify for financial assistance. Insolvent multiemployer plans also are required to reduce or suspend payment of any portion of benefits to beneficiaries that exceeds PBGC's guarantee level. If a plan recovers from insolvency, it must begin repaying the PBGC loan.
Fiduciary and settlor function	Employer sponsor generally assumes fiduciary role in addition to its settlor role.	Individual employers do not assume a fiduciary role in plan management, which is instead handled by a board of trustees.
Risk distribution	Plans generally do not share the risk with other employers.	Plans typically continue to operate after an individual employer, or sponsor, goes out of business because the plan's remaining employers are jointly liable for funding benefits for all vested participants.
Portability of benefits	Plans are established and maintained by only one employer and their benefits are not normally portable.	Plans provide participants some benefit portability because they allow workers to continue to accrue pension benefits when they change jobs as long as their new employer also participates in the same plan.
Ability to adjust contribution and benefit levels	Employer sponsors, depending on their employees' bargaining rights, may make adjustments to future contributions and benefits according to the company's fiscal condition provided that minimum funding requirements are met.	Individual employers cannot adjust their plan contributions at will and may be restricted in making changes until the collective bargaining agreement comes up for renegotiation, typically once every 2 or 3 years.

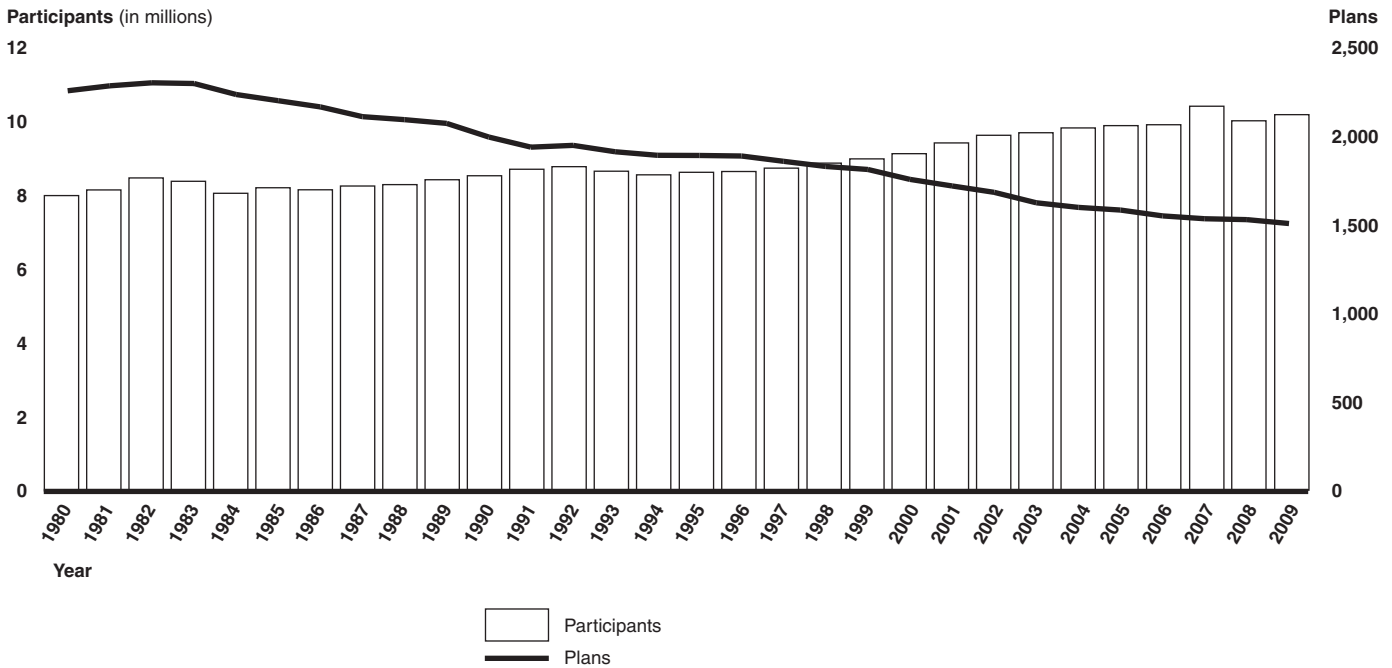
<b>Plan characteristic</b>	<b>Single-employer plans</b>	<b>Multiemployer plans</b>
Plan terminations	PBGC assumes trusteeship and administers payment of participant benefits when an underfunded plan terminates.	If an employer withdraws from a plan, the accrued benefits for its workers stay in and are administered by the plan. The plan terminates by mass withdrawal of all contributing employers. When a plan becomes insolvent, PBGC does not take over trusteeship but instead provides financial assistance to its trustees, who continue to administer the plan until all guaranteed benefits are paid out.
Employer withdrawal	There is no withdrawal liability for plan sponsors. However, plan sponsors are liable for benefits of its employees and to PBGC for any underfunding.	An employer seeking to withdraw from a plan is liable for its allocable share of the plan's unfunded vested benefits for all employees covered by the plan. In cases of bankruptcy, the remaining employers in the plan assume responsibility for funding benefits to the bankrupt employer's participants. <sup>a</sup>

Source: GAO analysis of ERISA, PBGC documents, and prior GAO reports.

<sup>a</sup>PBGC officials said that this greater financial risk for employers and lower guaranteed benefit level for participants in multiemployer plans, in practice, creates incentives for employers, workers, and their collective bargaining representatives to avoid insolvency and find solutions to a plan's financial difficulties.

The overall number of multiemployer plans insured by PBGC has decreased steadily since the 1980s as a result of plan mergers and terminations. At the same time, the aggregate number of participants—including active and inactive—has continued to rise. (See fig. 1.)

**Figure 1: PBGC-Insured Multiemployer Plans and Participants, 1980 through 2009**

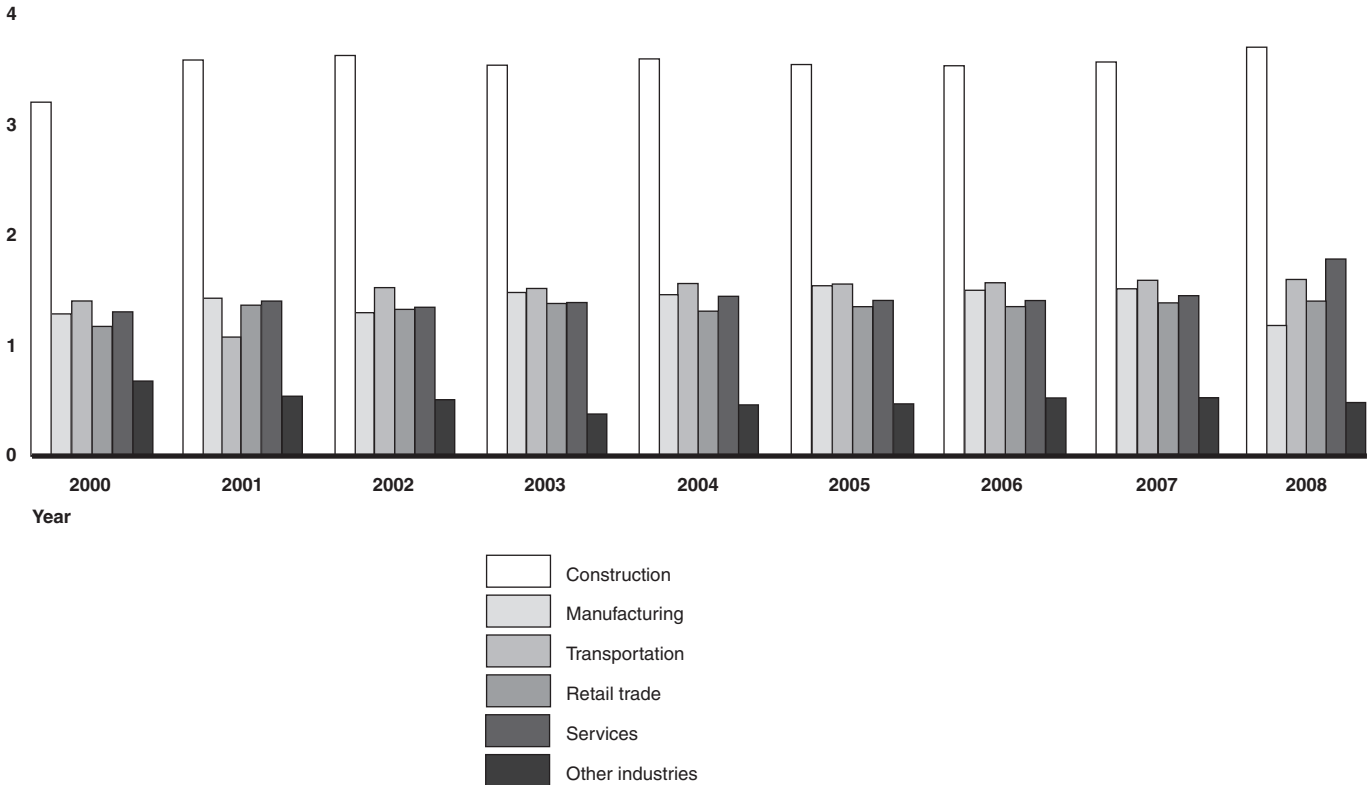


Source: PBGC annual *Pension Insurance Data Books*.

The number of participants in multiemployer plans also varies by industry. While PBGC covers workers in all major industrial sectors, the construction trades consistently account for over one-third of all covered multiemployer plan participants, totaling 36 percent in 2008. Other industries, including transportation and manufacturing, account for a smaller portion of participants, roughly 15 percent in 2007. (See fig. 2.)

**Figure 2: PBGC-Insured Multiemployer Plan Participants, by Industry, 2000 through 2008**

Participants (in millions)



Source: GAO analysis of PBGC annual *Pension Insurance Data Books*.

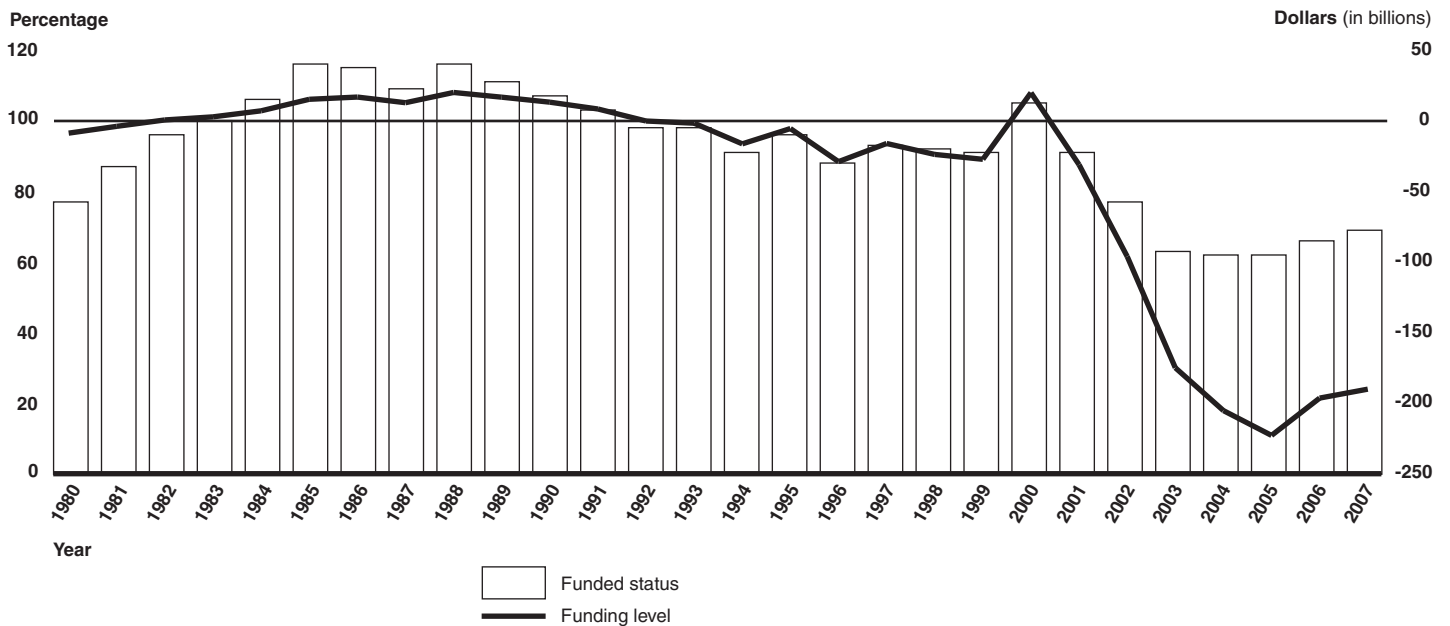
Note: PBGC draws these data from annual premium filings in which plans self-report their industry classification based on the predominant business activity of all employers in the plan. The industry classification categories are based on principal business activity codes used in the North American Industry Classification System. Additionally, the “Other Industries” category is made up of industries that individually account for less than 3 percent of all PBGC-insured multiemployer plan participants, including Agriculture, Mining, Information, Wholesale Trade, Finance, Insurance, and Real Estate. The 2001 participant data presented here are from PBGC’s Pension Insurance Data Book 2002. PBGC published different 2001 participant data in its Pension Insurance Data Book 2001.

# Multiemployer Plans Reported Large Funding Shortfalls and Face an Uncertain Future

## Multiemployer Plans Have Experienced General Funding Declines Since 2000

Multiple data sources that we examined indicate that most multiemployer plans experienced steep declines in their funded status in recent years. According to PBGC, multiemployer plans in aggregate have not been fully funded—at 100 percent or above level—since 2000 and their net funded status has declined significantly through 2007, the last date for which PBGC data are available. While plans are considered “safe” if their funded status is at least 80 percent, the aggregate funded status—the percentage of benefits covered by plan assets—of multiemployer plans insured by PBGC declined from 105 percent in 2000 to 69 percent in 2007. (See fig. 3.)

**Figure 3: Aggregate Funded Status and Funding Level of PBGC-Insured Multiemployer Plans, 1980 through 2007**



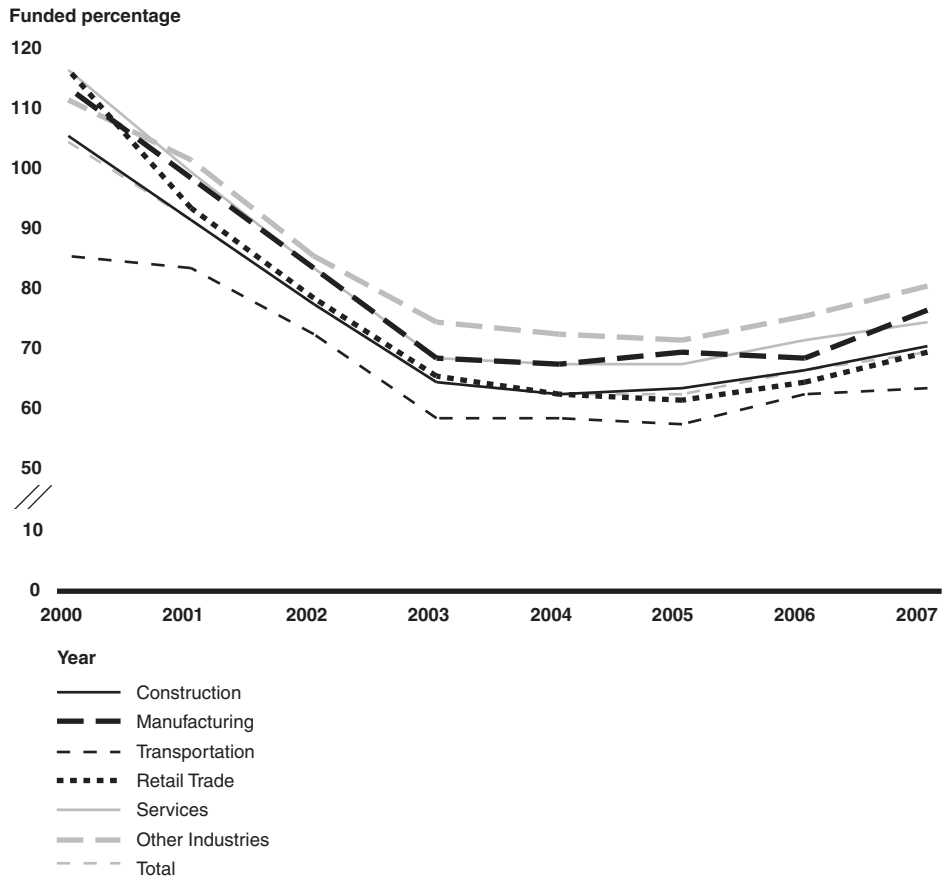
Source: GAO analysis of PBGC annual *Pension Insurance Data Books*.



---

The funded status of multiemployer plans insured by PBGC varies significantly by industry sector within which the plan operates. According to PBGC data, while all industries generally follow the same trend in funded status, plans in the transportation industry have since 2000 reported a consistently lower funded status than other industries. For example, in 2007, the aggregate funded status for plans in the transportation industry was 63 percent in contrast to the overall average of 69 percent. Furthermore, in 2000, the last year that the aggregate funded status of all multiemployer plans was over 100 percent, the funded status of multiemployer plans in the retail trade and services industries was about 30 percent higher than the funded status of plans in the transportation industry. (See fig. 4.) The extent of underfunding in multiemployer plans also varies by industry with the construction and transportation industries accounting for 71 percent of the underfunding of all PBGC-insured multiemployer plans in 2007.

**Figure 4: Funded Status of PBGC-Insured Multiemployer Plans, by Industry, 2000 through 2007**



Source: GAO analysis of PBGC annual *Pension Insurance Data Books*.

Note: PBGC draws these data from annual Form 5500 filings in which plans self-report their industry classification based on the predominant business activity of all employers in the plan. The industry classification categories are based on principal business activity codes used in the North American Industry Classification System. Additionally, the “Other Industries” category is made up of industries that individually account for less than 3 percent of all PBGC-insured multiemployer plan participants, including Agriculture, Mining, Information, and Wholesale Trade.

Since 2007, the last year for which data are available, aggregate plan funded status has declined further as a result of investment market declines. While the rapid drop in funded status, like the economic conditions that caused it, was severe, experts said that its effect on plans was similar to what happened to plans during the market correction of 2000 to 2002. For example, experts said that some plans, learning from the downturn from 2000 to 2002, took remedial steps in the following years,

such as increasing contributions, and likely fared better in the recent recession. In contrast, other plans did not change course after the 2000 to 2002 downturn in the hope that market returns would erase their deficits and are now the plans in the most critical financial condition.

### Many Multiemployer Plans Reported Large Funding Shortfalls during the Recent Economic Downturn

Although funded status was in a general decline since 2000, the economic recession that began in December 2007 had a negative impact on the funded status of multiemployer plans, according to a number of data sources. Annual actuarial certification data from IRS show that the proportion of multiemployer plans reporting in endangered or critical zone status rose significantly, from 23 percent of plans in 2008 to 68 percent of plans in 2009. (See table 3.)

**Table 3: Funding Zone Status of Multiemployer Plans, as Certified with IRS, Tax Years 2008 and 2009**

Funding zone status	2008		2009	
	Plans	%	Plans	%
Critical status	138	10	461	35
Endangered status	175	13	444	33
Subtotal	313	23	905	68
Safe status	1,034	77	426	32
<b>Total</b>	<b>1,347</b>	<b>100</b>	<b>1,331</b>	<b>100</b>

Source: GAO analysis of Internal Revenue Service annual actuarial certification data.

Note: The endangered status category includes plans certifying as endangered or seriously endangered.

Data from PBGC, although incomplete, show a similar downward trend in plan funded status. According to the annual funding notices that PBGC received in the 2009 plan year, nearly all of the 484 plans that filed reported a decrease in funded status from 2008 to 2009. Similarly, PBGC received more notices of critical or endangered status from plans, from 266 plans in 2008 to 624 plans in 2009.

Recent industry surveys of multiemployer plans found similar declines in funded status. For example, two industry groups surveying their multiemployer plan membership in 2009 found the same result: 80 percent of plans reported being in critical or endangered zone status, a reversal

---

from 2008 when 80 percent of plans reported being in safe status.<sup>16</sup> Similarly, another industry survey of nearly 400 plans found that the proportion of plans in the endangered or critical zone status increased from 24 percent in 2008 to 80 percent in 2009.<sup>17</sup> While these surveys are not comprehensive, they provide further evidence of the negative impact that the economic downturn had on multiemployer plans.

Although it did not affect their underlying funded status, many plans took advantage of the one-time freeze allowed under WRERA. According to IRS data, 745 plans elected to freeze their funded status in either 2008 or 2009, including 373 plans in critical status, 351 in endangered status, and 21 plans in safe status. According to experts, some plans took advantage of the freeze option for a variety of reasons. Plans wanted to give the markets a chance to rebound in order to recoup plan assets lost in the downturn. Others may have chosen the freeze due to timing of collective bargaining agreements, not wanting to take steps to address funding deficiencies until a new agreement was reached. Still other plans elected the freeze to avoid having to revisit or revise ongoing rehabilitation plans. However, experts also noted that the WRERA freeze option was not helpful for all plans. Specifically, some plans chose not to freeze in endangered status, preferring to go straight to critical status to give them more options to address their funding deficiencies.

---

## Plans Face Long-standing Demographic Challenges and an Uncertain Future

Multiemployer plans continue to face demographic challenges that threaten their long-term financial outlook—including an aging workforce and few opportunities to attract new employers and workers into plans. While the number of total participants in multiemployer plans has slowly increased, the proportion of active participants to retirees and separated vested participants has decreased.<sup>18</sup> (See fig. 5.) For example, multiemployer plans had about 1.6 million fewer active participants in 2007 than in 1980, according to PBGC. With fewer active participants,

---

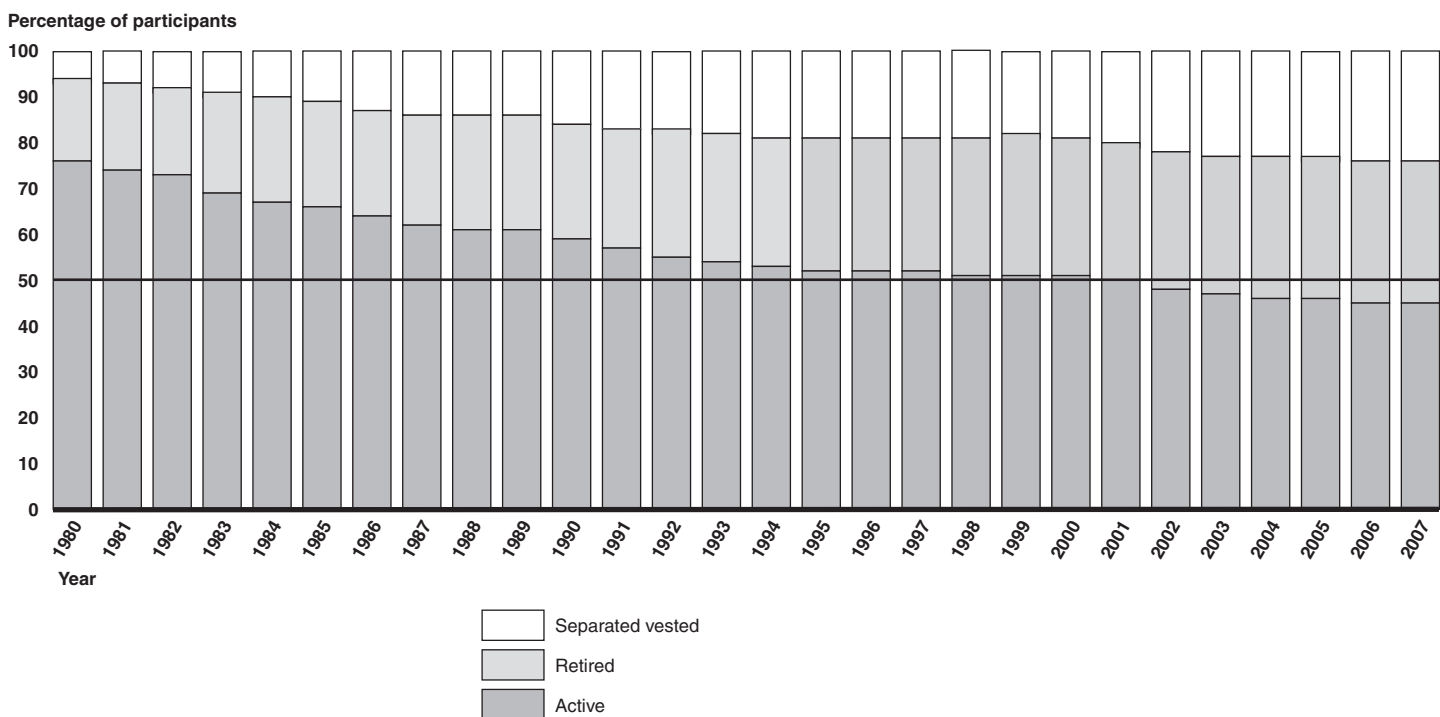
<sup>16</sup>See the Segal Company, *Winter 2010 Survey of Plans' 2009 Zone Status* and, the International Foundation of Employee Benefit Plans, *Multiemployer Pension Funding Status and Freeze Decisions*.

<sup>17</sup>See National Coordinating Committee for Multiemployer Plans, *Multiemployer Pension Plans, Main Street's Invisible Victims of the Great Recession of 2008* (Washington, D.C.: April 2010).

<sup>18</sup>A separated vested participant is one who has earned a nonforfeitable pension benefit but is no longer accruing benefits under the plan and has not yet started receiving benefits.

plans have more difficulty making up funding deficiencies by increasing employers' funding contributions. Moreover, increases in life expectancy also put pressure on plans, increasing the amount of benefits that the plan will have to pay as retirees live longer.

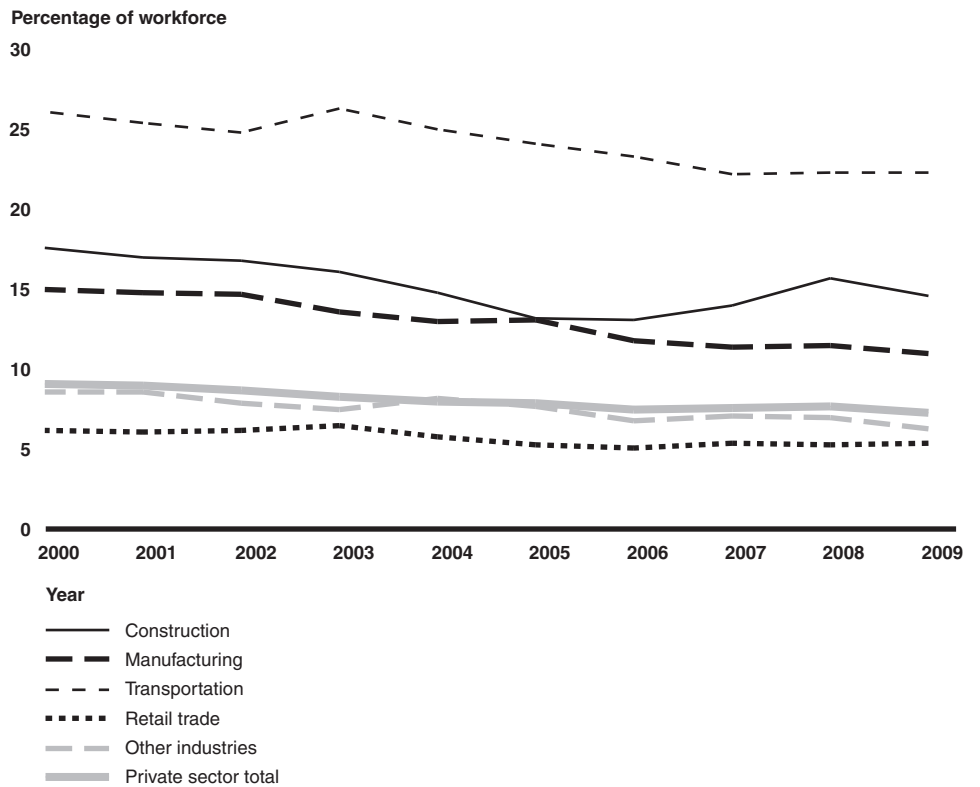
**Figure 5: PBGC-Insured Multiemployer Plan Participation, by Participant Status, 1980 through 2007**



Source: PBGC annual *Pension Insurance Data Books*.

The future growth of multiemployer plans is largely predicated on growth of collective bargaining. Yet collective bargaining has declined in the United States since the early 1950s. According to recent data from the Bureau of Labor Statistics (BLS), union membership—a proxy for collective bargaining coverage—accounted for 7.2 percent of the U.S. private-sector labor force in 2009. In contrast, in 1990, union membership in the private sector accounted for about 12 percent, and in 1980, about 20 percent. While union membership has trended downward in most industries, it has remained relatively high in the transportation sector. (See fig. 6.)

**Figure 6: Private Sector Union Affiliation, by Industry, 2000 through 2009**



Source: GAO analysis of BLS data.

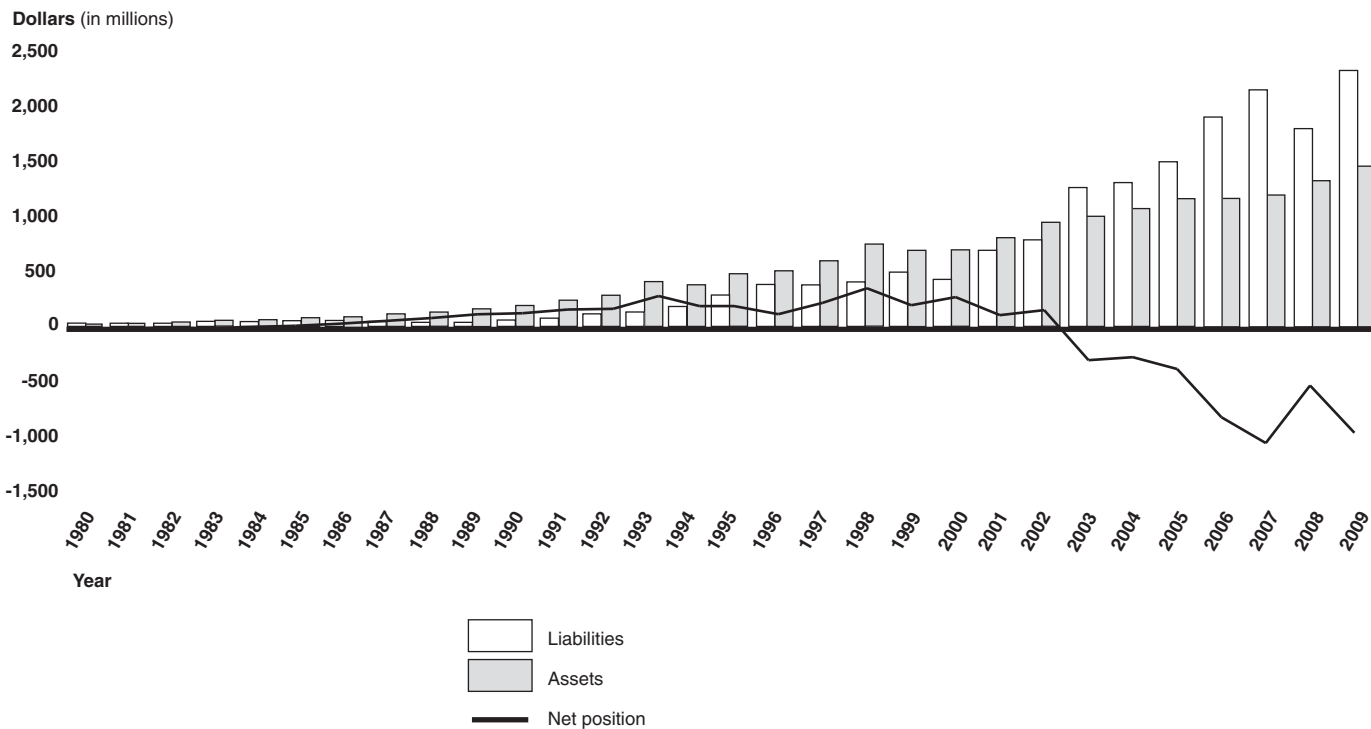
Note: The “Other industries” category includes the following industries: Agriculture, Mining, Information, and Wholesale Trade.

Some experts told us that some industries within which multiemployer plans operate were already in decline—such as the printing and trucking industries—and that their situation was likely exacerbated by the economic downturn. They also noted that other plans, while facing short-term funding deficiencies, belonged to industries that remained strong—such as the construction and entertainment industries—and were likely to improve their funded status as the economy improved.<sup>19</sup>

<sup>19</sup>Although the construction industry has the highest liabilities, plans in this industry, one expert said, were more likely to attract active participants and improve their funded status in periods of economic growth.

PBGC's ability to assist multiemployer plans is contingent upon its insurance program having sufficient funds to do so. The net position of PBGC's multiemployer pension insurance program has steadily declined since its highest point in 1998 as program liabilities outpaced asset growth. (See fig. 7.) The program's net position went negative in 2003 and by 2009 the multiemployer program reported an accumulated deficit of \$869 million.

**Figure 7: PBGC Multiemployer Insurance Program Assets, Liabilities, and Net Position, Fiscal Years 1980 through 2009**



Source: PBGC annual *Pension Insurance Data Books*.

The demographic challenges that multiemployer plans face also affect PBGC's ability to assist them. Plans pay PBGC an annual flat rate premium per participant. Similarly, contributions by employers in a multiemployer plan are generally paid on a per work-hour basis. Consequently, declines in the number of plan participants during periods of high unemployment and long-standing reductions in collective bargaining can result in less premium income to PBGC and an increased probability of PBGC-insured multiemployer plans requiring financial assistance.

# PBGC Monitors the Health of Multiemployer Plans, but Does Not Assist Troubled Plans on an Ongoing Basis

## Monitoring Plan Insolvency Risk

PBGC monitors the financial condition of its insured multiemployer plans to identify plans that are more likely to become insolvent and require financial assistance from the multiemployer insurance program. To identify the universe of multiemployer plans, PBGC maintains a database that matches a plan’s annual premium filings with its financial information reported on its annual Form 5500 filings.<sup>20</sup> PBGC then uses multiemployer plans’ annual Form 5500 filings, critical and endangered status notices, and other information to generate a contingency list of plans that have an increased risk of insolvency and making a claim to the PBGC’s multiemployer insurance program or terminating altogether. PBGC classifies plans into several categories on this contingency list, depending on the plan’s likelihood of a PBGC claim. (See table 4.)

**Table 4: Classification of Plans on PBGC’s Contingency List**

Classification	Definition
Current probable	A plan that is known to be insolvent and has received or will begin receiving financial assistance from PBGC.
Terminated future probable	A plan that may still have assets but the combination of plan assets and collectible payments of withdrawal liability are projected to be insufficient to cover plan benefits plus expenses.
Ongoing future probable	An ongoing plan with a projected date of insolvency within 10 years.
Reasonably possible	An ongoing plan with a projected insolvency date between 10 and 20 years away.
Remote watch list	Any plan that is not classified as probable or reasonably possible, but has a smaller probability of future liability to PBGC.

Source: PBGC.

<sup>20</sup>Each year, qualified DB pension plans are required to file a Form 5500 disclosure of financial information with IRS, EBSA, and PBGC. Beginning with the 2009 reporting year, Form 5500 filing and processing became wholly electronic. Filers are able to complete Form 5500 online or with third-party software using a new Web-based interface called ERISA Filing Acceptance System 2 (EFAST2) that EBSA officials say has greater data capture accuracy than its paper-based predecessor.



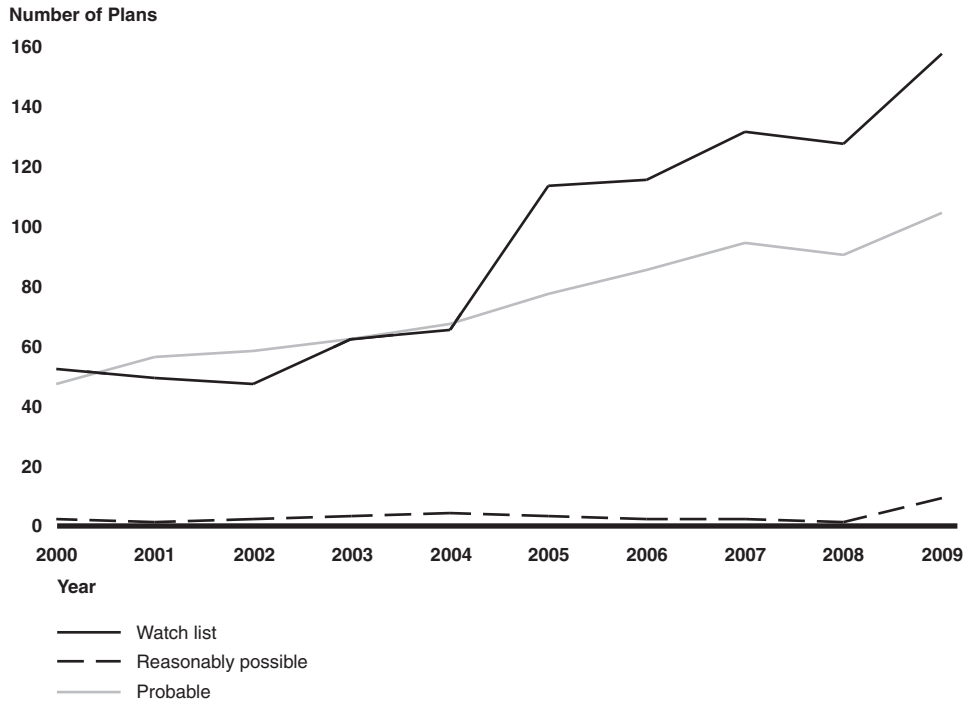
---

To determine which multiemployer plans belong in each of these categories, PBGC uses an automated screening process that measures the financial health of plans. The variables that PBGC reviews are:

- ratio of active participants (those for whom employers are continuing to make contributions) to other participants (those for whom plans are making benefit payments);
- ratio of assets to the present value of vested benefits accrued by participants;
- ratio of plan assets to annual benefit payments to retirees;
- ratio of annual contributions to carrying costs (i.e., normal cost and interest on unfunded liability);
- ratio of annual contributions from employers to the benefit distributions to retirees; and
- ratio of plan assets to the present value of retired participants' accrued benefits.

PBGC also monitors plans to assess their risk of insolvency and the effect of insolvency on PBGC's multiemployer program. PBGC determines expected claims on the multiemployer insurance program based on two factors, the amount of underfunding in the plans and the likelihood that the plans will become insolvent or face a mass withdrawal of contributing employers from a plan. PBGC also analyzes ongoing multiemployer plans (i.e., plans that continue to have employers making regular contributions for covered work) to determine whether they pose probable or possible claims on the insurance program. In conducting this periodic analysis, PBGC examines plans that are chronically underfunded, have poor cash flow, have a falling contribution base, or lack an asset cushion to temporarily weather income losses. A combination of any one of these factors may prompt PBGC to conduct a more detailed analysis of the plan's funding and the likelihood that the contributing employers will be able to maintain the plan. Since 2002, the number of plans classified as probable or placed on the watch list has steadily increased while the number of plans classified as reasonably possible has remained about the same. (See fig. 8.)

**Figure 8: PBGC-Insured Multiemployer Plans on PBGC's Contingency List, Fiscal Years 2000 through 2009**



Source: GAO analysis of PBGC data.

**Providing Financial Assistance to Plans**

PBGC provides insolvent multiemployer plans with financial assistance in the form of loans to provide beneficiaries with the PBGC-guaranteed benefit and for reasonable administrative expenses. PBGC considers a plan insolvent if it does not have enough assets to pay the PBGC guaranteed benefits for a full plan year.<sup>21</sup> An insolvent plan can obtain the loan by filing a claim with PBGC's multiemployer insurance program. PBGC can set the conditions under which it provides plans with this financial assistance. For example, PBGC can require that:

- a loan be repaid if the recipient plan's financial condition improves,
- a loan be collateralized by employer contributions, withdrawal liability payments, and other plan assets, and

<sup>21</sup>An insolvent plan continues operations and PBGC provides necessary financial assistance for payment of benefits at guaranteed level and for reasonable administrative expenses.

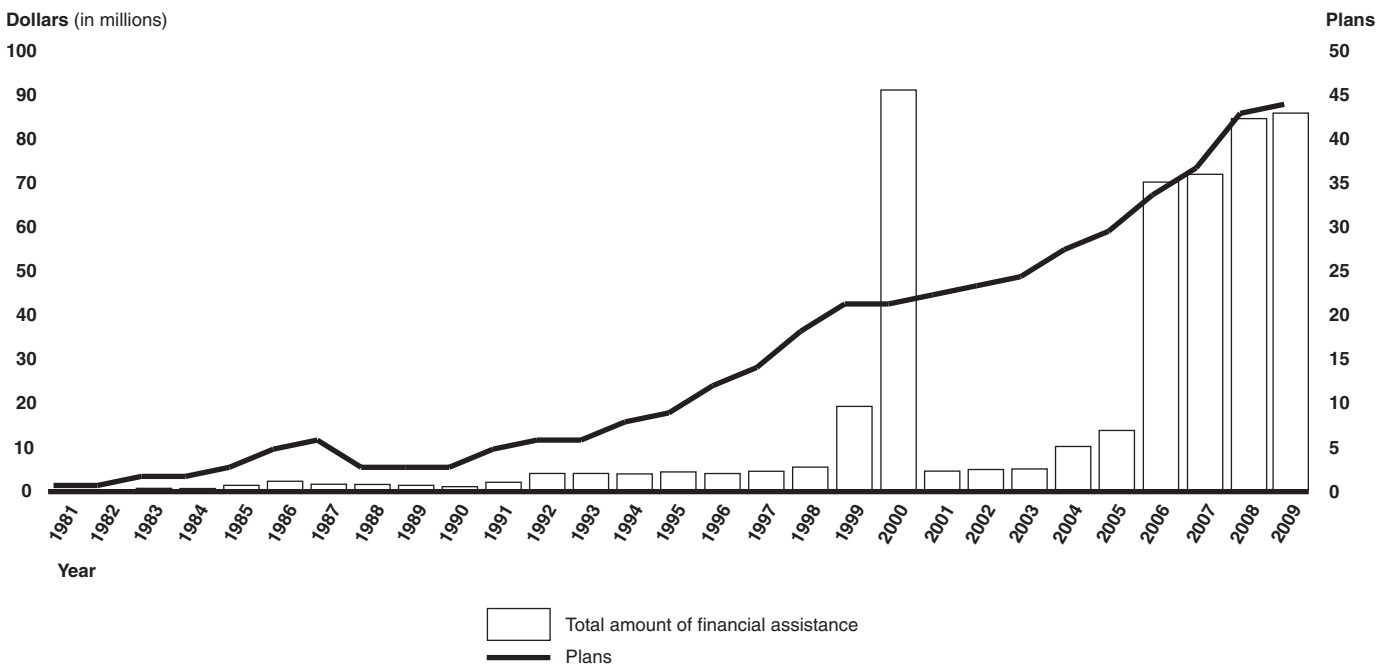
- PBGC be given broad audit authority over the plan.

In addition, PBGC must require payment of benefits at the guaranteed benefit level.

PBGC provides financial assistance to plans that can no longer make benefit payments. Once begun, these loans generally continue year after year until the plan no longer needs assistance or has paid all promised benefits at the guaranteed level. Although called “loans” in statute, these funds are provided to plans that have a declining asset base, making them unlikely to be repaid. To date, only 1 of the 62 plans that received PBGC financial assistance between 1981 and 2009 has ever repaid its loan.

While the number of plans receiving financial assistance has risen steadily since 1981, the amount paid has peaked twice in the past decade. In fiscal year 2009, PBGC paid \$85.6 million in financial assistance to 43 insolvent plans. (See fig. 9.)

**Figure 9: Multiemployer Plans Receiving PBGC’s Financial Assistance and Amounts Received, 1981 through 2009**



Source: PBGC annual *Pension Insurance Data Books*.

---

---

## Projecting Future Claims to PBGC

Since 1998, PBGC has assessed the long-term risk to the single-employer insurance program using its Pension Insurance Modeling System (PIMS), a stochastic simulation model designed to quantify the amount of risk facing the programs. According to PBGC, the model helps PBGC assess its financial vulnerability from future events that may be significantly different from past events.

Over time PBGC realized that a separate multiemployer plan model was needed to account for the unique factors that make up multiemployer plans, such as the role and number of unions and the role of negotiations in developing collective bargaining agreements. Following the enactment of PPA in 2006, PBGC developed a specific multiemployer PIMS model (ME-PIMS) that used data from a stratified sample of 132 plans that included the top 20 in terms of total underfunding. For these selected plans, PBGC uses data from the Form 5500 Schedule MB (and formerly Schedule B) and other sources to look at benefit levels, how benefits were accrued, and how fast they accrued. PBGC then estimated compensation levels and funding targets. According to PBGC officials, the model is weighted toward the bigger plans because that is where most of PBGC's risks lie. The model can project up to 20 years in the future, but the typical simulation is no longer than 10 years. As the projection period is extended, the simulation becomes less reliable.

ME-PIMS takes into account the different funding rules, nature of exposure, and possible future outcomes of multiemployer plans. The model anticipates that individual plans have various probabilities of positive and negative experiences, and that these probabilities can change significantly over time. Using the ME-PIMS model, PBGC projects interest rates, stock returns, and related variables; asset returns; plan demographics; plan size; plan benefit level and employer contribution increases; and a plan's probability of mass withdrawal. PBGC stresses that ME-PIMS is not a predictive model but instead simulates the flow of claims that could develop under hundreds of combinations of economic parameters and extrapolations of plans' respective historical patterns. ME-PIMS cannot model for the financial condition of individual employers or industries in part because, until recently, PBGC has not had access to information at the contributing employer level. PBGC uses ME-PIMS to report the agency's liabilities and exposure to losses under the multiemployer program in its annual reports. According to PBGC's 2009 annual report, ME-PIMS showed the median amount of claims over the next 10 years to be about \$5.5 billion and a median net position outcome of \$2.4 billion.

## Data That PBGC Uses Are Outdated

While PBGC officials told us that they could benefit from having more current data than are available on the Form 5500, they prefer using Form 5500 data on multiemployer plans because these older data are the most comprehensive, the agency's monitoring system is designed for it, the data are audited, and most private plans are required by law to file the form on an annual basis. Officials told us that, given the current Form 5500 reporting schedule, even with the data capture capabilities of the new EFAST2 system, they cannot make up for the time lag in plan filing and, as a result, its monitoring suffers.<sup>22</sup> Officials told us that the time lag made it difficult to detect when a plan was in trouble and what steps could be taken to avert greater problems. PPA generally requires multiemployer plans to provide more timely financial information to PBGC. (See table 5.)

**Table 5: Multiemployer Plan Information Filed with PBGC**

Notice, report, or filing item	Time frame	Plans required to file
Form 5500 (including Schedules MB and R) for annual certification by plan actuary	By the last day of the 7th calendar month following the end of a plan year. Plans may also apply for a one-time filing extension of up to 2½ months.	All multiemployer plans.
Annual funding notice	120 days from end of plan-year for large plans. Small plans with 100 or fewer participants must file either with their annual report or before the annual report filing deadline.	All PBGC-insured plans.
Notices of critical or endangered status	30 days after the date of certification.	All plans that certified with IRS that they are in critical or endangered zone status.
Plan actuarial valuations	Upon request.	PBGC asks for but cannot compel plans on its contingency list to provide.
PBGC premium filings	By last day of the 16th full calendar month following end of the preceding premium payment year (e.g., April 30, 2009, for 2008 calendar-year plans) for plans with fewer than 100 participants. By 15th day of the 10th full calendar month following end of prior plan year (e.g., October 15, 2008, for 2008 calendar-year plans) for plan with 100 or more participants.	All PBGC-insured plans.

Source: GAO analysis of certain reporting requirements for multiemployer plans under ERISA and the Internal Revenue Code of 1986 (the Code).

<sup>22</sup>For 2008 and later plan years, plans are required to identify whether they are making scheduled progress on their funding improvement or rehabilitation plan on the Form 5500 Schedule MB. In addition, plans are required to provide a summary of their funding improvement or rehabilitation plan. PPA also requires multiemployer plans to report the names of contributing employers that contribute 5 percent or greater of the total plan contributions for a plan year on Form 5500-Schedule R.

---

In addition to Form 5500 data, PBGC-insured multiemployer plans are required to submit annual funding notices (AFN) to PBGC. The AFN must include, among other things, the plans' identifying information and funded percentage for the plan year, a statement of the market value of the plan's assets as of the end of the year, a statement of the number of retired, separated vested, and active participants under the plan, and whether any plan amendment, or scheduled benefit increase or reduction has a material effect on plan liabilities. PBGC officials told us they do not use the AFNs they receive to determine the overall health of the universe of multiemployer plans, but may look at the market valuation of assets on the AFN of a specific plan once it has been identified through Form 5500 data as a potential candidate for the watch list. PBGC officials also told us they do not use the AFN in developing data for model simulation, annual reports, or data books. PBGC also receives annual notices of critical or endangered status from plans within 30 days of plans certifying their funding zone status with IRS, as required by PPA. PBGC officials said they compare the information in the notices—which alert recipients of the plan's funding zone status and the reasons for it—with the plan's Form 5500 filings to determine whether to place a plan on its contingency list. Plans on the list are asked to provide their current actuarial valuations so PBGC can monitor plans going forward. PBGC officials stated that, while plans are not required to provide this information, they are typically willing to cooperate with the requests.

---

### **PBGC Provides Non-Financial Assistance to Troubled Plans on an Ad Hoc Basis**

In addition to providing financial assistance, PBGC can assist troubled plans with technical assistance, facilitate mergers, and partition the benefits of participants orphaned by employers who filed for bankruptcy. Generally, it is up to plans to request these kinds of assistance. Occasionally, PBGC is asked to serve as a facilitator and work with all the parties to a troubled plan to improve a plan's financial status. Plan administrators can request PBGC's help to improve funding status of plans or provide assistance on other issues. They may contact PBGC's customer service representatives to obtain assistance on premiums, plan terminations, and general legal questions related to PBGC programs. PBGC has also assisted in the orderly shutdown of plans. The plans involved in these actions either merged with other multiemployer plans or purchased annuities from private-sector insurers for their beneficiaries. For example, PBGC facilitated the closeout of seven small multiemployer plans in 2010 that were receiving or expected to receive future financial assistance payments from PBGC and identified two additional plans for closeout in the future. According to PBGC, these small plan closeouts are

---

part of an ongoing effort to reduce plan administrative costs borne by PBGC's multiemployer program.

PBGC can also facilitate mergers between two or more multiemployer plans. According to PBGC officials, PBGC has received notice of 303 mergers since 2000, 5 of which PBGC facilitated by paying \$8.5 million from the multiemployer insurance program to the merged plans. Plans considering a merger must request approval from PBGC and typically involve merging a plan with a low funding level with a plan having a more favorable asset-to-liability ratio. PBGC officials told us that they carefully consider each merger request to ensure that the merger creates a stronger plan that will sustain operations indefinitely. They further noted that PBGC wanted to be sure that plans that received funds in a facilitated merger did not end up accepting the money only to become a liability to PBGC in the near future, in effect causing PBGC to make loans twice to poorly managed plans.

PBGC can also partition the benefits of certain participants from a financially weak multiemployer plan under certain circumstances. Partition is a statutory mechanism that permits financially healthy employers to maintain a plan by carving out the plan liabilities attributable to participants "orphaned" by employers who filed for bankruptcy.<sup>23</sup> Under ERISA, PBGC has the authority to order the partition of a plan's orphaned participants either upon its own motion or upon application by the plan sponsor. Once a plan is partitioned, PBGC assumes the liability for paying benefits to the orphaned participants. ERISA specifies four criteria that dictate when PBGC can utilize its partitioning authority.<sup>24</sup> PBGC may order a partition if:

- the plan experiences a substantial reduction in the amount of contributions that has resulted or will result from a case or proceeding under Chapter 11 bankruptcy with respect to an employer;
- the plan is likely to become insolvent;

---

<sup>23</sup>According to PBGC, orphaned participants may also include participants whose employers withdrew from a plan without filing bankruptcy. However, this group of participants would not be eligible for partitioning.

<sup>24</sup>29 U.S.C. § 1413.

- 
- contributions will have to be increased significantly in reorganization to meet the minimum contribution requirement and prevent insolvency; and
  - partition would significantly reduce the likelihood that the partitioned plan will become insolvent.

Like all multiemployer plans, the partitioned participants are subjected to ERISA's multiemployer guaranteed benefit limits.

PBGC may order the partition of a plan after notifying plan sponsors and participants, whose vested benefits will be affected by the partition. Since the implementation of MPPAA in 1980, PBGC has partitioned two plans.<sup>25</sup> In the most recent partition in July 2010, PBGC said it approved the move because, by removing 1,500 orphaned participants from the plan, PBGC was able to delay plan insolvency for at least 6 additional years and preserve full benefits for the approximately 3,700 workers and retirees of firms still contributing to the plan. Without partition, the plan would have become insolvent sooner and the federal benefit limits would have applied to all its retirees.

---

## Pension Structures in Other Countries Provide Multiemployer Plans with Options to Improve Funding

The private pension systems in the countries we studied—the Netherlands, Denmark, the United Kingdom, and Canada—support industrywide, employer-based pension plans that share some common attributes with U.S. multiemployer plan structure. Each of the countries is a member of the Organisation of Economic Co-operation and Development (OECD) and supports a three-pillar pension system that consists of a basic state pension (e.g., similar to Social Security), private employer-based pensions (e.g., single- or multiemployer), and individual retirement savings (e.g., independent retirement accounts). While each of the countries we studied had a pension system with some unique characteristics, pension officials in some countries told us they faced common short-term and long-term challenges in securing pension benefits for participants, including plan underfunding and an aging workforce.<sup>26</sup>

---

<sup>25</sup>PBGC partitioned the pension plan of Council 30 of the Retail, Wholesale and Department Stores Union and the Chicago Truck Drivers, Helpers & Warehouse Workers Union Pension Plan.

<sup>26</sup>We did not review or attempt to verify the information or legal requirements pertaining to plans maintained in these countries. We relied upon the representations and materials furnished by government officials in these countries and other experts.



## Multiemployer Plan Structures

The scope and coverage of the studied countries' multiemployer pension structures varied depending on a country's circumstances and plan design. While none of the countries had as much invested in its private pension systems as the United States, pension assets in the Netherlands exceeded the country's gross domestic product in 2010, according to OECD. Moreover, some countries with older workforces had a higher density of active trade union workers to help pay for the pensioner benefits. (See table 6.)

**Table 6: Comparison of Select Economic and Demographic Characteristics in the Studied Countries and the United States (2008)**

	The Netherlands	Denmark	United Kingdom	Canada	United States
Gross domestic product	\$675.1 billion	\$202.2 billion	\$2.2 trillion	\$1.3 trillion	\$14.4 trillion
GDP per capita	\$41,063	\$36,808	\$35,631	\$38,975	\$47,186
Total population (in millions)	16.4	5.5	61.4	33.1	304.2
Size of labor force (ages 25-64) (in millions)	7.2	2.4	25.6	14.9	126.0
Trade union density Includes public (%)	18.9	67.6	27.1	27.1	11.9
Effective retirement age (men/women) <sup>a</sup>	62/61	64/61	63/62	63/62	65/64
Population over age 65 (%)	14.9	15.9	16.2	13.6	12.7
Population over age 65 (as % of labor force)	27.4	25.3	26.8	21.1	20.8
Average overall life expectancy at age 65	83.4	82.7	83.3	84.5	83.6

Source: OECD.

<sup>a</sup>Data on effective retirement age, which is the real age that people retire, are reported from 2007.

Multiemployer plan structures in these countries did differ from those in the United States in several important ways. (See table 7.) First, like the United States, the United Kingdom provides some form of government-sponsored pension insurance, but while the level of compensation guaranteed is upwards of 90 percent, payouts only occur when the last remaining employer becomes insolvent. Second, while the United Kingdom and the Canadian province of Quebec assess withdrawal liability to employers leaving a multiemployer plan in ways similar to the United States, officials in the Netherlands, Denmark, and the Canadian province of Ontario did not and several experts told us that such assessments would discourage employers from remaining in multiemployer plans. In the

Netherlands and Denmark, collective bargaining agreements apply to both union and nonunion workers in an industry.

**Table 7: Comparison of Multiemployer Plan Structures in the Studied Countries and the United States**

	<b>The Netherlands</b>	<b>Denmark</b>	<b>United Kingdom</b>	<b>Canada</b>	<b>United States</b>
Plan type	Collectively bargained, defined benefit plans	Collectively bargained, defined contribution plans	Collectively bargained, defined benefit plans	Collectively bargained, defined benefit plans	Collectively bargained, defined benefit plans
Affinity groups	Industry	Profession or trade group	Labor union	Labor union	Labor union
Application of collective bargaining agreement	Applies to union and nonunion employees in an industry.	Applies to union and nonunion employees in a profession or trade group.	Applies to union employees.	Applies to union employees.	Applies to union employees.
Plan governance	Boards of trustees comprising equal representation of employers and employees	Boards of trustees comprising equal representation of employers and employees	Boards of trustees comprising representation of employers and employees	Boards of trustees typically comprising representation of employers and employees; some plans are union run.	Boards of trustees comprising equal representation of employers and employees
Pension guarantees for employers	None	Pension contributions are guaranteed against any loss that would result in the value of the benefits falling below the value of the contribution.	The Pension Protection Fund generally pays 100% of compensation to retirees and up to 90% of compensation to participants who have not yet reached retirement age.	None	PBGC provides a guaranteed benefit of \$12,870 per year for 30 years of service.
Withdrawal liability for employers	None	None	Withdrawing employers must pay proportionate share of plan's unfunded liabilities.	None imposed on plans under federal jurisdiction; in province of Quebec, withdrawing employers must pay proportionate share of plan's unfunded liabilities. In province of Ontario, employers may withdraw only with consent of the union(s).	Withdrawing employers must pay allocable share of plan's unfunded vested benefits.

Source: GAO analysis.

---

But, as in the United States, the recent economic downturn had a negative impact on defined benefit plans, including multiemployer plans, in three of the four countries we studied. The four countries experienced double-digit declines in their pension investment returns in 2008, according to OECD data,<sup>27</sup> and all but one experienced steep declines in the funded status of their multiemployer plans. For example, in the Netherlands, the aggregate funded status dropped below 100 percent for the first time, from 149 percent in 2007 to 89 percent in 2009.<sup>28</sup> Similarly, the United Kingdom reported that funded status for all DB plans fell from 102 percent in 2008 to 80 percent in 2009. Unlike the others, Denmark's plans survived the crisis with little decline in overall funding, which several plan officials attributed to changes that the pension regulator made prior to the crisis, such as moving from actuarial to market valuations of plan assets and liabilities. According to officials that we spoke with, the Netherlands and Canada also implemented funding relief measures to help plans address their funding deficiencies, such as extending the length of plan recovery periods. Officials at the Dutch Central Bank told us they hired additional staff to handle the workload of increasing numbers of recovery plans.

---

## Other Countries' Plans Are Subject to a Range of Funding, Reporting, and Regulatory Requirements

### Minimum Funding Requirements

Three of the four countries that we studied reported they had recently implemented some form of minimum funding requirements for multiemployer plans, but the levels varied by country. Officials we spoke with told us that plans that fell below these funding thresholds were

---

<sup>27</sup>OECD reports the following returns on pension investments in 2008: The Netherlands (-16.9%); Denmark (-16.8%); United Kingdom (-17.4%); Canada (-21.4%); and the United States (-26.2%).

<sup>28</sup>In the Netherlands, multiemployer plans share investment gains by periodically adjusting the value of workers' benefits, known as "indexation." According to officials, pension boards usually adjust workers' and also retirees' benefits conditional on the pension fund's overall funding level. If a plan's funding ratio is above the established benchmark, benefits are indexed to reflect the growth in wages or prices. However, if a plan's funding ratio is below the established benchmark benefits may be only partially indexed or not indexed at all. By law, employers are not allowed to provide full indexation if the funded ratio is below 130 percent. According to officials, most plans either paid partial indexation or none at all in 2009.

required to submit recovery plans to bring the funding levels back above the minimum level. Canada, Denmark, and the Netherlands required plans to be funded at a level of 100 percent or above. The United Kingdom recently suspended its minimum funding requirements in favor of plan-specific funding levels, and officials told us regulators still sought to maintain an aggregate funding level of 110 percent. Also, plans in the Netherlands are required to build funding reserves, or buffers, commensurate to the risk associated with their investment policies. Officials at the Dutch Central Bank told us plans must develop buffers for interest rate risk, private equity exposure, and hedge fund exposure.

## Reporting Requirements

While the reporting requirements in these countries are not so different from those in the United States, multiemployer plans in some countries submit more frequent plan funding and actuarial reports to regulators. For example, in the Netherlands and Denmark, all plans are required to submit data on a quarterly and annual basis and plans in recovery status had, in some countries, additional reporting requirements. (See table 8.)

**Table 8: Reporting Requirements for Multiemployer Plans in the Studied Countries**

	The Netherlands	Denmark	United Kingdom	Canada <sup>a</sup>
General reporting requirements for all plans	Annual financial reports Quarterly financial reports A 15-year continuity analysis every 3 years	Annual financial and audit reports Quarterly financial reports, solvency assessments, and register of assets report	Actuarial valuation reports every 3 years	Actuarial valuation reports every 3 years
Additional requirements for plans in recovery status	Recovery plan Annual progress report on recovery plan	Recovery plan Daily market valuation reports Monthly progress reports on recovery plan	Recovery plan	Actuarial valuations at least every year.

Source: GAO analysis.

<sup>a</sup>This column summarizes only those multiemployer plans under federal jurisdiction.

Some countries require plans to submit plan data electronically, which officials said allowed for real-time monitoring and transparency. For example, Danish plans are required to report market valuations of their assets and liabilities, which regulators said allowed them to identify plans at risk through market surveillance with minimal up-to-date information. The regulators told us they can take action as soon as a plan is in trouble and proactively notify plans of impending financial problems. In the United Kingdom, plan trustees are required to update their financial information electronically and can do so in real-time on the regulator's

information system. In the Netherlands, the Dutch Central Bank updates the aggregate funded status of plans on a quarterly basis and makes this information available on its public Web site.

**Monitoring**

These countries all monitored multiemployer plans for compliance and to determine plan funding and solvency risk. While the Netherlands and Denmark monitored the solvency risks of all plans, officials in both countries told us they also plan to develop a risk-based monitoring strategy, such as that used in the United Kingdom and Canada, which would target monitoring to plans that represented the greatest risk. Officials in these countries also had varying degrees of authority to intervene in the operations of multiemployer plans. (See table 9.)

**Table 9: Monitoring of Multiemployer Plans in the Studied Countries**

	<b>The Netherlands</b>	<b>Denmark</b>	<b>United Kingdom</b>	<b>Canada<sup>a</sup></b>
Regulatory authorities	Dutch Central Bank The Netherlands Authority for the Financial Markets	Financial Supervisory Authority	Pensions Regulator Pension Protection Fund Department of Works and Pensions	Office of the Superintendent of Financial Institutions (federal)
Monitoring activities	Risk-based monitoring approach that includes review of all plans' rules to see if they comply with legislation.	Risk-based monitoring approach that includes review of all plans and conducts formal periodic on-site audits to verify information submitted by all plans. Employs a traffic light system that determines the risks associated with each plan. Conducts stress tests for specific market risks that have certain triggers—a 12% decline in equities, 0.7% interest rate change; 8% decline in real estate values—that alert it to plans that need to take further action. Tracks whether employers made their required contributions to the plans and assesses the quality of the board of trustees.	Risk-based, plan-specific monitoring approach that focuses on education and enablement, with enforcement where appropriate. Reviews annual report and meets with plan sponsor to discuss the information provided. Assigns permanent case managers to the largest plans.	Risk-based supervisory framework that identifies plans at high risk. Reviews plans for key plan risks, including investment portfolio, actuarial assumptions, plan administration, and the likelihood of continued sponsor funding. Conducts on-site visits to a number of plans usually in response to a complaint.

	The Netherlands	Denmark	United Kingdom	Canada <sup>a</sup>
Intervention authorities	<p>Can prescribe actions that plans must take and demand plan disclosures to participants.</p> <p>Can appoint individuals to a plan's board.</p> <p>Can suspend board.</p> <p>Can require plans to maintain financial reserves commensurate with their investment risk.</p>	<p>Can close down company.</p> <p>Can put company on administration.</p> <p>Can remove board members.</p>	<p>Can compel contributions, remove plan trustees, require a recovery plan, terminate a plan, and force debt onto an employer.</p>	<p>Can force disclosure of information from plans if solvency ratio falls below certain thresholds.</p> <p>Can terminate plans.</p> <p>Must approve any plan terminations, reductions in accrued benefits, distributions of surplus, and transfers of assets between plans.</p>

Source: GAO analysis.

<sup>a</sup>This column summarizes only those multiemployer plans under federal jurisdiction.

## Plans in Other Countries Have Options to Improve Funded Status

Multiemployer plans in the countries we studied have a number of options to improve and maintain their funded status, and a specific length of time allotted to recovery. (See table 10.) Some of the countries allow plans to increase contributions and reduce the rate of benefit accruals. In Denmark, regulators told us that plans that fail stress tests must adjust investments to resolve funding deficiencies within 6 months. The Netherlands, United Kingdom, and Canada have longer recovery periods and the Netherlands and Canada allow plans to reduce accrued benefits, including the benefits of retirees, although this step is seen as a measure of last resort.

**Table 10: Recovery Periods and Tools Available to Improve Plan Funded Status in the Studied Countries**

	The Netherlands	Denmark	United Kingdom	Canada <sup>a</sup>
Length of recovery period	Plans must return to minimum funding level (105%) in 5 years and 125% funded in 15 years.	Plans expected to resolve funding deficit within 6 months.	There is no formula for recovery; it is a plan-specific approach.  Recovery period varies by plan, generally within 10 years.	Plans must resolve solvency deficits within 5 years.
Tools available to assist recovery	Increase contributions, reduce or suspend indexation, reduce benefit accrual rate and accrued benefits.	Increase contributions and adjust plan's risk exposure.	Increase contributions and reduce benefit accrual rate.	Increase contributions, reduce benefit accrual rate and accrued benefits.

Source: GAO analysis.

<sup>a</sup>This column summarizes only those multiemployer plans under federal jurisdiction.

Plans may also seek out mergers to reduce administrative costs and indirectly help preserve their funded status. Most of the countries we

---

studied allow plan mergers, but some officials told us that they were infrequent. Canadian officials told us mergers of multiemployer plans would be difficult because plan membership is based on profession and multiemployer plans do not want to lose control of plan policy and governance, even if the plan would be financially better off after a merger. In Canada, when full mergers do occur, they said, they tend to result from a merger of unions. In the Netherlands, mergers occur, but the industry identification of multiemployer plans limits merger activity to plans in the same industry. In Denmark, single-employer plans can choose to merge with multiemployer plans even if the participants are not affiliated with the plan's employer organization to take advantage of lower administrative fees. In the United Kingdom, there is a large trust that combines many single-employer and several multiemployer plans, benefiting all participating plans with lower costs and better investment opportunities.

---

---

## Changes to U.S. Multiemployer Plan Framework Could Help to Protect Pension Benefits

---

### Lack of Timely, Complete, and Accurate Information Hinders Ongoing Assessments of Multiemployer Plans

PPA requires multiemployer plans to file numerous notices with EBSA, IRS, and PBGC regarding their funded status. Our review of filings received by the three agencies found that plans are not all complying with these requirements. Moreover, we found that plans that did comply filed notices that varied in form and content. While current reporting requirements, if followed, would provide federal agencies with the data needed to monitor plan health, the current multiemployer plan framework requires plans to submit these data in a fractured format to three different agencies that do not share the information they receive. As a result, federal officials told us that their agencies are limited in their ability to assess the current and recent health of multiemployer plans.

Plans are required to certify their funding zone status each year with IRS, but they are not required to include their current funded percentage in this report, which would be helpful to officials determining the gravity of plans' funding deficiencies. Also, IRS officials told us that some plans provided a brief letter identifying the zone status, while other plan's submitted lengthy reports that detailed the assumptions and calculations

used to determine the plan's zone status. IRS officials told us that, while some plans provided their funded percentage in the certification notice, the agency did not track this information nor share the list of certifying plans with any other federal agency.

Within 30 days of certifying their funding zone status with IRS, PPA requires plans in critical or endangered status to submit a notice of their status to PBGC and EBSA, among others.<sup>29</sup> In our review of data from 2008 and 2009 obtained from the three agencies, we found large discrepancies in the number of plans certifying with IRS and the number of plans submitting notices of critical or endangered status to PBGC and EBSA. For example, IRS data show that 461 of the 1,331 plans certified in critical status in 2009, but only 132 plans provided notices of their certified status to EBSA. Similarly, some plans that elected to freeze their current funding status did not file notices of this election with PBGC and EBSA, as required. (See table 11.)

**Table 11: Comparison of Multiemployer Plan Status Information Received by Federal Agencies, 2008 and 2009**

	2008	2009
<b>Number of plans certifying zone status with IRS</b>	1,347	1,331
<b>Number of plans indicating critical status</b>		
<b>Agency notified</b>		
IRS	138	461
PBGC	111	296 <sup>a</sup>
EBSA	100 <sup>b</sup>	132 <sup>c</sup>
<b>Number of plans indicating endangered status</b>		
IRS	175	444
PBGC	155	317 <sup>d</sup>
EBSA	128 <sup>e</sup>	83 <sup>f</sup>
<b>Number of plans indicating their election to freeze funding status in 2008 or 2009</b>		
IRS		745
PBGC		408
EBSA		309 <sup>g</sup>

<sup>29</sup>This notification is filed with the EBSA, IRS, and PBGC and furnished to plan participants, beneficiaries, and the bargaining parties. 26 U.S.C. § 432(b)(3)(D)(i) and 29 U.S.C. § 1021(f)(3)(A).



---

Source: GAO analysis of EBSA, IRS, and PBGC data.

Note: EBSA data analyzed by GAO was taken from the EBSA Web site on August 19, 2010. Also, the endangered status category includes Endangered Status Notices and Seriously Endangered Status Notices.

<sup>a</sup>PBGC received 304 Critical Status Notices for 2009, which included 2 duplicate notices and 6 other notices.

<sup>b</sup>EBSA posted 102 Critical Status Notices for 2008, which included 2 duplicate notices.

<sup>c</sup>EBSA posted 140 Critical Status Notices for 2009, which included 7 duplicate notices and 1 other notice.

<sup>d</sup>PBGC received 323 Endangered Status Notices for 2009, which included 6 duplicate notices.

<sup>e</sup>EBSA posted 133 Endangered Status Notices for 2008, which included 4 duplicate notices and 1 other notice.

<sup>f</sup>EBSA posted 102 Endangered Status Notices for 2009, which included 8 duplicate notices and 11 other notices.

<sup>g</sup>EBSA posted 323 WRERA Notices for 2009, which included 14 duplicate notices.

In addition, for plan years beginning after December 31, 2007, all defined benefit plans are required to provide an additional notice—an annual funding notice—to PBGC, plan participants and beneficiaries, labor organizations, and, in the case of multiemployer plans, also to each participating employer. Like the notice of critical or endangered status, this notice must be provided within 120 days following the end of each plan year. EBSA can assess a civil penalty of \$110 per day per participant against the plan administrator for failure to submit the plan’s annual funding notice to participants and beneficiaries. Among other things, the AFN provides recent information on a plan’s funded status, actuarial valuations of assets and liabilities, market valuations of assets, and a plan’s asset allocation. According to PBGC officials, only half of multiemployer plans filed these notices in the 2008 plan year and many plans had failed to file notices for the 2009 plan year within the 120-day statutory timeline. PBGC officials could not explain why plans failed to file the notices with PBGC. But while EBSA can assess a civil penalty for failure to submit an annual funding notice, PBGC officials did not share any information on plans’ annual funding notices with EBSA, making it unlikely that EBSA would have the information necessary to assess such a penalty.

Industry experts told us that the reporting requirements for multiemployer plans are confusing and duplicative, and that further consolidation of notices is needed. They noted that plan reporting requirements have increased significantly and become burdensome for plans to administer with each notice having a different recipient and due date. Even if participant notices were more clearly written, one expert said, there is nothing that an individual can do to address the critical or endangered status because benefits are collectively bargained. Moreover, participants

---

do not need multiple notices each time an event occurs to change the long-term projections of their plan's standing.

---

### Current Multiemployer Framework Faces Challenges in Assisting Plans in Need

The statutory and regulatory framework guiding multiemployer plans is not structured to assist troubled plans, limits the actions agencies can take, and promotes little interaction among federal agencies that bear joint responsibility for monitoring and assisting these plans and their participants. We found that EBSA, IRS, and PBGC do not work together to share information received from plans and cannot determine whether all multiemployer plans are meeting applicable legal requirements.

First, PBGC's involvement with multiemployer plans is mostly limited to the plans on its contingency list that are already insolvent and receiving financial assistance or pose a potential risk for future claims against PBGC. PBGC has authority to interact with plans on an ongoing basis, but has done so infrequently to date. For example, at a recent testimony before Congress, an EBSA official stated that one large multiemployer plan, the Central States Southeast and Southwest Pension Fund, did not meet the criteria for partition, despite having \$2.1 billion in unfunded liabilities in 2009 and reportedly paying over 40 cents on every dollar to beneficiaries whose employers left the plan without covering their obligations. In fact, PBGC has only used its partition authority twice in its history and facilitated five plan mergers since 2000. Experts told us that plans could benefit from a greater level of PBGC interaction and a more flexible application of the tools available to PBGC. (See table 12.)<sup>30</sup>

---

<sup>30</sup>The suggestions in this table do not reflect GAO's views or the views of other federal officials that we interviewed. We collected this information interviewing a variety of experts. See appendix I for more information about how we conducted this work.

**Table 12: Experts' Suggestions to Improve PBGC's Assistance to Plans**

Issue	Experts' description of the problem	Options suggested by experts
Level of PBGC involvement	<p>While the multiemployer structure was designed to limit PBGC's exposure and let the employers serve as principal guarantors, PBGC is typically viewed as the guarantor of last resort for multiemployer plans. In the current system, PBGC provides little assistance to multiemployer plans prior to insolvency and focuses on limiting the government's exposure instead of ensuring that participants receive the benefits they deserve. PBGC waits too long to intervene and provide assistance to troubled plans. Plans on the path to insolvency can only watch and wait until PBGC finally gets involved.</p>	<p>Through more aggressive plan monitoring, PBGC could intervene as soon as a plan is in trouble, rather than waiting for a plan to become insolvent. PBGC could step in before plans reach the point of having to assess mass withdrawal liability, at which point all employers are committed to simultaneously withdrawing from a plan. PBGC could benefit from a continuous dialogue with pension plans—a "case worker" model in which PBGC staff provide actuarial or technical assistance to plans on an ongoing basis instead of waiting until the plans are unsalvageable.</p>
Plan partitioning	<p>In some mature plans, benefit payments to orphaned participants make up the majority of plan liabilities. PBGC has the authority to partition plan liabilities, but it is limited to orphaned pensioners coming from bankrupt companies and PBGC has been hesitant to use it.</p>	<p>PBGC's partition authority could be expanded to preserve the healthy part of a plan. Partition should apply to situations other than bankruptcy, but the agency should exercise caution and use partitioning as a tool of last resort. A high qualification threshold needs to be set for such intervention to ensure it was reserved for plans in the worst condition. Expansion of this authority would benefit about a dozen plans, most of them in the mining and trucking industries. Giving PBGC the ability to take over the sick part of a troubled plan so the healthy part could remain viable would benefit taxpayers in the long term because, if the plan became insolvent, PBGC would be responsible for paying benefits to all beneficiaries and not just the orphaned participants. Partition should be coupled with a requirement that the healthy part of a partitioned plan "de-risk" its investment strategies to prevent a repeat of financial trouble.</p>

Issue	Experts' description of the problem	Options suggested by experts
Plan mergers	<p>The current economic climate has made mergers more difficult because all plans are on unsure footing caused by the market collapse.</p> <p>Under the standard fiduciary rules, trustees of healthy plans may be less willing to merge with unhealthy plans for fear that they could be challenged for breach of fiduciary trust for assuming the liabilities of the weaker plan.</p>	<p>PBGC could be more active in facilitating mergers between healthy plans and unhealthy plans to maintain solvency and protect the agency from payouts.</p> <p>PBGC could alleviate the healthier plans' concerns by stepping in to provide incentives and financial assistance to allow these plans to make wise fiduciary decisions and support the smaller plans.</p> <p>PBGC could seek opportunities to promote mergers among different affinity groups because multiemployer plans are willing to consider branching out to find ways to preserve the plan and secure their participants' retirement future.</p> <p>PBGC would need a funding stream in addition to premiums to be able to support merger activity.</p>

Source: GAO analysis of information collected from pension experts and plan practitioners.

Second, the Employee Plans Compliance Unit (EPCU) at IRS, which is responsible for verifying that all multiemployer plans file annual actuarial certifications of funded status and confirming that the certifications are filed in a complete and timely manner,<sup>31</sup> does not have the capacity to identify plans that fail to file or verify that all plans submitting certifications are indeed multiemployer plans. IRS officials told us they could not determine whether all multiemployer plans filed their actuarial certifications because they did not know the universe of multiemployer plans. Specifically, they said they did not have a complete list of all multiemployer plans in part because the data they use is taken from the plans' Form 5500 filings, which included plans that had identified themselves as multiemployer plans but, judging from the plan name, were not (e.g., dental offices or 401(k) plans). Officials told us they hoped to get

<sup>31</sup>According to IRS, Section 432(b)(3) of the Code requires an actuarial certification of whether or not a multiemployer plan is in endangered status, and whether or not a multiemployer plan is or will be in critical status, for each plan year. This certification must be completed by the 90th day of the plan year and provided to the Secretary of the Treasury and to the plan sponsor. Failure of the plan's actuary to timely certify the plan's status is treated for purposes of section 502(c)(2) of ERISA as a failure or refusal by the plan administrator to file the annual report required to be filed under section 101(b)(1) of ERISA. A penalty of up to \$1,100 per day may be assessed by the Secretary of Labor. Plans certified to be in endangered status must adopt a funding improvement plan that is reasonably expected to enable the multiemployer plan to achieve certain funding improvements by the end of its funding improvement period. Plans certified to be in critical status must adopt a rehabilitation plan that is reasonably expected to enable the multiemployer plan to emerge from critical status by the end of its rehabilitation period. A funding improvement plan or rehabilitation plan must be updated each year after the initial endangered or critical year.

---

a more accurate data set in the future, but it would take several years before this would happen.

EPCU officials told us plan filings vary widely in scope and length. For example, some plans send a brief memo indicating their funding zone status; others send a long report detailing each of the actuarial assumptions used to determine the zone status. IRS officials told us some plans provided funded status as a percentage while others reported only zone status. IRS currently collects paper copies of the annual certifications. Officials said the annual certification notices required the same kind of information as the WRERA notices, which can be filled out and filed electronically on the IRS Web site. In March 2008, IRS proposed guidance to plans on the preferred format or content for the annual certification notices, but this guidance has not been finalized.

EPCU officials told us that they did not interact with either EBSA or PBGC with regard to the filing of certification notices. They said in the past they sent a few short summaries about the funding zone status certifications to IRS headquarters, but did not interact directly with EBSA or PBGC officials regarding the annual certifications. Moreover, IRS did not make certification data available to either EBSA or PBGC so they could reconcile the critical or endangered status notices with the number of certifications to determine if plans were complying with the law. EPCU officials said it would be beneficial for them to have direct contact with other federal agencies to share information on multiemployer plans.

Third, EBSA, which is responsible for assessing civil penalties for reporting violations against plans that do not file annual actuarial certifications of funded zone status, does not receive or actively seek out information from PBGC and IRS to enforce this penalty. PPA also requires plans that certify their funding zone status as either critical or endangered to send notices of endangered and critical funding status to EBSA, among others, but, unlike the annual certification of a plan's status, there are no penalties associated with the failure to furnish endangered or critical status notices. EBSA's Office of Participant Assistance scans the notices it receives and posts them on its Web site. Officials from EBSA's Office of Regulations and Interpretation and the Office of Enforcement said they make no attempt to reconcile the status notices with the certifications filed with IRS. They said they had no interaction with IRS officials on

these matters and noted some utility if IRS were to share certification data with EBSA.<sup>32</sup>

**Elements of Multiemployer Framework May Limit Protection of Benefits**

The pension experts and plan practitioners that we interviewed identified several elements of the multiemployer framework that were restrictive and had the potential to affect plans' ability to keep the pension promise to beneficiaries. These experts noted that each of these elements had unintended consequences made evident by the recent economic downturn. (See table 13.)<sup>33</sup>

**Table 13: Experts' Suggestions to Improve the Multiemployer Framework**

Issue	Experts' description of the problem	Options suggested by experts
Modifying accrued benefits	<p>Under current law, trustees cannot adjust retirement age or accrued benefits, even if the plan is in critical status. If plans in endangered or critical status could make such adjustments, they would have more tools at their disposal to close their funding gaps. Mature plans with high retiree liability cannot make any further benefit cuts.</p> <p>Much of a plan's liabilities lie in accrued benefits, plans need to be able to cut both future and accrued benefits, as well as increase contributions.</p> <p>Most plans with a small active participant base have no tools to address asset losses. They need a way to reduce accrued benefits to retirees. As it now stands, the inability for multiemployer plans to adjust accrued benefits creates intergenerational inequity and leaves plans with few options to address funding deficiencies.</p>	<p>Benefits need to be aligned with plan funding so incremental benefit cuts can be made, if necessary, to preserve plan assets longer.</p> <p>Plans need to strike a compromise between active workers and retired beneficiaries to spread the risk.</p> <p>PBGC may need to look into whether it can reduce benefits for retirees to help plans spread the risk evenly among all participants—active and inactive.</p> <p>Decreasing accrued benefits would require legislative changes.</p>

<sup>32</sup>PPA also gave Labor the authority to assess civil monetary penalties of up to \$1,100 per day against plan sponsors that fail to timely adopt funding improvement or rehabilitation plans. However, EBSA has not exercised this authority to date because IRS has yet to finalize regulations regarding what the content of these plans should be. As a result, EBSA has relied on plans to act in a good faith compliance basis. According to EBSA, EBSA's Office of the Chief Accountant is currently constructing a program to enforce the PPA civil penalty provisions.

<sup>33</sup>The suggestions in this table do not reflect GAO's views or the views of other federal officials that we interviewed. We collected this information interviewing a variety of experts. See appendix I for more information about how we conducted this work.

Issue	Experts' description of the problem	Options suggested by experts
Withdrawal liability	<p>Withdrawal liability discourages employers from leaving a plan; it also discourages new employers from joining a plan, especially one with unfunded liabilities, because they assume partial responsibility for the unfunded liability of all employers in the plan.</p> <p>New employers are afraid to join a multiemployer plan due to the burden of the withdrawal liability that would befall them after they joined. Without new participants, however, there will be no growth in multiemployer plans.</p>	<p>A plan's current unfunded liability should stay with the plan's current employers.</p> <p>A withdrawing employer should pay his share of the unfunded liability when withdrawing so as to not unfairly pass it onto employers who were not in the plan when those debts were incurred.</p>
Endangered status designation	<p>Plans in endangered status have insufficient tools to address their funding deficiencies. The endangered status designation had been a mistake in that it set plans up for failure.</p> <p>Plans in endangered status find themselves in a "purgatory" forced to face many challenges with limited tools. Some plans must wait and watch as their funding status deteriorates to the critical level, at which time they can choose from myriad tools to address their funding deficiency.</p>	<p>There is no need for the endangered status and it would be best if plans were considered to be either safe or critical.</p> <p>Most plans would prefer the safety valves built into critical status.</p> <p>Some plans are certifying in critical status—bypassing endangered status—to take advantage of the additional tools.</p> <p>Eliminating the endangered status would require legislative changes.</p>
PBGC guarantee level	<p>The PBGC guaranty level is low and many participants would lose a considerable amount in unguaranteed benefits if their plans were to become insolvent. Trustees are aware that the best way to insure benefits is to avoid insolvency, thereby reducing the liabilities for PBGC.</p> <p>The significant increase in premiums since 2005 did not coincide with a comparable rise in the benefit guaranty.</p>	<p>Raising the guarantee would give participants more insurance against underfunding because PBGC's guaranty would cover more of their benefits if their plan became insolvent.</p> <p>The benefit guarantee needs to be indexed to inflation.</p> <p>Establishing a benefits-related premium so plans that provided participants with larger benefits would pay higher premiums.</p> <p>Establishing a risk-based premium structure would be a good idea in the future if it were applied to plans with only active employers and workers. However, under current conditions, such a structure is not feasible as it would require underfunded plans to pay additional premiums at a time when they could least afford it.</p> <p>Increasing the PBGC guarantee level indexing it to inflation, and adding a risk-based guarantee would require legislative changes.</p>

Source: GAO analysis of information collected from pension experts and plan practitioners.

---

## Conclusions

For decades, multiemployer plans have secured and provided an uninterrupted stream of pension benefits to millions of U.S. workers and retirees. Through collective bargaining, employers and employees worked to maintain their pension benefits despite changing economic climates and financial challenges. As a result, the vast majority of plans have remained solvent and relatively few plans have made claims for financial assistance from PBGC's insurance program since its inception in 1980.

However, the recent economic downturn revealed that multiemployer plans, like most pension plans, were vulnerable to sudden economic changes and had few options to respond to the funding challenges highlighted by these economic conditions. The result was a steep decline in the funded status of most multiemployer plans—now below 70 percent in aggregate. In the short term, the majority of plans will have to make difficult decisions to improve their funding and protect against future declines. The multiemployer plan universe represents diverse groups of employers, participants and industries some of which may be better prepared to meet their future funding obligations. While some plans may be able to improve their funded status as the economy improves, plans in the worst condition may find that the current options of increasing employer contributions or reducing benefit accruals are insufficient to overcome the funding and demographic challenges they face. For these plans, the combination of the effects of the economic downturn, the decline in collective bargaining, the withdrawal of contributing employers, and an aging workforce has likely accelerated their path to insolvency. Without additional options to address their underfunding, or new employers joining the plans to replenish the contributions, many plans may find themselves at greater risk of insolvency and more likely to need PBGC financial assistance sooner rather than later. Such a situation would put additional stress on PBGC's insurance program that, already in deficit, it can ill afford.

The current statutory and regulatory framework for multiemployer plans is not structured to assist troubled plans on an ongoing basis. PBGC, Labor and IRS are all required by law to collect various funding data from plans, and these data are often duplicative. Moreover, these agencies are not making full use of these data to mitigate the risks to participants or to enforce plan discipline. While PBGC monitors plans on an ongoing basis, it focuses on the short-term risks to the trust funds rather than outward on the long-term risks to participants or the impact on their benefits if their plans cannot pay the benefits they promised.



---

There are other approaches to consider. While some practices in the countries we studied, such as mandatory employer participation, would not be feasible in the U.S. context; others may have more ready application for addressing some challenges that U.S. multiemployer plans face. For example, the countries that we studied had pension regulators that interacted with plans on a frequent basis, collected timely and detailed plan information, provided a range of tools to plans to address plan underfunding and made information on the funded status of plans available to the public. Yet, there is no one-size-fits-all solution. For example, some plans' greatest challenges may be their aging workforce or vulnerability to economic volatility, while others may face challenges inherent to the industries and geographical regions they serve.

Without more timely and accurate information on plan health, PBGC and other federal agencies can do little to help plans to respond to circumstances like the ones they experienced in the recent economic downturn. But collecting this information is not enough. The agencies must also incorporate this information into their monitoring and oversight efforts and use the most current data to inform their policies and risk assessments. To do this, the agencies responsible for multiemployer plans must work together to provide greater security for multiemployer plans, which for decades have limited the exposure to PBGC and the taxpayer.

---

## Matters for Congressional Consideration

To provide greater transparency of the current status of multiemployer plans, assist federal monitoring efforts, and help plans address their funding deficiencies, Congress should consider:

- consolidating the annual funding notices and the PPA notices of critical or endangered status to eliminate duplicative reporting requirements; and
- requiring IRS, EBSA, and PBGC to establish a shared database containing all information received from multiemployer plans.

---

## Recommendations for Executive Action

1. To improve the quality of information and oversight of multiemployer plans, we recommend that EBSA, IRS, and PBGC amend existing interagency memoranda of understanding to address, among other things, the agencies' plans for sharing information they collect on multiemployer plans on an ongoing basis. Specifically, the agencies should address how they will share data:

- 
- To identify the universe of multiemployer plans.
  - To reconcile similar information received by each agency.
  - To identify possible reporting compliance issues and take appropriate enforcement action.

The agencies should revisit this agreement periodically to determine whether modifications are required to ensure that each agency is able to carry out its responsibilities.

2. To collect more useful information from plans, the Secretary of the Treasury should direct the IRS to develop a standardized electronic form for annual certifications that requires plans to submit their funded percentage.
3. To implement better and more effective oversight practices, the Director of the PBGC should develop a more proactive approach to monitoring multiemployer plans, such as assigning case managers to work with the plans that pose the greatest risk to the agency and provide non-financial assistance to troubled plans on an ongoing basis.

---

## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretary of Labor, the Secretary of the Treasury, and the Director of PBGC for review and comment. Each agency provided us with written comments, which we reprinted in appendixes II, III, and IV of this report. In responding to the draft report, the agencies acknowledged the vital role of these plans in providing retirement security to millions of U.S. workers and retirees. PBGC further noted that the agency has limited information to analyze the health of multiemployer plans, and that additional information is needed to monitor plan health.

The three agencies also generally agreed with our recommendations to improve interagency information sharing and to take steps to acquire more current and accurate data on the status of multiemployer plans. The agencies noted, however, that in their view a new interagency MOU was unnecessary. The Department of the Treasury highlighted actions that the agency currently takes to coordinate with the other agencies. The Department of Labor provided an updated status of the actions that the agency has taken with regard to multiemployer plans. For example, EBSA said it recently initiated contact with IRS to begin work on reconciling

---

certain multiemployer data. IRS and PBGC further stated that memoranda were already in place that could be amended to allow for better information sharing. While we are encouraged by these developments, we do not believe that separate arrangements among agencies will produce the kind of interagency cooperation needed to facilitate information sharing and effective ongoing monitoring of the health of multiemployer plans. Therefore, we continue to believe that, in order to foster meaningful interagency coordination, the agencies should either amend existing agreements or enter into new ones, as we are recommending. EBSA and PBGC also provided technical comments, which we incorporated in this report, as appropriate.

---

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to relevant congressional committees, PBGC, the Secretary of Labor, the Secretary of the Treasury, and other interested parties. In addition, the report will be made available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink that reads "Barbara D. Bovbjerg". The signature is written in a cursive style with a large, stylized initial "B".

Barbara D. Bovbjerg  
Managing Director, Education, Workforce,  
and Income Security Issues

---

# Appendix I: Objectives, Scope, and Methodology

---

We were asked to answer the following research questions: (1) What is the current status of the nation's multiemployer pension plans? (2) What steps does PBGC take to monitor the health of these plans? (3) What is the structure of multiemployer plans in other countries? (4) What statutory and regulatory changes, if any, are needed to help plans to continue to provide participants with the benefits due to them?

To identify the current status of the nation's multiemployer pension plans, we interviewed officials and analyzed data and documents from PBGC, the Department of Labor's Employee Benefits Security Administration (EBSA) and the Department of the Treasury's Internal Revenue Service (IRS), and reviewed relevant industry studies and literature on multiemployer plans. To determine the recent funding status of multiemployer plans, we analyzed historical summary data published in PBGC's annual data books and summary data from IRS on the annual notices of funding status certification submitted in 2008 and 2009. To corroborate these data, we analyzed notices of critical and endangered status and WRERA notices sent to PBGC and EBSA and published on EBSA's Web site. To identify the demographics of multiemployer plans, including the number of plans, number of participants, and industry concentration of plans, we analyzed data published in PBGC's annual reports and data books. To determine private-sector union affiliation, we analyzed data from the Bureau of Labor Statistics. We assessed the reliability of the selected data that we used from these sources by comparing the number of plans filing reports to federal agencies. We determined that, although the data were incomplete and had certain limitations, which we present in our report, they were sufficiently reliable for the purpose of making clear which federal agencies collect data and showing how these data are similar and how they differ. To supplement this quantitative analysis, we interviewed EBSA, IRS, and PBGC officials; and a diverse range of pension experts and multiemployer plan practitioners. We selected experts based on those who had published on multiemployer plans or whose names were referred to us by other interviewees, and we spoke to 48 experts. We analyzed their responses on the current status of plans, the impact of the recent recession, and the future outlook of multiemployer plans. As appropriate, we reviewed relevant federal laws and regulations that pertain to multiemployer plans.

To determine the steps PBGC takes to monitor the health of multiemployer plans, we interviewed PBGC officials and reviewed documentation on PBGC's multiemployer plan monitoring, modeling, and assistance policies and procedures. We also reviewed relevant statutory and PBGC regulatory requirements with regard to multiemployer plans.

To understand the structure of multiemployer plans in other countries, we reviewed four countries selected because of their comparable multiemployer plan frameworks—the Netherlands, Denmark, United Kingdom, and Canada—and interviewed government officials, plan administrators and trustees, employer and union representatives, and other pension experts. We selected these countries after completing an initial review of employer-sponsored pension plan designs in Organisation for Economic Co-operation and Development (OECD) countries. We focused on OECD countries in order to increase our opportunity to identify practices used in countries with well-developed capital markets and regulatory regimes comparable, if not always similar, to the United States. We acknowledge that there may be relevant plan design features from a non-OECD country that we did not address in this report. Although we did not independently analyze each country's laws and regulations, we collected information about each country's multiemployer plan structure and interviewed government officials and pension experts in each country. We relied on the expertise of staff in the U.S. State Department to identify potential interviewees in these countries and to schedule the interviews. We did not review the laws or requirements of those foreign countries mentioned in this report. Rather, we relied upon the descriptions and materials furnished by officials and experts of these countries.

To identify what statutory and regulatory changes, if any, are needed to help plans continue to provide participants with the benefits due to them, we reviewed pension literature and interviewed a variety of experts on multiemployer plans, including officials from EBSA, IRS, and PBGC; pension experts; and practitioners representing a range of industries and plan sizes. We selected experts based on those who had published on multiemployer plans or whose names were referred to us by other interviewees, and we spoke to 48 experts.

We conducted this performance audit from September 2009 through October 2010,<sup>1</sup> in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe

---

<sup>1</sup>Subsequent to sending a draft of this report to the agencies for comment, the report's date of issuance was changed from fiscal year 2010 to fiscal year 2011. As a result, the number of the report was changed from GAO-10-926 to [GAO-11-79](#).

---

that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Comments from the Department of Labor

**U.S. Department of Labor**

Assistant Secretary for  
Employee Benefits Security Administration  
Washington, D.C. 20210



September 16, 2010

Ms. Barbara D. Bovbjerg  
Director Education, Workforce and Income Security Issues  
United States Government Accountability Office  
Washington, DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled "Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits" (GAO-10-926). GAO, in relevant part, is recommending that the Employee Benefits Security Administration (EBSA), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) enter into a memorandum of understanding that addresses, among other things, the agencies' plan for sharing information they collect on multiemployer plans on an ongoing basis. The memorandum should address how data will be shared to: (i) identify the universe of multiemployer plans; (ii) reconcile similar information received by each agency; and (iii) identify possible reporting compliance issues and take appropriate enforcement action. We agree with GAO that an effective information-sharing mechanism among the agencies is needed in this area and will work with the IRS and PBGC to establish such a mechanism. We believe, however, that this may be accomplished without the necessity of a formal memorandum of understanding.

The Department of Labor, through EBSA, is responsible for administering and enforcing the fiduciary, reporting, and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). ERISA covers approximately 1,500 defined benefit pension plans covering more than 10.4 million workers and retirees. As you know, recently, ERISA and the Internal Revenue Code were substantially amended by the Pension Protection Act of 2006 (PPA), with many of the more significant PPA amendments relating to multiemployer plans. Shortly after the PPA, the Congress enacted the Worker, Retiree, and Employer Recovery Act of 2008, which amended a number of the PPA amendments affecting multiemployer plans. As the legal landscape has and continues to evolve, EBSA, nonetheless, has and continues to commit significant resources to implementing the many new or revised requirements applicable to multiemployer plans. Set forth below is a description of the status of a number of these items which were discussed in GAO's report.

*Annual Reporting by Multiemployer Plans*

EBSA recently completed a multi-year overhaul of the filing system for ERISA's annual return/report (Form 5500) by moving to an all electronic system. The move to the all-electronic EFAST2 Form 5500 filing system was intended not only to make Form 5500 filing data available to the government and the public faster and improve the quality of data collected, but also to satisfy the PPA requirement that the Department make available electronically on its website certain actuarial information filed as part of the Form 5500. To reflect both the changes in the reporting requirements and in the funding rules established by the PPA, the agencies (EBSA, IRS, and PBGC) created the new, separate schedule for multiemployer defined benefit pension plans (Schedule MB) and added questions to the Schedule R (Retirement Plan Information) to collect information specifically about multiemployer plans, including contribution amounts and rates for employers contributing more than five percent of total contributions to the plan and the number of employers withdrawing from the plan during the preceding plan year, along with aggregate amount of withdrawal liability assessed or estimated to be assessed against the withdrawn employers.

*Model Notices for Multiemployer Plans in Critical Status*

On March 25, 2008, EBSA published in the Federal Register a model notice intended to assist multiemployer plans in complying with the notification requirement under section 305(b)(3)(D)(i) of ERISA. Section 305(b)(3)(D)(i) of ERISA provides that, in any case in which it is certified under section 305(b)(3)(A) that a multiemployer plan is or will be in endangered or in critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to participants and beneficiaries, the bargaining parties, the PBGC, and the Secretary of Labor. Model notices of this type promote uniform disclosure and often result in reduced administrative burdens to plans. EBSA receives, logs, and posts critical and endangered status notices on EBSA's website. EBSA's Office of Participant Assistance executes quality control checks regularly to avoid duplicative postings. EBSA is not a statutory recipient of annual actuarial certifications and, accordingly, does not post such certifications to its website.

*Annual Funding Notices*

On February 10, 2009, EBSA issued Field Assistance Bulletin 2009-01 (FAB) as interim guidance under section 101(f) of ERISA. Section 101(f) of ERISA generally requires the administrators of all defined benefit plans, including multiemployer plans, to furnish an annual notice to the PBGC, participants, beneficiaries, and certain other persons. A funding notice must include, among other information, the plan's funded percentage, over a three-year period, as well as other information relevant to the plan's funded status. Pending further guidance, the Department will, as matter of enforcement policy, treat a plan administrator as satisfying the requirements of section 101(f) of ERISA, if the administrator has complied with the guidance contained in the FAB and has acted in accordance with a good faith, reasonable interpretation of those requirements with respect to matters not specifically addressed in the FAB. The FAB contains a model notice for multiemployer plan administrators and while not mandatory, use of an appropriately completed model will, as a matter of Department enforcement policy, satisfy the content requirements of section 101(f) of ERISA. On August 10, 2010, EBSA transmitted a proposed regulation under section 101(f) to the Office of Management and Budget for review



under Executive Order 12866. The proposal will establish uniform content standards and include a model annual funding notice that multiemployer plans may use to satisfy their disclosure requirements under section 101(f) of ERISA.

EBSA does not have the authority to assess civil monetary penalties against a plan administrator that violates the annual funding notice requirements. Instead, under section 502(c)(1) of ERISA, a plan administrator who fails to meet the requirements of section 101(f) of ERISA with respect to a participant or beneficiary may, in the court's discretion, be personally liable to such participant or beneficiary in the amount of up to \$110 a day from the date of such failure. Under section 502(a)(8) of ERISA, however, a civil action may be brought by the Secretary of Labor or a person entitled to receive an annual funding notice (e.g., PBGC) to enjoin any act or practice which violates section 101(f) or obtain appropriate equitable relief.

*ERISA Civil Monetary Penalties for Failure to Adopt a Funding Improvement / Rehabilitation Plan*

On February 26, 2010, EBSA published a final regulation that establishes procedures relating to the assessment of civil penalties by the Department of Labor under section 502(c)(8) of ERISA. This provision authorizes the Secretary of Labor to assess a civil penalty of up to \$1,100 a day against the plan sponsor for each violation of the requirement under section 305 of ERISA to timely adopt a funding improvement or rehabilitation plan for a multiemployer plan in endangered or critical status. This regulation became effective on March 29, 2010, and while EBSA has not yet assessed civil monetary penalties under this provision, EBSA has undertaken compliance review activities in this area. In FY 2010, for example, EBSA's Office of Chief Accountant reviewed fifty plans for compliance and determined that civil penalties were not warranted. EBSA will continue such reviews on a regular basis. In conjunction with these reviews, EBSA began, and will continue, working with the IRS to reconcile actuarial certification and related zone status data, subject to any applicable restrictions under section 6103 of the Internal Revenue Code, in order to identify plan sponsors who failed to file actuarial certifications. With accurate filing data, the agencies will be in a stronger position to assess compliance with ERISA §305.

*Conclusion*

Multiemployer defined benefit pension plans play a vital role in providing retirement security to millions of American workers and retirees. We agree with GAO's conclusion that a more effective information-sharing mechanism among the agencies is necessary and will continue to work with the IRS and PBGC to that end. We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



Phyllis C. Borzi  
Assistant Secretary

# Appendix III: Comments from the Department of the Treasury



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 24, 2010

Ms. Barbara D. Bovbjerg  
Managing Director  
Education, Workforce and Income Security  
United States Government Accountability Office  
441 "G" Street, NW  
Washington, DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled "Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits" (GAO-10-926).

Multiemployer defined benefit pension plans play a vital role in providing retirement security to millions of American workers and retirees. Concern about the funded status of these plans led Congress to enact, in the Pension Protection Act of 2006, a series of revisions to the multiemployer pension funding and related rules.

Since enactment of that law, the three agencies that regulate these plans -- the Employee Plans (EP) division within the Internal Revenue Service, the Employee Benefits Security Administration (EBSA) within the Department of Labor, and the Pension Benefit Guaranty Corporation (PBGC) -- have been working together to issue interpretive guidance and to implement the new rules. This is part of our longstanding practice of coordinating oversight of defined benefit pension plans.

The three agencies' coordination efforts include the following:

- Mutual review of each agency's regulatory and other multiemployer funding administrative guidance prior to publication;
- Joint development of the schedule MB and schedule R attachments to the Form 5500;
- Discussion of multiemployer issues during bi-weekly three-agency conference calls (and follow-up meetings on specific issues);
- Quarterly regional meetings between EP and EBSA area directors and staff;
- Joint training and outreach efforts, including EP, EBSA, and PBGC joint panels at national practitioner benefits conferences; and
- Cross-agency internal training and information sharing, such as the recent presentation by the manager of PBGC's Multiemployer Program Division at a training session for EP examination agents in the Multiemployer Audit Program.

Like many other defined benefit plans, multiemployer plans have been under financial strain as a result of the 2008 turmoil in the financial markets. As a result, the number of these plans that was certified by the plan actuary to be in either endangered or critical status increased

dramatically from 2008 to 2009. The draft report compares the number of plans that are certified in endangered status or critical status for the 2008 and 2009 plan years with the number of plans providing notice of their critical or endangered status to the PBGC and Department of Labor. This leads the reader to draw the inference that many plans in endangered or critical status are not complying with the requirement to notify the PBGC and Department of Labor of that status. However, that inference would be inaccurate to the extent that plans took advantage of the election to “freeze” their status (i.e., maintain their prior-year status) under section 204 of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). If a multiemployer plan that was neither in endangered nor in critical status for 2008 but was certified by the plan actuary to be in endangered or critical status for 2009 elects to “freeze” its status pursuant to section 204 of WRERA for 2009, there will be a mismatch between the notification of status sent to the IRS (which is the actuary’s actual certification of endangered or critical status) and the requirement to notify the PBGC and Department of Labor if the plan’s status is endangered or critical (because notification to the other agencies would take into account the plan’s freeze election).

GAO’s draft report recommends that the agencies enter into a memorandum of understanding (MOU) that addresses, among other things, the agencies’ plans for sharing information they collect on multiemployer plans on an ongoing basis. The draft report recommends that the MOU address how data will be shared to (i) identify the universe of multiemployer plans; (ii) reconcile similar information received by each agency; and (iii) identify possible reporting compliance issues and take appropriate enforcement action.

In fact MOUs that provide for the sharing between agencies of taxpayer information, including information on multiemployer plans, are currently in force between the IRS and EBSA and between the IRS and PBGC. In addition, the IRS shares taxpayer information, including information on multiemployer plans, with the Department of Labor and PBGC pursuant to annual requests under section 6103(l)(2) of the Internal Revenue Code. These MOUs and annual request letters describe the purposes for which information may be requested, and also detail information-sharing procedures, including the safeguarding of taxpayer data.

We agree that the agencies should periodically consider modifying the MOUs and related documents to ensure that cooperation and sharing of information continues efficiently, particularly in light of the changes to the funding rules for multiemployer plans enacted in recent years. Accordingly, the IRS will be working with EBSA and PBGC to consider necessary and useful changes to the MOUs and related documents.

GAO’s draft report also recommends that the IRS develop a standardized electronic form for annual certifications that would require plans to disclose their funded percentage. In March 2008, the IRS issued proposed regulations specifying the information that multiemployer plans must include as part of the annual certification of their plans’ funded status under section 432 of the Internal Revenue Code. Those proposed regulations would not require that multiemployer plans present this information on a specific form or in a specific format and do not specifically require disclosure of plans’ funded percentage. However, as part of the process of finalizing those proposed regulations, Treasury and the IRS will take into account, in developing future guidance, GAO’s recommendation that disclosure of a plan’s funded percentage be included as part of the certification. We also appreciate the rationale for GAO’s recommendation to create a

---

**Appendix III: Comments from the Department  
of the Treasury**

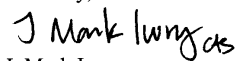
---

form for this purpose, and EP will discuss with the IRS's governing council on electronic filing the feasibility of developing an electronic filing program for such a form.

Restoring the financial health of multiemployer plans is an important part of improving the retirement security of our country. However, it will not be an easy task. GAO has performed a useful service in identifying possible approaches to improve the situation.

We appreciate having had the opportunity to review and comment on the draft report. Please do not hesitate to contact us if you have questions concerning this response or if we can be of further assistance.

Sincerely,



J. Mark Iwry  
Senior Advisor to the Secretary  
Deputy Assistant Secretary for Retirement and Health Policy  
United States Department of the Treasury

# Appendix IV: Comments from the Pension Benefit Guaranty Corporation



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

September 24, 2010

Barbara D. Bovbjerg  
Managing Director, Education, Workforce and Income Security Issues  
U.S. Government Accountability Office  
Washington, DC 20548

**Re: "Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits"**

Dear Ms. Bovbjerg:

Thank you for the opportunity, both to work with your team and to comment on your draft report, "*Private Pensions: Changes Needed to Better Protect Multiemployer Pension Benefits*."

PBGC is grateful that GAO is continuing to focus on multiemployer plans. They are undeniably important. Multiemployer plans provide retirement security for some 10 million Americans. Furthermore, as the report notes, many of these plans are significantly underfunded.

Given GAO's impartial position, longstanding interest and expertise in these complex and difficult subjects, we view your report as a step to improve public understanding and hope you will continue your efforts in future reports.

This report begins with four important questions:

1. What is the current status of the nation's multiemployer pension plans?
2. What steps does the PBGC take to monitor the health of these plans?
3. What is the structure of multiemployer plans in other countries?
4. What statutory and regulatory changes, if any, could help plans to continue to provide participants the benefits due them?

It then proceeds, using the limited information presently available, to describe what is known about the health of multiemployer plans. It also reports, in impressive detail, how PBGC monitors the health of such plans, as well as the limited authorities that PBGC has to assist them. Finally, the draft report describes multiemployer plans in other nations, and how other nations have taken steps to safeguard them.

We would value and welcome future GAO analysis relating to the fourth question raised by the draft report, to describe some of the choices plans may need to make, of potentially desirable changes to the statutory or regulatory structure, and perhaps identify measures used by multiemployer plans in other countries that might be considered in the United States.

*I hasten to note that neither PBGC nor the Administration has yet formed any policy views about whether statutory or regulatory changes are appropriate and, if so, what they should be. We are not yet in a position to do so. Under the Pension Protection Act, the three ERISA agencies have been directed to report, by the end of 2011, on the operation and funding status of multiemployer plans. In the context of that report, we should be able to consider whether changes are appropriate.*

Our efforts to analyze these important issues are, however, hamstrung by the limited information we possess concerning both multiemployer plans and their participating employers. As we noted in conversations with GAO staff, neither PBGC nor other federal agencies has sufficient information to determine the scope and nature of the challenges multiemployer plans actually face, the extent to which plans have used the tools that are already available, and the extent to which additional measures are or are not justified.

As GAO knows, the primary responsibility for the health of pension plans lies with plan sponsors. Under the Pension Protection Act of 2006, plans in critical status can reduce plan accruals and adjustable benefits and increase contributions. Although PBGC does not administer the Internal Revenue Code sections that govern these measures, we can and do help plans address their funding-related concerns by reviewing alternative withdrawal liability rules and discussing other ideas. We spend a lot of time talking to plan professionals about how they can help their plans. Nonetheless, multiemployer plans have no obligation to work with PBGC or the other federal agencies. (Although there are limited reporting requirements to PBGC, there is no sanction if plans fail to comply and no requirement to work with PBGC if they do.)

Furthermore, as GAO knows from the notices we have received, some plans are healthy while others are not. The healthy “green zone” plans operated under the same rules (and in some cases in the same industries) as plans that entered endangered or critical status. For the most part, we do not have the information to know why: to what extent have endangered or critical plans been affected by broad economic factors, to what extent by unfortunate choices in investments or benefit/accrual levels, or by other factors. We hope the final report will mention these factors.

The Report’s primary discussion about information deals with the information that is already collected by IRS, DOL, or the PBGC. It recommends that executive agencies coordinate and share the information they already possess via a Memorandum of Understanding (MOU). This is a useful recommendation, and one whose objective we support. However, as the Treasury Department’s response to the GAO report notes, MOUs that provide for the sharing between agencies of information on multiemployer plans are currently in force between IRS and EBSA and IRS and PBGC. We can and will review these to ensure that we take full advantage of the information already in our possession that can be shared, but PBGC does not believe that this will be nearly sufficient to prepare us for the challenges we face.

Without additional information on the current situation of plans – not just those that choose to file Annual Funding Notices – and the ability to obtain information in some cases on the economic condition of major

---

**Appendix IV: Comments from the Pension  
Benefit Guaranty Corporation**

---

employer participants, we will neither be prepared to help multiemployer plans nor be able to analyze whatever statutory changes might ultimately be necessary to do so.


We hope GAO will consider these issues further. Ideally, this report would recommend further analysis and data about multiemployer plans, because Congress and the executive branch plainly need better information about multiemployer plans than what we already have. It would help both to note this and suggest what additional reporting may be necessary. For example, should there be penalties for failing to send PBGC critical or endangered status notices, or for failing to send Annual Funding Notices?

The draft report also recommends that PBGC develop a more active approach to monitoring multiemployer plans. We agree that our multiemployer program will need more resources and a more robust infrastructure. We have already begun to redirect some of our current resources to the program, and have begun discussions about additional program needs in the future. However, an active approach requires more than just a willing staff, even as talented and hardworking a staff as that of PBGC. It requires cooperation and information from the plans, participants, and employers that we are trying to help.

Under separate cover, we have provided a list of suggested technical corrections and other comments to clarify the draft report.

Again, we very much appreciate the opportunity you have given us to comment on the draft report and to meet with your staff to discuss it. We appreciate GAO's ongoing efforts to call attention to retirement security issues and the role PBGC plays in protecting pension benefits. And we look forward to working with you to help protect them in the future.

Sincerely,

  
Joshua Gotbaum  
Director

cc: Phyllis Borzi  
Department of Labor  
J. Mark Iwry  
U.S. Department of the Treasury

---

# Appendix V: GAO Contact and Staff Acknowledgments

---

## GAO Contact

Barbara Bovbjerg (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov)

---

## Staff Acknowledgments

Individuals making key contributions to this report include David R. Lehrer, Assistant Director; Jonathan S. McMurray, Analyst-in-Charge; Robert Campbell; and Thanh Lu. Joseph Applebaum, Susan Aschoff, and Roger J. Thomas also provided valuable assistance.



---

## GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

---

## Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site ([www.gao.gov](http://www.gao.gov)). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to [www.gao.gov](http://www.gao.gov) and select "E-mail Updates."

---

## Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

---

## To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: [www.gao.gov/fraudnet/fraudnet.htm](http://www.gao.gov/fraudnet/fraudnet.htm)

E-mail: [fraudnet@gao.gov](mailto:fraudnet@gao.gov)

Automated answering system: (800) 424-5454 or (202) 512-7470

---

## Congressional Relations

Ralph Dawn, Managing Director, [dawnr@gao.gov](mailto:dawnr@gao.gov), (202) 512-4400  
U.S. Government Accountability Office, 441 G Street NW, Room 7125  
Washington, DC 20548

---

## Public Affairs

Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800  
U.S. Government Accountability Office, 441 G Street NW, Room 7149  
Washington, DC 20548

