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PBGC

PBGC Seeing Increase in Litigation Against Agency by Participants, Official Says

Due to the ''down tick'' in the economy, there has been an increase in litigation filed by pension plan participants who have been upset with the benefits they receive from the Pension Benefit Guaranty Corp. after their plan was terminated, Karen L. Morris, deputy chief counsel for PBGC, said May 7.

Officials from the Treasury Department and Internal Revenue Service also spoke during the session of the American Bar Association's Section of Taxation May Meeting about a request for information on lifetime income options and about the sufficiency of the annuity market.

PBGC's Morris said many participants were unhappy about the difference in the amount of benefits they were expecting at retirement under their previously viable defined benefit plan and the amount they received after their plan was taken over by PBGC. Under the Employee Retirement Income Security Act, the maximum guaranteed pension at age 65 for participants of terminated plans is $54,000 per year.

Morris said that year-to-date, the agency has been involved in 86 plan terminations, representing about $900 million in unfunded plan liability.

When Delphi Corp. was taken over by PBGC in July 2009, Morris said the agency was saddled with over $6 billion in unfunded liability (139 PBD, 7/23/09; 36 BPR 1737, 7/28/09). Delphi's salaried employees were particularly upset with their PBGC benefits, which for many was substantially below what they anticipated receiving under their plan.

What was even more disconcerting to the salaried employees was that hourly workers through bargaining negotiations had reached an agreement with the company to ''top-off,'' their benefits in the event of a PBGC takover, she said.

Consequently, a class of salaried employees filed a lawsuit against PBGC in September 2009 (177 PBD, 9/16/09; 36 BPR 2201, 9/22/09).

Morris also said PBGC was interested in working with plan sponsors who believed their plans were at risk for termination. She emphasized that the agency ''wants to hear from sponsors early.''

Although she agreed with an earlier statement by moderator Harold Ashner, of Keightley and Ashner, Washington, D.C., that ''PBGC never met a contribution it didn't like,'' she said PBGC ''wants contributions in cash.'' She pointed out that PBGC previously has rejected a plan sponsor's offer of a contribution of the employer's stock.

Lifetime Income Option. Harlan Weller, a senior actuary at Treasury's Office of Tax Policy, said Treasury's joint issuance with the Labor Department of a request for information seeking ideas on how to turn defined contribution pension plans and individual retirement accounts into a lifetime stream of income for participants (20 PBD, 2/2/10; 37 BPR 301, 2/9/10) was not merely directed at defined contribution plans or the insurance industry.

Instead, he said the growth of hybrid cash balance plans has resulted in fewer people taking a lifetime income option on retirement. In making the request for information, Treasury was looking to see if people's behavior could be changed so they once again are considering this as an option, Weller said.

The RFI (RIN 1210-AB33) drew 655 comments by its May 3 deadline (85 PBD, 5/5/10).

Private Annuity Supply. Seth Tievsky, senior technical adviser to the director of employee plans (rulings and agreements), asked those attending the meeting whether they thought the private annuity market was adequate to handle the needs of terminating plans or whether mutual insurance companies were needed to be created for this purpose.

Nell Hennessy, president and chief executive officer of Fiduciary Counselors Inc., Washington, D.C., re-

sponded that ''it is not a problem finding bidders'' for annuity products, but because of state guarantee fund limits, there may be a problem finding enough ''safe carriers'' from which to divide the annuity needs of a very big terminating plan seeking to spread the annuity risk among several carriers.

An audience member responded to Tievsky's question that he was told the insurance industry was going to ''ramp up'' in anticipation of additional plan terminations. This led Tievsky to say that he was pleased to hear that the ''law of supply and demand'' may be working to solve this potential problem.

By David B. Brandolph

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