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Report to the Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives

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PENSION PLANS

Pension Benefit Guaranty Corporation Needs to Improve Premium Collections

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The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

This report responds to your request for information about the Pension Benefit Guaranty Corporation's (PBGC's) efforts to collect pension plan premiums. On December 13, 1991, we briefed your office on the preliminary results of our work. Our collection work is part of a series of studies we are performing at PBGC.[1]

Results in Brief

PBGC's efforts to identify and collect delinquent (unpaid) premiums, underpaid premiums, interest, and penalties are inadequate. Attempts to collect delinquent premiums from large plans have been infrequent, and follow-up has been sporadic; PBGC does not attempt to identify or collect delinquent premiums from small plans. Until April 1992, PBGC had not sent bills for underpaid premiums, interest, and penalties to large or small plans for plan years after 1987. A breakdown in PBGC's computerized premium accounting system was a major factor in some of these problems. Further, PBGC normally does not use civil action to make collections. We are recommending specific actions that PBGC should take to improve premium collections.

Background

Under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, defined benefit pension plans are required to pay annual premiums to PBGC for pension insurance.[2] Originally $1 for each single-employer plan participant, the annual fixed premium has been increased several times, most recently to $19 in 1991. Beginning in 1988, some single-employer plans were also required to pay an additional variable premium if their current liability for immediate and deferred vested benefits exceeded their assets. In 1991, the variable premium

[1]See Financial Audit: System and Control Problems Further Weaken the Pension Benefit Guaranty Fund (GAO/AFMD-92-1, Nov. 13, 1991); Accuracy of PBGC Premiums (GAO/HRD-92-28R, Mar. 23, 1992); and PBGC's Premium Accounting System RFP (GAO/IMTEC-92-49R, May 6, 1992).

[2]Defined benefit plans are plans that pay specific retirement benefits generally based on years of service, earnings, or both.

increased from $6 to $9 for each $1,000 of unfunded vested benefits.[3] Benefits are insured even if premiums are not paid.

Each year PBGC sends premium instruction booklets, including payment forms, to pension plans that paid premiums in the past. Plans are to calculate their premiums in accordance with PBGC instructions, file their forms, and pay their premiums by a specified due date.[4]

ERISA requires that interest accrue on unpaid premiums and authorizes PBGC to assess penalties when premiums are paid late. There is no limit on the amount of interest that may accrue. The penalty for late premiums is the greater of 5 percent per month of the unpaid premium, or $25 per month, but not more than 100 percent of the unpaid premium.

ERISA authorizes PBGC to bring civil action to collect premiums, interest, and penalties and to recover the costs of such action. ERISA also establishes a statute of limitations that essentially prohibits PBGC from bringing civil action after the later of 6 years after the date on which the premium was due or 3 years (6 years in the case of fraud or concealment) after PBGC became, or should have become, aware of a plan's obligation to pay premiums.[5]

PBGC Premium Collection Efforts

PBGC uses two mechanisms to identify and collect delinquent premiums, and a third to identify and collect underpaid premiums, interest, and penalties from plans that did not pay enough or paid late.

The primary mechanism used to identify and collect delinquent premiums is the Past Due Filing Notice. PBGC procedures require that each month, PBGC make a computer search of premium payment records and identify plans that paid premiums one year but not the next. Plans identified for the first time are to be sent a computer-generated Past Due Filing Notice if their payment is 60 days late. The notice requests payment for the year in question, or an explanation of why payment is not due. A second computer-generated notice is to be sent if the plan fails to respond to the

[3] Multiemployer plans pay a fixed premium of $2.60 (originally $.50) per participant and no variable premium. Such plans involve more than one employer and are maintained pursuant to collective bargaining agreements.

[4] Plans with 500 or more participants file two forms, one with the estimated payment of their fixed premium, then a second to confirm that the first payment was correct or make an additional payment, including a variable premium, if necessary.

[5] The 3-year provision could be applied in cases where PBGC was not aware of the existence of a plan and did not know a payment was due.

first notice within 60 days. If there is no response to the two computer-generated notices, PBGC procedures require manual follow-up contacts. Sixty days after the second computer-generated notice, PBGC staff are to call or write the plan and request payment of any amounts due for the 6 years preceding the contact, or an explanation of why payment is not due. If there is no response, three additional calls or letters are required. If the plan still does not respond, PBGC is to send a final collection letter stating that if the plan does not make the payment within 10 days, the matter will be referred for further collection action.

The second mechanism PBGC uses to identify delinquent premiums is a computerized match of its records with Internal Revenue Service (IRS) records. The purpose of the match is to identify plans that filed a report with IRS but did not pay a premium to PBGC.[6] PBGC then sends inquiry letters to these plans.

PBGC's mechanism for identifying and collecting underpaid premiums, interest, and penalties is the Statement of Account. PBGC procedures require that each month, a computer search be made of premium payment records to identify plans that paid their premiums, but underpaid or owe interest or penalties because premiums were paid late. The first time the plan is identified, PBGC sends a computer-generated Statement of Account to bill the plan for amounts owed. If there is no response to the bill, manual follow-up, similar to that described for Past Due Filing Notices, is to be initiated.

In August 1988, PBGC partially shut down its computerized premium accounting system after failing in attempts to modify the system to handle variable rate premiums. After the shutdown, only premium payment information for periods before August 1988 was in the system and available to PBGC. PBGC could query the system for information and make basic changes, such as plan name and participant count, but could not update payment records. As a result of its computer problems, PBGC developed serious backlogs in identifying and collecting delinquent premiums. PBGC has been working for almost 4 years to restore its computer capability.

[6]Federal regulations require plans to file an annual information report (Form 5500) with IRS showing assets, liabilities, and various other information. IRS is responsible for enforcing ERISA's plan funding requirements.

Objective, Scope, and Methodology

Our objective was to assess PBGC's efforts to identify and collect delinquent premiums, underpaid premiums, interest, and penalties. We reviewed selected sections of ERISA, applicable federal regulations, and PBGC policies and procedures. We also reviewed selected PBGC documents, including the Inspector General's January 1991 audit report (and supporting documentation) on PBGC's premium collection program; internal correspondence; contractual arrangements for private collection agency services; and reports showing the number of delinquent plans, amount of delinquent premiums, amount of interest and penalties, monthly collections, and collection agency results. We did not verify the information in these reports. Finally, we discussed collection policies and practices with PBGC officials.

Our work was done between August 1991 and March 1992 in accordance with generally accepted government auditing standards.

Inadequate Efforts to Identify and Collect Delinquent Premiums

PBGC's efforts to identify and collect delinquent premiums have been inadequate. PBGC estimates that as much as $38 million in premiums may be delinquent. PBGC has sent past due notices infrequently to large plans—with 50 or more participants—and its follow-up has been sporadic. PBGC has not attempted to collect delinquent premiums from small plans.

Infrequent Past Due Notices

Between August 1988 and April 1992, PBGC sent past due notices only three times—in April 1990, January 1991, and August 1991. No notices were sent between August 1988 and April 1990 because the premium accounting system was partially shut down, as described previously. Effective April 1992, PBGC resumed issuing these notices on a monthly basis.

PBGC officials told us that past due notices were not sent monthly between April 1990 and April 1992 because PBGC's computerized information, used to identify delinquent plans, contained numerous errors. More than 60 percent of about 10,000 notices sent in April 1990 were returned due to errors, including about 3,500 because the plan terminated or merged with another plan. Other reasons for invalid notices included changes in employer identification or plan number and plan reporting errors. PBGC said that many invalid notices were sent because PBGC was unable to update plan information while the system was partially shut down. Noting that invalid notices create a burden on plans and PBGC staff, PBGC officials said they decided to correct the computerized data before resuming monthly mailings.

PBGC has made progress in reducing the error rate for past due notices. PBGC said that about 30 percent of the 15,630 notices sent in August 1991 were invalid. PBGC reduced errors by screening notices before mailing to identify obvious errors, such as terminated plans, and by correcting some of its computerized data.

PBGC officials estimate that they have collected about 35 percent of the delinquent fixed premiums represented by the 1990 and 1991 past due notices. They estimated that plans with 50 or more participants may have owed about $48 million in delinquent fixed premiums for plan years 1986-91. As of March 1992, PBGC reported collecting about $17 million as a result of past due notices, with an estimated $31 million outstanding. PBGC could not estimate the amount of delinquent variable premiums, underpaid premiums, interest, or penalties for these plans.

Little Follow-Up on Notices

PBGC officials told us that manual follow-up on past due notices has been sporadic. They said there had been no follow-up calls or letters on notices sent in August 1991 because staff were busy researching PBGC's records to respond to inquiries from plans about erroneous notices, and correcting computerized data.

Past Due Notices Not Sent to Small Plans

PBGC has not sent past due notices to plans with fewer than 50 participants. Officials said PBGC has excluded small plans because of its limited resources. Plans with fewer than 50 participants, they said, account for about 55 percent of covered plans but only 1.5 percent of covered participants. Officials said they have targeted resources to large plans, where they believe the potential for recoveries is greatest—collecting from one large plan may yield more than collecting from several small plans and require less resources.

Two analyses indicate the extent of small plans' delinquent premiums. In April 1992, PBGC's search of its computerized payment records showed that thousands of plans with fewer than 50 participants may be delinquent on one or more payments for plan years 1987-91, and may owe up to $6.7 million in fixed premiums; there is no estimate of delinquent variable premiums. Also, a PBGC match of IRS and PBGC records for plan year 1987 to identify plans that did not pay premiums indicated that about 30 percent of the $11 to $12 million in estimated delinquent premiums[7] were owed by plans with fewer than 100 participants.

Inadequate Efforts to Collect Underpaid Premiums, Interest, and Penalties

PBGC's efforts to collect underpaid premiums and interest and penalties on underpaid and late premiums also have been inadequate. PBGC did not issue Statements of Account between August 1988 and November 1990 because of problems with its premium accounting system (see p. 3).

In November 1990, PBGC resumed sending computer-generated statements to plans that owed for plan years before 1988. However, PBGC did not send statements to plans with fewer than 50 participants. PBGC officials told us that, given their limited resources, they chose to focus collection efforts on larger plans, and will continue to send statements to plans with 50 or more participants. PBGC reports indicate that as of January 31, 1992, as much as $7.8 million may be outstanding from plans with 50 or more participants for plan years before 1988. PBGC could not estimate amounts outstanding for plans with fewer than 50 participants.

PBGC has not sent computer-generated statements for plan years after 1987 because its premium accounting system cannot make variable rate premium calculations. This prevents PBGC from determining whether the amounts paid by plans are correct. Officials said they are continuing to attempt to modify the premium accounting system to enable it to perform variable rate calculations. As of June 25, 1992, PBGC told us that it should be able to issue computer-generated statements for plan years after 1987 before the end of fiscal year 1993. PBGC has not estimated total interest and penalties owed for these plan years.

In April 1992, PBGC began sending manually prepared Statements of Account to large plans for plan years 1988-91. PBGC officials said they sent statements to 359 plans, billing them for about $3.0 million.

No Use of Civil Action for Routine Collections

PBGC has not used civil action to collect delinquent premiums, interest, or penalties, except in bankruptcy proceedings when pursuing claims relating to terminated plans. PBGC's general counsel has twice rejected the use of civil action to routinely collect delinquent premiums. In 1984 and 1990, PBGC's collection staff recommended that the general counsel assist with collections. On both occasions the general counsel declined because it

[7]This estimate of $11 to 12 million is subject to a large sampling error—plus or minus 33.2 percent—at the 95-percent confidence level. The estimate includes amounts due for 1987 (about 65 percent), as well as for years before 1987 (about 22 percent) and after 1987 (about 13 percent).

considered tasks associated with civil action, such as issuing subpoenas, reviewing plan records, and participating in court proceedings, too time consuming and costly. In its 1990 response, the general counsel staff recommended that PBGC consider contracting with a private debt collector to assist in collecting delinquent premiums.

Consistent with the general counsel's suggestion, and recognizing the need to increase collections, in October 1991 PBGC began using a collection agency.[8] The collection agency makes telephone calls and sends letters to collect interest and penalties from plans referred by PBGC. The collection agency, however, has no authority to use civil action.

The collection agency receives 15.1 percent of collections. As of March 31, 1992, PBGC had made 59 referrals for plan years 1986 and 1987, totaling about $336,000, to the collection agency, which had collected approximately 17 percent of that amount.

PBGC officials told us that PBGC historically has filed claims in bankruptcy proceedings for missed premiums, but not taken civil action against delinquent plans because they thought such action would not be cost effective based on low premium rates and generally small participant counts. In March 1992, noting that premiums have increased, officials said that they would reconsider this position and that PBGC's general counsel would study information provided by PBGC's collection staff to determine the feasibility of using civil action.

Conclusions

Pension plans can avoid paying premiums to PBGC by not paying voluntarily, then ignoring PBGC attempts to collect. PBGC has done nothing to collect delinquent premiums, underpaid premiums, interest, or penalties from plans with fewer than 50 participants. Efforts to collect from larger plans include two Past Due Filing Notices and follow-up calls and letters by PBGC staff. However, if the plan does not pay, PBGC does not take legal action to collect.

PBGC has estimated that certain delinquent premiums, underpaid premiums, interest, and penalties may be as much as $45 million. This estimate may be low, however, because it does not include an estimate of (1) delinquent and underpaid variable premiums, (2) underpaid premiums, interest, and penalties owed by plans with fewer than 50 participants, or

[8]PBGC obtained collection agency assistance through a General Services Administration contract with a private firm to provide debt collection services to federal departments and agencies.

(3) underpaid premiums, interest, and penalties owed by larger plans for plan years after 1987.

PBGC can increase premium revenue and enhance plans' ERISA compliance through improved collection efforts. Systematic Past Due Filing Notices, with appropriate follow-up, as required by PBGC procedures, should increase collections of delinquent premiums. PBGC collected $17 million from large plans as a result of 1990 and 1991 Past Due Filing Notices, with limited follow-up. Systematic Statements of Account, with appropriate follow-up, could increase collections of underpaid premiums, interest, and penalties. Collections and compliance could also increase by sending notices and statements to small plans.

Despite the authority to do so, PBGC has not used civil action to collect premiums, interest, and penalties. Using civil action could increase PBGC revenue, as well as encourage pension plans to pay premiums as required. The statute of limitations, however, limits the time that PBGC has to bring a civil action to collect.

Recommendations

We recommend that the Executive Director of PBGC begin sending Past Due Filing Notices and Statements of Account to plans with fewer than 50 participants. The Executive Director should also (1) expedite completion of the general counsel study of using civil action as a collection tool and (2) consider the deterrent effect of using such action, along with the results of the general counsel study, when deciding how PBGC will use civil action to collect.

Agency Comments and Our Evaluation

PBGC commented on a draft of this report and agreed that premium collection problems have occurred since the computerized premium accounting system broke down in 1988 (see app. I). PBGC also said it is committed to correcting problems in its premium system and collecting delinquent premiums. PBGC noted, for example, that it began performing field audits of selected plans to ensure the collection of maximum premiums, penalties, and interest, and that it will expand the use of an outside collection agency to enhance collections.

PBGC generally agreed with our recommendations. PBGC said it will initiate a program of filing civil actions to collect premiums, penalties, and interest. It will initially file lawsuits against some plans, and then publicize the filings to encourage more voluntary compliance. Its general counsel is also considering other collection efforts.

Regarding our recommendation to send Past Due Filing Notices and Statements of Account to plans with fewer than 50 participants, PBGC said it intends to expand its notice program in steps, as its capacity to issue more notices increases and its ability to process plan responses becomes more efficient. PBGC did not address sending Statements of Account to small plans in its written comments. In subsequent discussions, however, PBGC officials told us that its premium accounting system had significant problems and could not produce computer-generated Statements of Account for large or small plans for plan years after 1987.

We continue to believe that statements should be sent to small, as well as large plans. In April 1992, PBGC began sending manually prepared statements to some large plans for 1988-91. Until its premium accounting system is able to produce computer-generated statements, PBGC should send manually prepared statements to some small plans before the statute of limitations on initiating civil action expires.

PBGC said that the estimate of outstanding fixed premiums for 1986-91 should be based on its experience regarding the percentage of notices it sends that are invalid. We revised our report accordingly.

PBGC also said that our report gives the impression that it is not making a serious effort to collect amounts owed. This was not our intent. We recognized in our draft that PBGC had attempted to modify its premium accounting system to perform variable rate calculations so it could send Statements of Account for plan years after 1987, sent periodic Past Due Filing Notices to large plans, sent Statements of Account to large plans for plan years before 1988, and conducted a pilot project to test the feasibility of using a collection agency to enhance collections.

PBGC also suggested a number of technical changes, which we incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after it is issued. At that time, we will send copies to other interested committees and to PBGC's Executive Director. We will also make copies available to others on request. If you have any questions concerning this report, please call me on (202) 512-7215. Other major contributors are listed in appendix II.

Sincerely yours,

Joseph F. Delfico

Joseph F. Delfico
Director, Income Security Issues

Comments From the Pension Benefit Guaranty Corporation

PBGC
US GOVERNMENT AGENCY

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Office of the Executive Director

June 12, 1992

Mr. Joseph F. Delfico
Director
Income Security Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Delfico:

Thank you for the opportunity to comment on GAO's draft report on PBGC's efforts to collect delinquent premiums. PBGC is committed to correcting the problems in our premium system and collecting delinquent premiums.

The breakdown of PBGC's computerized premium accounting system in 1988 and the resulting problems with PBGC's premium collection activities since that time are well known. They have been documented in GAO's audits of PBGC's fiscal year 1990 and 1991 financial statements and addressed in GAO's testimony before the House Ways and Means Oversight Subcommittee on August 1, 1991.

The tasks of modifying our existing premium accounting system to handle the variable rate premium and updating and correcting the backlog of premium records that developed since the system failed in August 1988 have been enormous. PBGC has been devoting considerable time, attention and resources to correcting the problems. We have made significant progress in achieving our current level of activity in issuing past due filing notices, reducing the error rate in those notices, and issuing statements of account.

Specifically, we have modified the computer programs to issue past due filing notices for all plan years and have collected over $17 million from those plans that filed in a previous plan years but not in the next. These notices were sent, as your report accurately states, in April 1990, January 1991, August 1991, and resumed monthly beginning in April 1992.

The PBGC has pursued a staggered approach in sending out notices. This approach was necessary to ensure that incorrect plan data generated from two years when the system was inoperative, is correct. This method resulted in a marked decrease of invalid notices, from a 60% rate in April of 1990 to a 30% rate in August of 1991. It is not in the PBGC's interest to unduly burden plans with incorrect notices. The PBGC has spent well over $800,000 in incremental cost to detect and correct the data. The benefits of collecting the $17 million in premiums owed far exceeded this cost.

The PBGC has continued to enhance its collection activity during the past year by developing pilot programs that (1) utilize an outside collection agency to collect on the oldest and most delinquent plans, and (2) perform field audits of select plans to ensure collection of maximum premium, penalty and interest. The pilot program with the collection agency, after 8 months of activity, has resulted in approximately 52% of the accounts being collected or identified for resolution. I have instructed that we expand the scope of this agency program. The field audits have not been as encouraging in that they did not generate significant new premiums. The PBGC has completed two full field audits. Our results are similar to those of your audit findings reported by your Dallas office in a report dated, March 23, 1992, which showed few significant errors.

A key comment on the report is that it highlights PBGC's enforcement criteria of the 50 person cutoff, which was necessary to prevent an administrative overload. We would caution that publicity of this standard in a GAO report may encourage non-compliance.

A second main comment on the draft report is that it overstates the amount of uncollected premiums and that it gives the erroneous impression that PBGC is not making a serious effort to collect amounts owed. Thus the draft report conflicts with GAO's audit report on PBGC's 1991 final statements which states that PBGC has made a major commitment to resolving its premium collection problems.

We request that the draft report be revised to correct the discussions of outstanding premium accounts, to put these amounts in context, and to acknowledge PBGC's diligence and progress in correcting deficiencies in the premium collection process. We have enclosed a mark-up of the draft report that suggest language for these revisions.

Our specific areas of concern are discussed below:

1. <u>Amount of outstanding premiums.</u>

The draft report gives the incorrect impression that $52 million in flat rate premiums remain outstanding for years 1986 - 1991, exclusive of the more than $3 billion in premium receipts collected for that same time period. Specifically, this $52 million figure is merely a summary of actual premiums paid by plans that failed to file a premium form for a subsequent plan year. Many such plans do not file because no premium is owed. This can occur for a variety of reasons, such as a change of plan sponsor, merger into another plan, or a final distribution of plan assets pursuant to termination of the plan. A more realistic figure is $31 million, which is based on our experience that 30 percent of potential notices are invalid because of the above-mentioned reasons. Assuming this number is accurate, we expect most premiums, including interest and penalty, will be collected in full.

2. Collections from small plans.

PBGC is determined to collect delinquent premiums to the extent cost effective. Because of the premium computer system breakdown in 1988, PBGC developed a large backlog of plans of all sizes.

As the draft GAO report states, we have begun issuing those notices. We intend to expand our notice program in steps, as our capacity to issue more notices increases and our ability to process the responses becomes more efficient. Whether we will institute this mailing under the existing premium system or the new premium system will depend on our relative progress in further resurrecting the present system and on developing the new premium system.

3. Use of civil actions to collect delinquent premiums.

For plan years prior to 1986, the low premium rates (no more than $2.60 per participant) and the generally small participant counts for those plans that were delinquent in their premiums militated against bringing civil actions. The major single-employer premium increases in 1986, 1988, and 1991 may have shifted the balance of this analysis. Under the applicable statute of limitations, we can go back six years (and longer under certain circumstances) when we file a civil action to collect premiums, penalties and interest. Thus, at this point, we can still collect most 1986 amounts and all 1987 and later amounts.

We will initiate shortly a program of filing civil actions to collect premiums (along with associated penalties and interest) for 1986 and later years. Last year, we retained an outside collection agency with a view toward considering the use of civil actions, as appropriate, thereafter. In making decision, we will also consider the relative costs and benefits of using litigation resources for premium collections, given our other litigation responsibilities.

Among the methods we will use in this effort are (1) using PBGC staff to conduct the litigation, (2) using outside counsel to conduct the litigation, and perhaps (3) selling certain premium receivables outright. As an initial approach, we will file lawsuits in some cases, and publicize our filing of these actions to encourage a greater degree of voluntary compliance. Under this approach, we will also consider other cases for litigation after this initial round of actions. We are currently reviewing cases that are possible candidates for the initial round of litigation, as well as estimates of the number and types of case that may be considered for civil action under the broader program.

We hope that the GAO's final report will reflect our comments. Please do not hesitate to contact us to discuss these matters further.

Sincerely,

James B. Lockhart III
Executive Director

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