

## ABA Joint Committee on Employee Benefits

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### **Experts' Guide to Researching Employee Benefits Issues**

Researching PBGC Issues:  
The Basics and Beyond

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## Presented by

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## Overview

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- Key PBGC Issues
  - PBGC Legislative/Regulatory Framework
  - PBGC Case Law
  - PBGC Guidance—Beyond the Regulations and Case Law
  - Other Sources
  - Contacting PBGC
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## Key PBGC Issues

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- Coverage (ERISA § 4021)
  - Premiums and related audits and penalties (ERISA §§ 4006–4007)
  - Annual employer reporting (ERISA § 4010)
  - Reportable events (ERISA § 4043)
  - Information penalty assessments/waivers (ERISA § 4071)
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## Key PBGC Issues (Cont.)

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- ❑ Facility shutdown liability (ERISA § 4062(e))
  - ❑ \$1M+ missed contribution liens (ERISA § 303(k); IRC § 430(k))
  - ❑ “Early Warning”/“Risk Mitigation” program
  - ❑ Standard terminations and related audits (ERISA §§ 4003(a), 4041(b))
  - ❑ Distress terminations (ERISA § 4041(c))
  - ❑ Involuntary (PBGC-initiated) terminations (ERISA § 4042)
  - ❑ Controlled group determinations/liabilities (ERISA §§ 4001, 4062–4064, 4068)
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## Key PBGC Issues (Cont.)

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- ❑ Employer liability and unpaid contributions (ERISA § 4062(a)–(c))
  - ❑ Multiple-employer plan liability (ERISA §§ 4063–4064)
  - ❑ Bankruptcies and workouts (ERISA §§ 4041, 4042, 4062, 4068)
  - ❑ Benefit determinations and appeals (ERISA §§ 4003, 4022, 4044)
  - ❑ Multiemployer plan matters (ERISA §§ 4022A, 4022B, 4041A, 4201–4402)
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## PBGC Legislative/Regulatory Framework

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### Legislative

- Most provisions in ERISA Title IV
    - ERISA §§ 4001–4402
    - 29 U.S.C. §§ 1301–1461
  - Some non-Title IV provisions (*e.g.*, \$1M+ missed contribution liens in ERISA § 303(k); IRC § 430(k))
  - Check legislative history
    - GPO: [www.gpoaccess.gov/index.html](http://www.gpoaccess.gov/index.html)
    - Thomas: [thomas.loc.gov](http://thomas.loc.gov)
    - Key committee websites (Joint Tax, Senate Finance, Senate HELP, House Ways/Means, House Ed./Labor)
    - Subscription services (*e.g.*, BNA, CCH, RIA, Lexis, Westlaw)
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## PBGC Legislative/Regulatory Framework (Cont.)

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### Regulatory

- All in 29 CFR Parts 4000–4907
  - CFR “Part” numbers track ERISA Title IV § numbers
  - Current (“real time”) CFR available at [pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13188.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13188.html)
  - Check Fed. Reg. preambles/notices (significant guidance!)
    - 7/1/96 forward: [pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13189.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13189.html)
    - 1994 forward: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html)
    - Earlier: subscription services
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## PBGC Case Law

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- ❑ Significant body of case law
  - PBGC is active litigant!
    - ❑ Has independent litigating authority
    - ❑ Particularly active in bankruptcy cases
  - Much case law on plan termination and related liabilities
  - Little case law on ongoing compliance (*e.g.*, premiums, reporting, penalties)
- ❑ Reporting/subscription services (*e.g.*, BNA, CCH, RIA, Lexis, Westlaw, Colliers, Norton)

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## PBGC Guidance—Beyond the Regulations and Case Law

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- ❑ Start with PBGC website: [pbgc.gov](http://pbgc.gov)
  - Helpful “search”/“advanced search” capability
  - Most guidance under “Practitioners” page: [pbgc.gov/practitioners/index.html](http://pbgc.gov/practitioners/index.html)
  - Keeping up to date:
    - ❑ Check practitioners’ “What’s New” page: [pbgc.gov/practitioners/whatsnew.html](http://pbgc.gov/practitioners/whatsnew.html)
    - ❑ Sign up for email notifications (same page)
    - ❑ Check news releases: [pbgc.gov/media](http://pbgc.gov/media)

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- Forms and instructions
  - Significant additional guidance!
  - Available at [pbgc.gov/practitioners/index.html](http://pbgc.gov/practitioners/index.html)
  - Use *current* version (updated periodically)
- PBGC “Technical Updates”
  - Explanations, interpretations, reporting relief
  - Available at [pbgc.gov/practitioners/law-regulations-informal-guidance/content/index.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/index.html)
  - Generally not binding on public, but wise to follow!

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- PBGC Opinion Letters
  - Most issued in early years (none since 2002)
  - Available at [pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13191.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13191.html)
  - Not designed to dispose of particular controversies
  - Not binding
  - May be entitled to deference (per Op. Ltr. 87-7)

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- ❑ PBGC Appeals Board decisions
  - Recent (post-9/30/02) full Board decisions available at [pbgc.gov/practitioners/law-regulations-informal-guidance/content/page15626.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page15626.html)
  - Primarily involve benefit claims
  - Other issues too (*e.g.*, coverage, employer liability)
  - Not binding on other parties, but helpful guidance
- ❑ FAQs
  - Wide variety of PBGC areas
  - Available at PBGC website under particular topics

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- ❑ PBGC Annual Reports:  
<http://pbgc.gov/about/annreports.html>
- ❑ PBGC Data Books:  
<http://pbgc.gov/practitioners/plan-trends-and-statistics/content/page13270.html>
- ❑ PBGC Research Reports:  
<http://pbgc.gov/media/key-resources-for-the-press/content/page13695.html>
- ❑ PBGC Fact Sheets:  
<http://pbgc.gov/media/key-resources-for-the-press/content/page13538.html>
- ❑ Various other PBGC publications:  
<http://pbgc.gov/media/key-resources-for-the-press/content/page14802.html>

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- PBGC litigation briefs may contain useful guidance
  - Example: briefs with PBGC position on proof needed for “reorganization” distress test (“road map” for debtor)
  - Obtain through PACER, FOIA, counsel in other case
- PBGC settlements may provide some “practice” guidance (generally available through FOIA)
- PBGC staff instructions, guidelines, etc. (generally available through FOIA)

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- ABA JCEB Qs/As with PBGC
  - Summary: Qs/As at annual JCEB/PBGC meeting
  - Strong disclaimer, but helpful guidance (various areas)
  - Available (1994 to date) at [abanet.org/jceb](http://abanet.org/jceb)

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## PBGC Guidance—Beyond the Regulations and Case Law (Cont.)

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- PBGC “Blue Books”
  - Summary: Qs/As at annual “Enrolled Actuaries Meeting”
    - Analogous to older IRS “Gray Book” and newer DOL “Green Book”
    - Prepared in 1998 and each year from 2000 forward
  - Significant guidance on premiums, reporting, standard terminations, guaranteed benefits, other areas
  - Most content useful to attorneys (not just actuaries)
  - Strong disclaimer, but on PBGC website as “informal guidance” and PBGC staff discusses at EA Meeting
  - Available at [pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13190.html](http://pbgc.gov/practitioners/law-regulations-informal-guidance/content/page13190.html)

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## Other Sources

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- Internet sources, including:
  - [abanet.org](http://abanet.org)
  - [actuary.org](http://actuary.org)
  - [americanbenefitscouncil.org](http://americanbenefitscouncil.org)
  - [asppa.org](http://asppa.org)
  - [benefitslink.com](http://benefitslink.com)
  - [ccactuaries.org](http://ccactuaries.org)
  - [coffi.org](http://coffi.org)
  - [ebri.org](http://ebri.org)
  - [eric.org](http://eric.org)
  - [freerisa.com](http://freerisa.com)
  - [ifebp.org](http://ifebp.org)
  - [soa.org](http://soa.org)
  - Websites of actuarial, accounting, law firms

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## Other Sources (Cont.)

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- Reporting/subscription services (*e.g.*, BNA, CCH, RIA, Lexis, Westlaw, Colliers, Norton)
- *Employee Benefits Law*, 2<sup>nd</sup> Ed. & 2007 Cum. Supp., Ch. 9 (ABA Labor & Employment Law Section (BNA))
- *ERISA Fiduciary Answer Book*, 5<sup>th</sup> Ed. & 2008 Supp., Ch. 10 (Aspen)

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## Other Sources (Cont.)

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- *ABI's Pension Manual: A Practical Guide to Pension Issues* (American Bankruptcy Institute)
- *Pension Plan Terminations* by Veal & Mackiewicz
  - Last published in 1998 (BNA)
  - Updated thru 3/26/07 at [stromata.tripod.com/id373.htm](http://stromata.tripod.com/id373.htm)
- *Multiemployer Plans—Special Rules* by Kushner (BNA Tax Management Portfolio)

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## Contacting PBGC

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- ❑ Detailed practitioner contact information:
  - [pbgc.gov/practitioners/contact.html](http://pbgc.gov/practitioners/contact.html)
- ❑ General legal questions related to PBGC:
  - Office of General Counsel
  - (202) 326-4400 or [askogc@pbgc.gov](mailto:askogc@pbgc.gov)
- ❑ ERISA/bankruptcy legal questions:
  - Office of Chief Counsel
  - Ask for (rotating) "general inquiry attorney"
  - (202) 326-4020
- ❑ Legislative/regulatory questions:
  - Legislative and Regulatory Department
  - (202) 326-4024

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## Contacting PBGC (Cont.)

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- ❑ General practitioner phone number:
  - (800) 736-2444
- ❑ Unresolved practitioner problems:
  - Diane Morstein
  - Problem Resolution Officer for Practitioners
  - (800) 736-2444, ext. 4136, or [practitioner.pro@pbgc.gov](mailto:practitioner.pro@pbgc.gov)
- ❑ General participant phone number:
  - (800) 400-PBGC (7242)
- ❑ Unresolved participant problems:
  - Problem Resolution Officer for Participants
  - (800) 400-PBGC (7242) or [participant.pro@pbgc.gov](mailto:participant.pro@pbgc.gov)



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