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New PBGC proposal facing stiff resistance

System for warning on financial health of companies criticized

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CIEBA's Deborah Forbes: "This will only serve to enhance the trend toward plan terminations."

A PBGC proposal to boost defined benefit plan reporting to help the agency access the plan sponsors' financial soundness is drawing strong protests.

Plan executives initially considered proposed changes to the Pension Benefit Guaranty Corp.'s “reportable events” rule an improvement over an earlier approach. Now, however, they are doing everything they can to stop it, saying the idea will hasten the decline of defined benefit pension plans.

The subject proved so touchy that the PBGC took the unusual step of holding its first public hearing on a regulatory proposal, inviting input on the best way to get useful information about companies' financial health before their pension plans become the agency's problem. At that June 18 hearing, PBGC Director Joshua Gotbaum said agency officials are mindful of not scaring away plan sponsors, acknowledging that “we do have to do our jobs, but we also have to keep our customers.”

Plan administrators are required by the Employee Retirement Income Security Act to notify the PBGC of events that could signal problems for the plan sponsor, such as bankruptcies and mergers. When the agency in 2009 proposed to eliminate most rule waivers that well-funded plans had come to rely on, the protests were swift. Characterizing that first attempt as “a mistake,” Mr. Gotbaum and his staff came up with a new proposal they said will exempt as many as 90% of companies from having to disclose “reportable events” if they qualify for certain waivers and pass a financial soundness test, or have fewer than 100 plan participants. Companies not meeting those tests could still be exempt if their defined benefit plans are 120% funded on an ongoing basis or 100% funded on a termination basis.

Plan executives say the proposal is simply not needed. “There is no reason to impose new reporting burdens on voluntary sponsors," said Deborah Forbes, executive director of the Committee on Investment of Employee Benefit Assets, Bethesda, Md., which represents more than 100 of the largest U.S. corporate pension funds with $1.5 trillion in aggregate assets. "As voluntary sponsors - voluntary — CIEBA members support defined benefit, but this will only serve to enhance the trend toward plan terminations."

The right metrics

The idea of digging deeper into a company's financial health to determine whether the PBGC's proposed waivers would apply is not sitting well with plan executives, who say the current practice of providing waivers to companies with plans at least 80% funded is the right way, particularly for financially strong firms.

"I completely understand that the PBGC is looking for what is the right metric," Charles Van Vleet, assistant treasurer and chief investment officer at Textron Inc., Providence, R.I., said in an interview. "For large public companies, the PBGC has access to a lot of public information and they've always had the ability to get more. It's better to use a specific request than a blanket request, which is a tax on time." Textron's U.S. defined plans have $5.6 billion in assets.

Rather than adding to compliance costs, "let the market apply the right pressures and be the discipliner for how I manage my pension. When it comes to metrics like debt to capital, the market is a decent disciplinarian. That same market wants pension sponsors to maintain stable, high funding levels to reduce volatility, and to be more transparent about pension costs as a soft debt. I'd encourage (Mr. Gotbaum) to foster shareholder and CEO understanding about what impact soft debt has on your stock price," Mr. Van Vleet said.

Part of the unease can be attributed to a broader distrust of the agency. "The PBGC has not demonstrated that they understand the challenges of keeping plans in the system," said a lobbyist for a company that sponsors a multibillion-dollar defined benefit plan.

"Why would plan sponsors want them to develop their own rules behind closed doors using their own black box metrics? It is completely inappropriate for the PBGC to assess the financial soundness of any business, publicly traded or private," said the lobbyist, who declined to be identified.

Plan executives are hopeful that the PBGC will be more flexible about how plans can qualify for safe harbors based on financial soundness. The PBGC has proposed five criteria a company would have to meet in order to be considered "financially sound."

One would require the company to have a score from a commercial credit reporting company showing a low likelihood of defaulting on its financial commitments. Other criteria tied to the company's financial performance, indebtedness and loan payment history also would have to be met. (A 2011 review of reportable events found that while as much as 90% of the information wasn't helpful, the chance of a plan sponsor defaulting on other obligations "was critical" to detecting plan failures, said Mr. Gotbaum.)

Safe harbor levels too high

Plan executives also believe the proposed levels to qualify for safe harbors are too high. Few plans take the time and expense of running termination calculations, and the 120% threshold test (on an ongoing basis) "is so high that it makes it meaningless" to all but a very few plans, Michael Francese, a partner in the Washington law firm Covington & Burling LLP, said at the hearing, where he represented the ERISA Industry Committee. Funding levels that high, combined with significant new monitoring and reporting demands, could also tip the scales toward a plan freeze or derisking with annuities, plan executives warn.

Eric Keener, chief actuary at Aon Hewitt, Norwalk, Conn., noted that some clients are more concerned than others about the specific tests, but all are concerned about additional reporting burdens and the ongoing monitoring that collective testing would entail. "The need to meet each one of the five criteria simultaneously, for example, might be really more burdensome than is necessary. ... If you're going to be introducing some of these safe harbors, they have to be workable."

"There needs to be a happy medium between giving the PBGC the information they need and not overburdening plan sponsors — or the PBGC itself," said Mr. Keener. "It could make more plan sponsors say "that's it' and move away from the plan as quickly as they can. It wouldn't cause a big rush for the exit, but it could be one more thing."

Finding a balance of corporate and PBGC interests is going to take some work, especially with plan executives lobbying to have the proposed changes go away, a suggestion that Mr. Gotbaum told hearing attendees "is not going to cut it." But he did welcome input on alternative ways to gauge financial soundness of plans while protecting PBGC assets, and has already asked for more information.

Plan executives do have time on their side. Harold Ashner, a former PBGC assistant general counsel for legislation and regulations who is now a partner with the Washington law firm Keightley & Ashner LLP, notes that getting the existing proposal cleared by the Office of Management and Budget "took well over a year." Given an even more elaborate clearance process for an increasingly unpopular final rule — including approval by the secretaries of Treasury, Labor and Commerce — "I wouldn't expect a final rule to be imminent," said Mr. Ashner.

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