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Pension Benefit Guaranty Corporation

PBGC
Protecting America's Pensions

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Termination Fact Sheet

Background: The Pension Benefit Guaranty Corporation (PBGC) was created by the Employee Retirement Income Security Act of 1974 (ERISA) to protect the pensions of participants in private defined benefit pension plans. In underfunded single-employer pension plans, PBGC guarantees participants' benefits if the employer can no longer stay in business and fund its pensions. Ending a plan in such a situation is known as a "distress termination," if carried out by the employer, or "involuntary termination" if PBGC must take action to protect the plan benefits. An employer also may use a "standard termination" to end a plan, but only if the plan has enough assets to provide full plan benefits. In PBGC's separate multiemployer program, pension plans normally are not terminated. If a multiemployer plan becomes insolvent, it receives financial assistance from PBGC to enable the plan to pay participants their guaranteed benefits.

Types of Termination: Specifically, PBGC was created to protect the retirement security of participants whose pension plans terminate without sufficient assets to pay all promised benefits. Cessation of a plan under these circumstances is a **distress termination** or **involuntary termination**. At the time of termination, activities under a pension plan such as benefit accruals and vesting cease; PBGC steps in and uses its own assets to insure that participants do not lose all their benefits as occurred prior to 1974.

Benefit payments actually earned are guaranteed up to a monthly limit that is set by law. For pension plans terminating in 2005, the maximum guaranteed amount is \$3,801.14 per month (\$45,613.68 yearly) for a participant retiring at age 65. This maximum monthly payment must be reduced for any benefit that is paid or payable to a participant before age 65, or is paid to a participant in a form other than an annuity for the participant's life alone, such as a form that provides for survivor's benefits. The maximum is increased for anyone who retires after age 65.

Some 961,000 workers and retirees of 3,479 underfunded plans that have been terminated in PBGC's 30-year history, and 100,000 participating in multiemployer plans receiving financial assistance, depend on PBGC for their retirement income.

ERISA also provides protection for participants whose pension plans

terminate with sufficient assets to pay for all benefits. Cessation of a plan under these circumstances is a **standard termination**. As of the date of this event, all activities under the plan cease, all benefits become fully vested, and the benefits are distributed under ERISA guidelines and PBGC's insurance responsibility ends. There have been more than 165,000 standard terminations since PBGC's creation.

Distress Termination: A company in financial distress may voluntarily terminate a pension plan if:

- the plan administrator has issued a notice of intent to terminate to affected parties, including PBGC, at least 60 days, and no more than 90 days, in advance of the proposed termination date;
- the plan administrator has issued a subsequent termination notice to PBGC, which includes data concerning the number of participants and the plan's assets and liabilities; and
- PBGC has determined that the plan sponsor and each of its corporate affiliates have satisfied at least one of the following financial distress tests - though not necessarily the same test:
 - a petition has been filed seeking liquidation in bankruptcy;
 - a petition has been filed seeking reorganization in bankruptcy, and the bankruptcy court (or an appropriate state court) has determined that the company will not be able to reorganize with the plan intact and approves the plan termination;
 - it has been demonstrated that the sponsor or affiliate cannot continue in business unless the plan is terminated; or
 - it has been demonstrated that the costs of providing pension coverage have become unreasonably burdensome solely as a result of a decline in the number of employees covered by the plan.

Involuntary Termination: The law provides that PBGC may terminate a pension plan, even if a company has not filed to terminate a plan on its own initiative, if:

- the plan has not met the minimum funding requirements;
- the plan cannot pay current benefits when due;
- a lump sum payment has been made to a participant who is a substantial owner of the sponsoring company; or
- the loss to PBGC is expected to increase unreasonably if the plan is not terminated.

PBGC must terminate a plan if assets are unavailable to pay benefits currently due.

Standard Termination: A plan may terminate only if plan assets are sufficient to satisfy all plan benefits and if the plan administrator has taken the following

steps:

- Issued a Notice of Intent to Terminate to affected parties other than PBGC at least 60 days, and no more than 90 days, before the proposed termination date; it also must inform plan participants that PBGC's guarantee of their benefits will cease upon distribution of plan assets;
- Informed plan participants of the identity of the private insurer from whom an annuity is being purchased or the names of insurers from whom bids will be sought no later than 45 days before the distribution of plan assets;
- Sent each plan participant a notice that includes the benefit the participant has earned and data the plan used to calculate the value of the benefit;
- Submitted a termination notice to PBGC, which includes certified data on the plan's assets and liabilities as of the proposed date of distribution; and
- Distributed plan assets to cover all benefit liabilities under the plan.

Plans must provide PBGC with the names of any missing participants and either money to pay their benefits or the name of the insurer holding their annuities. Before sending money to PBGC, the plan administrator must conduct a diligent search that includes using a commercial locator service.

If assets cannot cover all benefit liabilities, the plan administrator must notify PBGC and stop the termination process. If the plan administrator does not follow proper procedures, PBGC may issue a Notice of Noncompliance that nullifies the proposed termination.

Annuity insurer selections are fiduciary decisions and must comply with fiduciary provisions of Title I of ERISA, which is enforced by the Department of Labor.

Single copies of publications and fact sheets are available from: Pension Benefit Guaranty Corporation, Communications and Public Affairs Department, 1200 K Street NW, Suite 240, Washington, DC 20005-4026.

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