

## **National Coordinating Committee for Multiemployer Plans**

### **Lawyers and Administrators Meeting**

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Today, I will begin by discussing the financial health of the multiemployer pension insurance program, as established under MPPAA. I will next provide an overview of PBGC's operations and current challenges in the administration of the multiemployer program. Finally, I will provide an overview of ongoing activities at PBGC. I understand there will be a Q&A session after this panel's presentation but we're happy to take any questions as we go along.

#### What is the status of PBGC's multiemployer insurance program?

PBGC currently insures about 1,500 multiemployer plans. Those plans provide or promise benefits to roughly 10 million participants or their beneficiaries.

As of September 30, 2007, the end of our last fiscal year, the multiemployer insurance program reported a deficit of over \$900 million. In other words, multiemployer program liabilities exceeded assets by almost \$1 billion. It pales in comparison to the deficit in the much larger single-employer program, but it nevertheless is a matter of concern.

Let me take a minute to explain the basis of PBGC's obligations under MPPAA, the nature of the assets supporting the multiemployer insurance program, and the corresponding liabilities that have a claim on those assets.

Since the enactment of MPPAA in 1980, the insurable event that triggers PBGC's guarantee of benefits in a multiemployer plan is plan insolvency, not termination, as is the case under the single-employer program. I refer to insolvency on a cash flow basis. Simply stated, an insolvent plan cannot pay benefits that are currently due. When a multiemployer plan becomes insolvent, it is required to reduce benefit payments to the level that can be supported by the plan's assets, including assets in trust plus anticipated contributions and withdrawal liability payments. If the plan's available resources are less than the amount necessary to pay benefits at the guaranteed level

and reasonable administrative expenses, the plan will apply to PBGC for financial assistance, in the form of a loan, to cover the shortfall. Because PBGC does not become the statutory trustee of multiemployer plans, PBGC is not in the business of recovering assets on behalf of insolvent multiemployer plans.

To understand what assets support the multiemployer insurance program, we start with the accumulated premiums paid by each covered multiemployer plan over the last 28 years. PBGC invests the premium revenue in U.S. government securities and earns income on its investments, increasing the program's assets. The program's assets are reduced, of course, by payments of financial assistance to insolvent plans, giving us the balance of assets in the multiemployer program insurance fund at any particular point in time.

The assets supporting the multiemployer program had a value of \$1.2 billion as of September 30, 2007. By law, these assets are required to be invested in government securities..

Now let's discuss the liabilities. Against \$1.2 billion in assets, PBGC has recorded \$2.1 billion in accrued liabilities in the multiemployer insurance program as of September 30, 2007. These liabilities represent the present value of future financial assistance for plans that PBGC has identified as "probables" for purposes of PBGC's financial statements. A "probable" plan is one that is currently receiving, or is projected to require, financial assistance. Thus, a "probable" plan is usually a terminated or insolvent multiemployer plan. Using the most recent data available, PBGC actuaries compute the liability for each plan identified as probable using data from the plan's actuarial valuation. If the information is more than five years old – recall that a multiemployer plan is not required to maintain a funding standard account after termination – PBGC will consider commissioning a new valuation. Using a cash flow model, the actuaries determine the present value of expected financial assistance for each plan, including future benefit payments, administrative costs, and payments by employers for contributions and withdrawal liability.

At the close of the 2007 fiscal year, PBGC's actuaries used the cash flow model to determine that the present value of future financial assistance payments under the multiemployer insurance program was \$2.1 billion. These liabilities are attributable to

94 multiemployer plans. These 94 plans fall into three categories: plans currently receiving financial assistance; plans that have terminated but have not yet started receiving financial assistance from PBGC; and ongoing plans that PBGC expects will require financial assistance in the future.

Thirty-four of these plans were receiving financial assistance payments at the close of fiscal year 2007. In 2007, PBGC paid \$71 million in financial assistance for benefits and administrative expenses to these 34 plans. PBGC recorded a present value of future financial assistance payments to these 34 plans of \$928 million, for payments over the actuarial lives of plan participants and beneficiaries.

Forty-nine plans from this group of 94 plans have terminated, but have not yet started receiving financial assistance payments from PBGC. These plans do not have sufficient assets on hand to pay projected benefit liabilities. Because they will no longer receive employer contributions, plan assets will eventually be exhausted and the plan will need to apply for financial assistance to pay PBGC-guaranteed benefits. At the close of the 2007 fiscal year, PBGC had recorded liabilities of \$625 million for the 49 plans in this group.

Lastly, 11 of the 94 plans still have some contributing employers, but PBGC expects that these plans will exhaust plan assets and need financial assistance within 10 years. At the close of the 2007 fiscal year, the present value of future financial assistance payments for these 11 ongoing plans was \$571 million.

In summary, PBGC's multiemployer program deficit was \$955 million dollars at the end of fiscal year 2007. This was a \$216 million increase in the deficit compared to the previous year, when there was a \$739 million deficit.

The increased deficit is due primarily to PBGC's booking of additional liabilities arising from expected future financial assistance to troubled plans – most of these increased liabilities were attributable to plans that terminated in 2007. In addition to terminated plans, certain ongoing plans have notified PBGC of their intentions to file termination notices in the near future.

With most of the new rules of the Pension Protection Act beginning in the 2008 plan year, it is premature to comment on future changes in the deficit. However, we can say with a reasonable degree of certainty that premium revenue will increase. For

2008, the first inflation-triggered increase of multiemployer premiums will become effective, increasing the premium rate from \$8 per participant, established by the Deficit Reduction Act of 2006, to \$9 per participant. Given 10 million covered participants in multiemployer plans, PBGC expects to receive approximately \$90 million in premium revenue over the next twelve months.

How does PBGC track the universe of multiemployer plans?

The professional staff in PBGC's Multiemployer Program Department ("MEPD") monitors, studies, and evaluates developments in the universe of covered multiemployer plans. This enables PBGC to manage risks to the program to the extent possible and to recommend changes in administration of the statute, including amendments to regulations, that are needed to improve the program.

Of course, self-reporting provides the easiest method of identifying plans that may be at risk. A plan that terminates files a notice of termination with PBGC. If the plan's liabilities exceed its assets, PBGC can expect that plan will eventually need financial assistance.

It is more difficult to identify at-risk plans before their termination. For many years, PBGC has analyzed the electronic data from Forms 5500 to identify these plans. PBGC screens the data using a ratio analysis that identifies plans needing further evaluation.

In evaluating plans, PBGC currently uses five ratios. Generally, the failure to satisfy any two ratios will subject the plan to additional analysis. The ratios are:

- The ratio of active participants to all other participants. This ratio measures the plan's ability to generate contributions to support its obligations. A ratio of less than 1.3 to 1 is considered a failed ratio.
- The ratio of plan assets to the present value of nonforfeitable benefits. This ratio measures the extent to which the nonforfeitable benefits accrued to date can be paid from current assets. A ratio of less than 0.6 to 1 is considered a failed ratio.
- The ratio of plan assets to annual benefit payments. This ratio measures the extent to which assets would be available to pay current benefits if

contributions were to cease. A ratio of less than 6 to 1 is considered a failed ratio.

- The ratio of income to total expenses, including benefit distributions and administrative expenses. This ratio measures on a continuing basis the plan's ability to make benefit distributions. A ratio of less than 1.3 to 1 is considered a failed ratio.
- The ratio of plan assets to the present value of retired participants' benefits. This ratio measures the extent to which benefits in pay status have been funded in advance. A ratio of less than 1 to 1 is considered a failed ratio.

As I mentioned, if a plan fails two or more of these ratios, PBGC considers the plan at risk, and will conduct additional analyses.

In addition to data from Forms 5500, the PPA has provided another source of information on multiemployer plans that will assist PBGC in assessing risks to the program. As many of you are undoubtedly aware, certain multiemployer plans have or will soon file notices of critical or endangered status – the so called “red zone” and “yellow zone” plan notices. Under the PPA, PBGC must receive copies of these notices. To date, we have received six, but we expect to receive more soon because the requirement to certify on or before the 90<sup>th</sup> day of each plan year began in 2008 and notification to PBGC is due within 30 days of plan certification.

These notices – especially the notice of critical status – will give PBGC advance notice of potential risk to the multiemployer program that has been previously unavailable to the agency. As we receive these notices, PBGC staff will determine whether the plans have already been identified as potential risks. A notice of critical status will trigger a review of the plan's financial history, causing PBGC to review filings with the Department of Labor and PBGC records of previous requests, filings, or other dealings with PBGC that might provide insight into the long-term health of the plan.

These notices will facilitate better and more up-to-date monitoring of what is taking place in the multiemployer plan universe. I will now turn to our current regulatory initiatives.

## What are the current developments in PBGC's regulatory activity?

On March 19, 2008 PBGC issued a proposed regulation that affects most of the multiemployer plan universe. It is primarily directed at amending PBGC's regulations to implement changes under the PPA to the statutory withdrawal liability methods. But it makes other changes to the rules governing multiemployer plans.

The proposed regulation can be broken into three major parts:

First, the regulation would permit all plans -- including construction industry plans -- using the presumptive method of calculating withdrawal liability to gain a "fresh start" by substituting a plan year, specified by plan amendment, for the plan year ending before September 26, 1980. The statutory change is conditioned on the plan having no unfunded vested benefits at the end of the specified plan year. The proposed regulation would provide guidance on how to calculate the allocable share even when the plan is receiving withdrawal liability payments at the time of the fresh start. We would also extend the rule to allow plans (other than construction plans) to gain a fresh start even though the year they are starting from is not a year with zero unfunded vested benefits. Finally, we would allow plans (other than construction plans) to use the modified presumptive method with a fresh start. These changes could be adopted without PBGC approval.

Second, the proposed regulation would make PPA-related adjustments to PBGC's definitions and conform the existing rules so that for plans in critical status, the PPA-triggered reductions in benefits and employer surcharges are removed from the determination of a plan's unfunded vested benefits when computing an employer's withdrawal liability. We provide simplified guidance in the form of an example.

Third, the proposed regulation would also revise the method of apportioning reallocation liability among employers involved in a mass withdrawal. The current regulation apportions this liability based on a withdrawn employer's initial liability. A rare but troublesome problem arises if the withdrawn employer had no initial liability. Without initial liability, the employer who is part of a mass withdrawal may end up with no share of the liabilities upon mass withdrawal. To correct for this anomaly, the regulation would provide for the reallocation liability arising on a mass withdrawal to be apportioned based on contribution base units, rather than the initial liability.

I also want to discuss a few non-regulatory activities involving multiemployer plans. These activities include closing out small insolvent plans, ruling on applications of union staff plans that elect multiemployer status, and working with trustees seeking to establish non-statutory payment terms for mass withdrawal situations.

#### Non-regulatory activities

Activity in PBGC's multiemployer insurance program has increased substantially over the last few years. For instance, PBGC has experienced a sharp increase in requests for rulings on alternate methods for computing withdrawal liability and in requests to evaluate or approve merger activity. PBGC has also seen significant increases in requests for financial assistance. To put matters in perspective, consider the evolution of requests for financial assistance.

In 1997, PBGC recorded liability for future financial assistance in the amount of \$361 million to 45 troubled plans. PBGC was paying 14 of those plans \$4 million annually in financial assistance. In fact, in the first 17 years since the inception of MPPAA, PBGC had provided financial assistance to only 19 plans in the approximate amount of \$35 million.

By the end of 2007, as I've noted, the multiemployer program recorded liability for 94 plans with a present value of future financial assistance of \$2.1 billion. In fiscal 2007, PBGC paid nearly \$71 million to 34 plans -- an 18-fold increase in payments to more than double the number of plans. By the end of fiscal 2008, PBGC expects to pay financial assistance to 44 plans; by the end of 2009, 50 plans.

To assist in managing this rapid escalation in costs, PBGC's Inspector General recently recommended closing out small insolvent plans by facilitating the purchase of annuities from private insurers. This would involve PBGC making single-sum payments of financial assistance to the insolvent plans for the present value of guaranteed benefits, enabling the plan trustees to select and purchase the close-out annuities. We accomplished three such small plan close outs in 2007, and this is a continuing effort at PBGC. Ideally, PBGC saves administrative costs it would ordinarily pay incident to providing financial assistance to insolvent plans, while participants continue receive their PBGC-guaranteed benefits.

## Work under PPA

As many of you know, PPA offered certain single-employer plans a limited opportunity to elect multiemployer status. These plans were, for the most part, union officer and staff plans.

PPA provided that this election would be made according to PBGC procedures, which were published last summer. These procedures followed the statutory requirements and required the plans to demonstrate that they met the necessary requirements for electing multiemployer status.

We received a limited number of applications. To date, we have sent approval letters to the majority of the applicants. A few plans have submitted follow-up information and a few we referred to the Labor Department. We have not denied any applications. And, as the procedures state, until a plan hears otherwise from PBGC, they may act in accordance with their application.

## ERISA § 4224 work-outs

Withdrawal liability that arises from a mass withdrawal termination may depress a plan's recovery if it causes employers to file for protection under the bankruptcy laws. Consequently, ERISA section 4224 permits plan trustees to adjust the withdrawal liability payments to assist a plan's collection efforts. The statute thus recognizes that regular payments from a viable but withdrawn employer may be better than 100 percent of a statutory claim against the employer in bankruptcy.

In a few instances, plans trustees have presented PBGC with proposed adjustments in withdrawal liability payments after a plan termination occurs. PBGC reviews the proposed adjustments to verify the trustees' assertions that more revenue will result from the adjustments. In appropriate cases, PBGC will provide a letter to the trustees stating its opinion that the proposed adjustments, if agreed to by the parties, are consistent with Title IV.

Demonstrating that a workout is appropriate involves a number of factors that relate both to the state of the industry (or type of covered work in the region) and the financial capabilities of the employers involved. If you represent a plan that is involved in a situation of this nature, you may contact the Multiemployer Program Division and discuss how to proceed.

I'd like to now close with a summary of some of our case-related work.

### Case-related work

As you know from the newspaper accounts, pursuant to collective bargaining between UPS and the Teamsters, UPS ceased contributing to the Central States Plan, effective at the end of 2007. As part of this arrangement, on December 26, UPS made a \$6.1 billion payment to the Plan in satisfaction of its withdrawal liability.

Additionally, a new, jointly administered, single-employer plan was created to provide benefits to UPS employees who were previously earning pension credit under the Central States Plan. This new single-employer plan is to receive a transfer of accrued liabilities from the Central States Plan. Section 4232 of ERISA would leave Central States with contingent liability to PBGC's single-employer insurance program should this new single employer plan terminate within 60 months of the transfer. Central States has applied to PBGC for a waiver of its contingent liability to the PBGC should the new plan terminate within 60 months of the transfer. PBGC has 180 days to act on this waiver request.

### Section 4204 Relief

If you read the Sports page, you may be aware that the last time a major league baseball team in Washington, D.C. started a season with a 2-0 record was in 1962. That team, of course, was the Washington Senators. But baseball returned to the capital city in the form of the Washington Nationals, resulting from the sale of the Montreal Expos, a participating employer in the Major League Baseball Players Benefit Plan, a multiemployer plan. As you know, section 4204 of ERISA provides that the sale of assets by an employer that contributes to a multiemployer plan will not result in withdrawal liability if certain conditions are satisfied, including the purchaser's posting of a bond or establishing of an escrow account as security for potential withdrawal liability to the plan. The statute and PBGC regulations permit the plan to waive the bond or escrow requirement if the purchaser satisfies certain financial tests and, in limited circumstances, the waiver request may be directed to PBGC. The Washington Nationals Baseball Club requested a waiver, and PBGC published a notice of the request in the Federal Register. As the notice reflected, the teams in major league baseball have established a Central Fund under the Major League Baseball

Constitution. The Commissioner of Baseball makes contributions on behalf of each team to the Fund with monies derived from the gate receipts from All-Star games, television and radio broadcast revenues from the World Series, the All-Star games, and League Championship Games, and receipts from spring training and exhibition games, and revenues derived from broadcasts to foreign markets. Would that all multiemployer plans had sources of funding like this. I was pleased that PBGC was able to grant the Nationals' request, and look forward to the day when the Nationals play in the World Series and gate receipts from our brand new stadium support a small piece of the multiemployer insurance program.

#### Contact information

We welcome inquiries on any aspect of our programs or ERISA Title IV. The main phone number is 202-326-4000. Contacts include:

For multiemployer matters, Chief Insurance Program Officer Terrence Deneen x 3506; Multiemployer Program Manager John Foster x 3642; Associate Manager Robert Rideout x 3057; Deputy Chief Counsel Karen Morris x 3074; Assistant Chief Counsel James Eggeman x 6833; Attorney Eric Field x 3987; and myself x 3078.

For single-employer plan matters, Mr. Deneen; Ms. Morris; Deputy Chief Counsel Charles Finke x 3588; myself; Acting Director of Insurance Supervision and Compliance Robert Bacon x 3962; and Standard Termination Program Manger Bela Palli, x 3985.