

**PRESENT LAW AND BACKGROUND RELATING TO
THE PENSION BENEFIT GUARANTY CORPORATION**

Scheduled for a Public Hearing
Before the
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
on September 24, 2008

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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I. OVERVIEW

The Subcommittee on Oversight of the Committee on Ways and Means of the House of Representatives has scheduled a public hearing on the Pension Benefit Guaranty Corporation (“PBGC”). This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of present law regarding the PBGC.

The PBGC was created by Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”)² for the purpose of ensuring that benefits promised under a defined benefit pension plan are paid (up to specified limits) if the sponsor of the plan is not able to fulfill its obligation to adequately fund the plan.³ The benefit protection function of the PBGC is carried out through two insurance programs (collectively “termination insurance”). The first program is for single employer defined benefit pension plans. The second program is for multiemployer defined benefit pension plans. A multiemployer defined benefit pension plan is generally a plan to which more than one employer is required to contribute and which is maintained pursuant to a collective bargaining agreement.⁴

PBGC termination insurance serves as a backstop to the minimum funding rules established by ERISA for defined benefit pension plans.⁵ The purpose of the minimum funding rules is to ensure that sponsoring employers make minimum contributions that will adequately fund benefits promised under defined benefit pension plans. However, the minimum funding rules permit an employer to fund a defined benefit pension plan over a period of time. Thus, it is possible that a plan may be terminated at a time when plan assets are not sufficient to provide all benefits accrued by employees under the plan.

As of 2007, almost 44 million participants in more than 30,000 defined benefit pension plans were insured under the PBGC’s termination insurance programs. Of these, almost 34 million participants are covered by almost 29,000 single-employer defined benefit pension plans, and approximately 10 million participants are covered by approximately 1,500 multiemployer defined benefit pension plans. The PBGC paid over \$4.3 billion in benefits in fiscal year 2007.

¹ This document may be cited as follows: Joint Committee on Taxation, Present Law and Background Relating to the Pension Benefit Guaranty Corporation (JCX-67-08), September 17, 2008. This document is available at www.jct.gov.

² References in this document to ERISA are to the Employee Retirement Income Security Act of 1974, as amended.

³ ERISA sec. 4002(a).

⁴ ERISA sec. 3(37).

⁵ The minimum funding rules have been modified over time, with significant revisions made by the Pension Protection Act of 2006. Pub. L. No. 109-280.

At the end of 2007, the PBGC was directly responsible for the pensions of more than 1.3 million people.⁶

The PBGC was established as a corporation within the Department of Labor and is not funded by general tax revenues. It is instead funded by: (1) premiums paid by employers who sponsor or contribute to plans that are covered by the termination insurance program; (2) assets in terminated plans; (3) amounts recovered from employers who terminate underfunded plans; and (4) investment earnings. The PBGC is vulnerable to periods of economic downturn because it is more likely during such periods that plans will terminate with insufficient funding to pay benefits and, at the same time, the PBGC itself is more likely to suffer investment losses or reduced earnings.

As of September 30, 2007, the PBGC reported a total deficit of \$14.1 billion, most of which is attributable to the insurance program for single-employer plans. This is a \$4.81 billion improvement over fiscal year 2006 for which an \$18.9 billion deficit was reported. As of September 30, 2007, the value of the PBGC's total investments was approximately \$62.6 billion. Investment income for fiscal year 2007 was \$4.76 billion which is more than twice the fiscal year 2006 amount of \$2.18 billion.⁷

Many of the rules relating to the PBGC are contained in the Labor Code sections of ERISA. For example, the Labor Code contains the rules that establish the PBGC and the termination insurance programs. Some of the rules relating to the PBGC are found in the Internal Revenue Code (the "Code"),⁸ or are generally duplicated as parallel requirements in both the Code and the Labor Code sections of ERISA. For example, both the Code and the non-Code provisions of ERISA contain parallel minimum funding rules. However, the Code contains the excise tax that applies in the case of a failure to satisfy the minimum funding rules, while the Labor Code sections authorize a claim of action on the part of plan participants, beneficiaries, fiduciaries, and the Department of Labor to enforce violations of the minimum funding rules.⁹

⁶ Source for figures is the *Pension Benefit Guaranty Corporation Performance and Accountability Report*, Fiscal Year 2007 ("2007 Annual Report"). The 2007 Annual Report and the PBGC's *Pension Insurance Data Book 2006* ("2006 Data Book") are available on the PBGC's website, at www.pbgc.gov.

⁷ 2007 Annual Report.

⁸ References in this document to the Code are to the Internal Revenue Code of 1986, as amended.

⁹ ERISA sec. 502(a)(3), (a)(5), and (b)(1).

II. GOVERNANCE, COVERAGE, AND FUNDING

A. Statutory Purpose and Governance¹⁰

In general

The PBGC was created as a corporation within the Department of Labor in 1974. ERISA specifies that the PBGC has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act. ERISA also lists a number of specific powers conferred upon the PBGC, such as the power to sue and be sued, the power to adopt and amend bylaws, rules, and regulations regarding the conduct of PBGC business, the power to acquire property and enter into contracts, and the power to use the personnel and facilities of an agency of the United States Government, with or without reimbursement, with the consent of the head of such agency. ERISA directs the PBGC to make such arrangements or agreements for cooperation or mutual assistance with other government agencies as required to avoid unnecessary expense or duplication.

Governance

ERISA provides that the PBGC is administered by a director, who is appointed by the President of the United States by and with the advice and consent of the Senate. The director must act in accordance with policies established by the board of directors of the PBGC.

The composition of the board of directors is specified under ERISA as the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. The Secretary of Labor is the chairman of the board of directors.

ERISA also establishes an advisory committee to the PBGC. The purpose of the advisory committee is to render advice relating to: (1) the appointment of trustees in plan termination proceedings; (2) investment of funds; (3) whether plans being terminated should be liquidated immediately or continued in operation under a trustee; and (4) such other issues as the PBGC may request from time to time. Under ERISA, the advisory committee consists of seven members appointed by the President for three-year terms. Of the seven members, two must represent the interests of employee organizations, two must represent the interests of employers that maintain defined benefit pension plans, and three must represent the interests of the general public. ERISA specifies that no more than four members may be affiliated with the same political party. The President designates one of the members as the chairman of the advisory committee. ERISA specifies that the advisory committee is to meet at least six times each year.

A 2007 report by the Government Accountability Office (“GAO”) expressed concern that the PBGC’s board of directors has limited time and resources to provide policy direction and

¹⁰ ERISA secs. 4002 and 4003.

oversight for the PBGC. For example, GAO noted that between 1980 and 2007, there were only 18 official board meetings, although GAO noted that the frequency of meetings began to increase in 2003. The report suggested that the PBGC's board of directors could be diversified so that it includes additional members with expertise relevant to PBGC operations and who can provide the attention required for oversight. The report also expressed concern that the board has not established formal procedures to ensure that PBGC management provides the board with information on all policy matters and that it has not developed committees to oversee PBGC operations. The report suggested that dedicated staff, independent of the PBGC's executive management, could support the board of directors.¹¹

The PBGC's internal bylaws were revised by the board of directors in 2008.¹² The revised bylaws clarify the power that cannot be delegated to the director and the matters on which a designated representative of a member of the board of directors may act without later ratification by the board member. The bylaws also establish governance procedures that apply in the case of a government-wide emergency. GAO recently issued an updated report on the PBGC's governance structure.¹³ The report notes the changes that PBGC instituted in 2008, but recommends that additional reforms be made. In particular, the report suggests restructuring the PBGC's board to increase its size and diversity.

Investigative authority

The PBGC is authorized under ERISA to make such investigations as are necessary to enforce any provision of Title IV of ERISA, and it may require any person to file with it a statement under oath as to all of the facts and circumstances concerning the matter being investigated. The PBGC is required to audit annually a statistically significant number of plans terminating under the standard termination procedures (i.e., plans that are not terminating with insufficient assets) to determine whether participants have in fact received their benefits.

In conducting investigations, ERISA provides that the director of the PBGC, any member of the board of directors of the PBGC, or any officer designated by the director (or the chairman of the board) may administer oaths, subpoena witnesses, compel their attendance, take evidence, and require production of books, papers, correspondence, memoranda, or other records that the PBGC deems relevant or material.

¹¹ *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, GAO-07-808, July 2007.

¹² 73 Fed. Reg. 29985 (May 23, 2008).

¹³ *Pension Benefit Guaranty Corporation: Need for Improved Oversight Persists*, GAO-08-1062, September 2008.

B. Plans Subject to PBGC Coverage

General rule

The PBGC insurance programs apply to tax-qualified defined benefit pension plans, subject to a number of exceptions (discussed below). Tax-qualified for this purpose generally means that the plan satisfies, or has been determined by the Secretary of the Treasury to satisfy, the requirements of section 401(a) of the Code.

A defined benefit pension plan is one of two basic types of retirement or pension plans that an employer may provide for its employees. The other type is a defined contribution plan (referred to under the Labor Code provisions of ERISA as an “individual account plan”). The fundamental difference between the two types of plans is the nature of the benefits that are promised to participating employees (“participants”).

In the case of a defined contribution plan, the employer makes a specific contribution to the plan for each participant, and the participant’s sole retirement benefit under the plan is the amount of such contributions together with the participant’s share of the plan’s earnings or losses on such contributions.¹⁴ Under such a plan, no promise is made by the employer as to the amount of money that will be available to the participant upon retirement. The promised benefit is solely comprised of plan contributions, as increased by investment earnings (or reduced by investment losses) with respect to such contributions.

In contrast, a defined benefit pension plan provides a participant with a specified benefit at a specified age.¹⁵ For example, the plan might provide for annual payments commencing at age 65 equal to one percent of a participant’s final average compensation for each year of the participant’s service with the sponsoring employer. Unlike a defined contribution plan, the sponsor of a defined benefit pension plan is responsible for ensuring that adequate contributions are made to the plan so that promised benefits can be paid. Thus, under a defined benefit

¹⁴ Code sec. 414(i); ERISA sec. 3(34).

¹⁵ See Code sec. 414(j) and ERISA sec. 3(35) (defining a defined benefit pension plan as a plan other than a defined contribution plan). A defined benefit pension plan can be designed in a manner such that it mimics a defined contribution plan. Such plans are referred to as “hybrid plans,” and a so-called “cash balance plan” is a typical example of a hybrid plan. Under a typical cash balance plan, a hypothetical account is created for each participant under the plan, and hypothetical contributions are credited to the account along with periodic interest credits. A participant’s retirement benefit under the plan is equal to his or her hypothetical account balance as of the participant’s retirement date. At that time, the account balance can be converted into an annuity-type payment (which is similar to the type of payment made by a traditional defined benefit pension plan) using actuarial factors specified in the plan. While a cash balance plan resembles a defined contribution plan, the sponsoring employer is responsible for funding the plan sufficient to ensure that the hypothetical account balance will be paid, even if the plan’s actual investments perform poorly.

pension plan, the sponsoring employer bears the risk of loss with respect to investment of plan contributions, while in a defined contribution plan the participants themselves bear that risk of loss.

Coverage exceptions

The following types of plan are excluded from termination insurance coverage:¹⁶

- A plan established and maintained for its employees by the Federal government, a State government or political subdivision, or an agency or instrumentality of the foregoing (a “governmental plan”). A governmental plan includes a plan established and maintained by an Indian tribal government or political subdivision (or agency or instrumentality) thereof as long as all participants are employees of such entity, all of whose services are in the performance of essential governmental functions (but not in the performance of commercial activities).
- A plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of the Code. However, such a plan may elect to be covered under certain requirements of ERISA, including termination insurance.
- A plan that does not provide for employer contributions (i.e., the plan is solely funded with employee contributions).
- A plan that is established and maintained exclusively for substantial owners of the entity sponsoring the plan. The term substantial owner means an individual who (at any time during the 60 month period ending on the date for which the determination is being made) owns the entire interest in an unincorporated trade or business, is a partner who owns more than 10 percent of either the capital or profits interest of a partnership, or owns more than 10 percent in value of either the voting or all stock of a corporation.
- A plan that is established and maintained by a professional service employer which does not at any time have more than 25 active participants in the plan. A professional service employer means any proprietorship, partnership, corporation, or other association or organization that is owned or controlled by professional individuals and the principal business of which is the performance of professional services. Professional individuals includes licensed professionals in the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.
- A plan that is established and maintained outside the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens.

¹⁶ ERISA sec. 4021(b).

- A plan of an international organization which is exempt from taxation under the International Organizations Immunities Act.
- An unfunded plan maintained by an employer for the purpose of providing deferred compensation to a select group of management or highly compensated employees.
- An excess benefit plan (which is a funded or unfunded plan that provides benefits for certain employees in excess of the limitation on benefits that applies to tax-qualified plans under section 415 of the Code).

Coverage determinations

An employer may request that the PBGC determine whether a defined benefit pension plan that it sponsors (or to which it contributes) is subject to coverage under the PBGC termination insurance program.

Coverage data

Table 1 indicates that the number of PBGC insured plans under the single-employer program has declined substantially between 1985 and 2007, from a high of 112,208 plans in 1985 to approximately 28,929 plans in 2007. In contrast, Table 2 indicates that the total number of participants covered by the single-employer program has gradually increased from 27 million participants in 1980 to over 34.5 million participants in 2004, with 33.7 million participants covered in 2007. Table 3 indicates that from 1980 to 2005 the proportion of separated and retired employee participants that are covered by the single-employer program has steadily increased relative to the number of active employee participants who are covered by the program. Thus, while the number of participants covered by the PBGC termination insurance program generally has increased over the years, this increase is not due to an increase in the number of active employees participating in employer-sponsored defined benefit pension plans.

Tables 4, 5, and 6 demonstrate that there are similar trends with respect to the multiemployer plan program.

Table 1
PBGC-Insured Plans (1980-2007)
Single-Employer Program

Year	Total Insured Plans	Insured Plans with 10,000 or more Participants	Insured Plans with 5,000-9,999 Participants	Insured Plans with 1,000-4,999 Participants	Insured Plans with 250-999 Participants	Insured Plans with 100-249 Participants	Insured Plans with 25-99 Participants	Insured Plans with Fewer than 25 Participants
1980	95,439	349	365	2,858	7,439	8,512	19,069	56,847
1985	112,208	354	435	3,125	8,230	10,003	22,609	67,452
1990	91,899	458	477	3,400	8,085	8,976	19,464	51,039
1991	82,717	495	493	3,353	7,986	8,867	17,888	43,635
1992	71,589	505	504	3,367	7,402	7,991	15,410	36,410
1993	63,778	504	517	3,336	7,064	7,358	14,392	30,607
1994	57,010	524	553	3,361	6,682	6,941	13,100	25,849
1995	53,589	528	559	3,308	6,743	6,850	11,674	23,927
1996	48,748	531	556	3,280	6,217	6,225	10,931	21,008
1997	43,902	563	550	3,199	5,962	5,734	9,822	18,072
1998	41,462	570	565	3,139	5,693	5,255	8,788	17,452
1999	37,536	603	555	2,933	5,271	4,803	7,779	15,592
2000	35,373	621	531	2,875	5,056	4,536	7,150	14,604
2001	32,954	644	522	2,787	4,757	4,154	6,335	13,755
2002	31,229	632	505	2,671	4,461	3,742	5,875	13,343
2003	30,611	621	514	2,569	4,238	3,662	5,705	13,302
2004	30,148	627	510	2,478	4,083	3,483	5,616	13,351
2005	29,605	618	509	2,404	3,935	3,379	5,493	13,267
2006	28,923	592	525	2,337	3,850	3,272	5,341	13,006
2007	28,929	592	531	2,322	3,747	3,188	5,301	13,248

Source: 2006 Data Book, Table S-31, 2006 and 2007 figures are estimates provided by PGBC staff.

Table 2
PBGC-Insured Plan Participants
(1980-2007)
Single-Employer Program

Year	Total Insured Participants (in thousands)
1980	27,518
1985	29,809
1990	31,633
1991	31,851
1992	32,056
1993	32,271
1994	32,372
1995	32,634
1996	32,724
1997	33,214
1998	33,545
1999	33,804
2000	34,108
2001	34,342
2002	34,248
2003	34,407
2004	34,523
2005	34,232
2006	34,042
2007	33,792

Source: 2006 Data Book, Table S-30, 2006 and 2007 figures are estimates provided by PBGC staff.

Table 3
PBGC-Insured Plan Participants by Participant Status (1980-2005)
Single-Employer Program

Year	Active Participants	Retired Participants	Separated Vested Participants
1980	77.6%	16.0%	6.4%
1985	72.2%	18.7%	9.1%
1990	68.1%	19.4%	12.6%
1991	66.4%	20.1%	13.5%
1992	64.2%	20.9%	14.9%
1993	61.9%	21.6%	16.5%
1994	61.2%	21.3%	17.5%
1995	57.8%	22.9%	19.3%
1996	55.3%	23.0%	21.8%
1997	54.7%	23.7%	21.5%
1998	54.2%	23.8%	22.0%
1999	53.7%	23.9%	22.4%
2000	51.9%	24.4%	23.7%
2001	51.3%	24.6%	24.1%
2002	49.8%	25.2%	25.0%
2003	48.6%	25.4%	26.0%
2004	47.2%	26.1%	26.7%
2005	45.8%	26.6%	27.7%

Source: 2006 Data Book, Table S-32, 2004 and 2005 figures are estimates provided by PBGC staff. Data for plan years prior to 1999 include only plans with 100 or more participants. Due to rounding, percentages may not add up to 100 percent.

Table 4
PBGC-Insured Plans (1980-2007)
Multiemployer Program

Year	Total Insured Plans	Insured Plans with 10,000 or more Participants	Insured Plans with 5,000-9,999 Participants	Insured Plans with 2,500-4,999 Participants	Insured Plans with 1,000-2,499 Participants	Insured Plans with 500-999 Participants	Insured Plans with 250-499 Participants	Insured Plans with Fewer than 250 Participants
1980	2,244	120	131	211	452	420	404	506
1985	2,188	137	124	216	459	402	376	474
1990	1,983	140	127	214	428	402	332	340
1991	1,926	145	127	207	414	401	302	330
1992	1,936	150	121	210	418	386	310	341
1993	1,900	143	126	204	412	378	302	335
1994	1,880	141	125	202	403	369	302	338
1995	1,879	144	123	205	409	368	303	327
1996	1,876	143	132	206	400	373	287	335
1997	1,846	145	131	206	401	365	296	302
1998	1,817	147	136	193	400	357	290	294
1999	1,800	149	137	189	403	357	279	286
2000	1,744	152	138	197	388	357	258	254
2001	1,707	159	133	210	377	327	254	247
2002	1,671	163	133	212	397	316	233	217
2003	1,612	166	129	206	391	321	202	197
2004	1,586	166	129	208	393	305	198	187
2005	1,571	164	134	204	381	309	195	184
2006	1,538	162	132	203	380	305	184	172
2007	1,529	168	123	198	390	296	177	177

Source: 2006 Data Book, Table M-6, 2006 and 2007 figures are estimates provided by PBGC staff.

Table 5
PBGC-Insured Plan Participants
(1980-2007)
MultiEmployer Program

Year	Total Insured Participants (in thousands)
1980	7,997
1985	8,209
1990	8,534
1991	8,710
1992	8,780
1993	8,657
1994	8,559
1995	8,632
1996	8,649
1997	8,740
1998	8,876
1999	8,991
2000	9,132
2001	9,423
2002	9,630
2003	9,699
2004	9,829
2005	9,887
2006	9,916
2007	10,044

Source: 2006 Data Book, Table M-5, 2006 and 2007 figures are estimates provided by PBGC staff.

Table 6
PBGC-Insured Plan Participants by Participant Status (1980-2005)
Multiemployer Program

Year	Active Participants	Retired Participants	Separated Vested Participants
1980	75.9%	17.7%	6.5%
1985	66.1%	22.6%	11.4%
1990	58.6%	25.2%	16.2%
1991	57.2%	26.3%	16.5%
1992	54.6%	27.6%	17.8%
1993	53.5%	28.0%	18.4%
1994	53.4%	28.0%	18.6%
1995	52.4%	28.9%	18.7%
1996	52.1%	29.1%	18.8%
1997	52.2%	28.9%	18.9%
1998	51.2%	30.4%	18.3%
1999	50.9%	30.5%	18.6%
2000	51.1%	30.1%	18.7%
2001	49.5%	29.6%	20.9%
2002	48.1%	29.7%	22.2%
2003	47.1%	30.2%	22.8%
2004	46.0%	30.8%	23.2%
2005	45.6%	30.8%	23.6%

Source: 2006 Data Book, Table M-7, 2004 and 2005 figures are estimates provided by PBGC staff. Data for plan years prior to 1999 include only plans with 100 or more participants. Due to rounding, percentages may not add up to 100 percent.

The decline in employer sponsorship of defined benefit pension plans has been accompanied by a rise in employer sponsorship of defined contribution plans, such as section 401(k) plans. Some commentators have argued that this trend marks a paradigm shift in the way in which Americans wish to implement social policy, observing that the structure of defined contribution plans and the attendant risks and rewards of such plans reflect current societal norms about property ownership and self-determination.¹⁷ Others have attributed this trend to the greater risk incurred by the sponsoring employer of a defined benefit pension plan, noting that such plans involve long-term obligations on the part of the employer and volatile funding requirements (as the value of plan assets increases or decreases), while defined contribution plans generally do not.¹⁸

Aside from funding volatility, employers may also prefer defined contribution plans over defined benefit plans because defined contribution plans may be less expensive and complex to administer. For example, there is generally no need to retain an actuary in the administration of a defined contribution plan. Employees also may prefer defined contribution plans for several reasons. The first is the transparency of the value of the benefit that an employee will receive under such a plan. The value of an amount in an account under a defined contribution plan is more readily understood than the value of an annuity that may be payable under a defined benefit plan many years in the future. Second, increased mobility in the workforce has affected the relative values that employees place on defined contribution and defined benefit plans. A defined contribution plan benefit may be more readily portable if the employee changes employment (e.g., the employee can receive an immediate distribution of the benefit) while traditional defined benefit formulas may provide lesser benefits to shorter term employees. Employers too may prefer defined contribution plans if their portability enables employers to limit the number of former employees with whom they must maintain a plan administration relationship.

Many of the employers that currently maintain defined benefit pension plans have frozen their plans so that employees no longer accrue additional benefits under the plan (sometimes referred to as a “hard freeze”) or newly hired employees are not eligible to participate in the plan (sometimes referred to as a “closed plan” or “partial freeze”).¹⁹ According to a recently issued GAO report, an estimated 3.3 million active participants in single-employer defined benefit plans (or approximately 21 percent of active participants in the private, single-employer defined

¹⁷ Zelinsky, Edward A., *The Defined Contribution Paradigm*, 114 Yale L.J. 451 (2004).

¹⁸ Befort, Stephen F., *The Perfect Storm of Retirement Insecurity: Fixing the Three-Legged Stool of Social Security, Pensions, and Personal Savings*, 91 Minn. L. Rev. 938 (2007).

¹⁹ The term “soft freeze” is sometimes used to describe a plan under which additional service accruals have been frozen but plan participants may still experience benefit growth with respect to prior accruals on account of wage increases.

benefit pension plan system) are affected by some type of a plan freeze.²⁰ The GAO report also notes that 51 percent of plan sponsors (with plans with 100 or more total participants) had one or more frozen plans, while 44 percent of plans report a freeze and 51 percent of plans do not allow new hires to accrue benefits under the plan. The PBGC has also studied the prevalence of frozen plans and found that the percentages of PBGC covered plans that were hard frozen were 9.5 percent for 2003, 12.1 percent for 2004, and approximately 14.1 percent for 2005.²¹ Both GAO and the PBGC found that hard freezes are more prevalent in smaller plans. The GAO report noted that sponsors of frozen plans cited a number of reasons for freezing their plans, with the annual contributions required to fund plans (and the effect of such contributions on cash flows) and the volatility of plan funding requirements being cited most frequently.

GAO and PBGC note that the effect of plan freezes on the PBGC's net financial position is not clear. Sponsors of frozen plans must continue to pay premiums to the PBGC and comply with ERISA's funding requirements. Because future accruals are limited, however, sponsors may find it easier to bring frozen plans to full funding. If this is the case, the increase in the number of frozen plans may have a modestly positive effect on the PBGC's net finances, since the freezes should reduce system liabilities and minimize claims by financially weak plans. The effect on the PBGC's net financial position also depends, however, on whether plan freezes reduce the PBGC's premium income over time as a result of a decline in participants for whom premiums must be paid, a decline in underfunded plans which must pay variable-rate premiums (such premiums are paid only by underfunded plans), or an increase in plan terminations. In addition, there is some concern that an adverse selection process will result in fully funded plans terminating while underfunded plans remain frozen and subject to the PBGC's insurance responsibility, further impairing the PBGC's net financial position.

Tables 7 and 8 show the concentration of PBGC insured plans and participants by industry category under the single-employer and multiemployer insurance programs for 2006 and PBGC insurance program premiums paid per industry category for 2006 for the single-employer plan program.

²⁰ *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817, July 2008.

²¹ 2006 Fact Book at 12-13.

Table 7
PBGC-Insured Plans, Participants and Premiums by Industry (2006)
Single-Employer Program

Industry	Insured Plans		Insured Participants (in thousands)		Premiums	
AGRICULTURE, MINING, AND CONSTRUCTION	2,466	8.5%	630	1.9%	\$26,742,851	1.9%
MANUFACTURING	7,439	25.7%	15,812	46.6%	644,815,426	44.7%
Chemical and Allied Products	629	2.2%	1,741	5.1%	69,675,568	4.8%
Fabricated Metal Products	1,279	4.4%	677	2.0%	29,426,490	2.0%
Food and Tobacco Products	688	2.4%	1,273	3.8%	45,530,790	3.2%
Machinery and Computer Equipment	679	2.3%	864	2.5%	33,717,478	2.3%
Motor Vehicle Equipment	338	1.2%	2,084	6.1%	106,666,029	7.4%
Paper Manufacturing	287	1.0%	602	1.8%	21,450,427	1.5%
Primary Metals	439	1.5%	569	1.7%	34,793,207	2.4%
Rubber and Miscellaneous Plastics	377	1.3%	374	1.1%	29,316,802	2.0%
Other Manufacturing	2,723	9.4%	7,628	22.5%	274,238,636	19.0%
TRANSPORTATION AND PUBLIC UTILITIES	1,028	3.6%	2,334	6.9%	197,576,981	13.7%
Air Transportation	68	0.2%	608	1.8%	124,750,932	8.7%
Other Transportation	562	1.9%	633	1.9%	23,321,010	1.6%
Public Utilities	398	1.4%	1,093	3.2%	49,505,038	3.4%
INFORMATION	727	2.5%	2,421	7.1%	96,544,800	6.7%
WHOLESALE TRADE	2,073	7.2%	712	2.1%	27,270,071	1.9%
RETAIL TRADE	1,429	4.9%	1,983	5.8%	61,043,385	4.2%
FINANCE, INSURANCE, AND REAL ESTATE	5,353	18.5%	4,141	12.2%	137,221,329	9.5%
SERVICES	7,340	25.4%	5,640	16.6%	235,564,174	16.3%
Health Care	1,928	6.7%	2,916	8.6%	125,441,282	8.7%
Other Services	5,412	18.7%	2,724	8.0%	110,122,893	7.6%
NON-PROFIT ORGANIZATIONS	1,068	3.7%	260	0.8%	15,220,983	1.1%
TOTAL	28,923	100.0%	33,933	100.0%	\$1,442,000,000	100.0%

Source: Estimates provided by PBGC staff.

Due to rounding of individual items, numbers and percentages may not add up to totals.

Industry classifications are based on principal business activity codes used in the North American Industry Classification System.

Table 8
PBGC-Insured Plans and Participants by Industry (2006)
Multiemployer Program

Industry	Insured Plans		Insured Participants	
AGRICULTURE	11	0.7%	44,096	0.4%
MINING	10	0.7%	159,180	1.6%
CONSTRUCTION	832	54.1%	3,537,907	35.7%
Building Construction	95	6.2%	693,652	7.0%
Heavy Construction	82	5.3%	383,619	3.9%
Plumbing, Heating, and Air Conditioning	165	10.7%	404,792	4.1%
Electrical Work	124	8.1%	738,224	7.4%
Building Finishing Contractors	83	5.4%	388,095	3.9%
Foundation, Structure, and Exterior Work	157	10.2%	488,977	4.9%
Other Construction	126	8.2%	440,548	4.4%
MANUFACTURING	184	12.0%	1,503,303	15.2%
Food and Tobacco Products	44	2.9%	240,902	2.4%
Apparel and Textile Products	12	0.8%	315,275	3.2%
Paper and Allied Products	4	0.3%	85,909	0.9%
Printing and Publishing	18	1.2%	155,533	1.6%
Machinery and Computer Equipment	9	0.6%	235,671	2.4%
Electrical and Electronic Equipment	10	0.7%	91,606	0.9%
Other Manufacturing	87	5.7%	378,407	3.8%
TRANSPORTATION AND PUBLIC UTILITIES	147	9.6%	1,571,951	15.9%
Trucking	71	4.6%	938,970	9.5%
Water Transportation	44	2.9%	117,575	1.2%
Other Transportation and Public Utilities	32	2.1%	515,406	5.2%
INFORMATION	41	2.7%	205,029	2.1%
WHOLESALE TRADE	34	2.2%	123,175	1.2%
RETAIL TRADE	91	5.9%	1,355,411	13.7%
SERVICES	188	12.2%	1,410,846	14.2%
Administrative/Support	48	3.1%	346,517	3.5%
Health Care/Social Assistance	17	1.1%	390,818	3.9%
Accommodation/Food Service	37	2.4%	340,334	3.4%
Other Services	86	5.6%	333,177	3.4%
TOTAL	1,538	100.0%	9,910,898	100.0%

Source: Estimates provided by PBGC staff.

Due to rounding of individual items, numbers and percents may not add up to totals.

Industry classifications are based on principal business activity codes used in the North American Industry Classification System.

C. Minimum Funding Rules for Defined Benefit Pension Plans

In general

A defined benefit pension plan is generally subject to minimum funding rules, subject to certain exceptions.²² For example, governmental and church plans that are not subject to PBGC termination insurance also are not subject to the minimum funding rules. The minimum funding rules for single-employer and multiemployer plans are different.

Rules for single-employer plans

The new minimum funding rules for single-employer defined benefit pension plans established under the Pension Protection Act of 2006 are generally effective for plan years beginning after December 31, 2007. Under the new rules, the minimum required contribution for a plan year generally depends on a comparison of the value of the plan's assets with the plan's funding target and target normal cost. The plan's funding target for a plan year is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is the present value of benefits expected to accrue or be earned during the plan year.

In general, a plan has a funding shortfall for a plan year if the plan's funding target for the year exceeds the value of the plan's assets. A shortfall amortization base is generally established for each year for which a plan has a funding shortfall, and this base is amortized over a seven year period. As a result, in any given plan year, a plan may have a number of shortfall amortization installments that relate to the current or prior plan years. The aggregate of these installments is referred to as the shortfall amortization charge. In the case of a plan with a funding shortfall for a plan year, the minimum required contribution is generally equal to the sum of the plan's target normal cost and the shortfall amortization charge for that year.

If the value of the plan's assets exceeds the plan's funding target for a plan year, then the minimum required contribution is generally equal to the plan's target normal cost for the year. Target normal cost for this purpose is reduced (but not below zero) by the amount by which the value of the plan's assets exceed the plan's funding target.

The new minimum funding rules for single-employer defined benefit pension plans specify the interest rates and other actuarial assumptions that must be used in determining a plan's target normal cost and funding target. Under the rules, present value is determined using three interest rates, each of which applies to benefit payments expected to be made from the plan during a certain period. The new rules also specify that the value of plan assets is generally fair

²² Code sec. 412. Similar rules apply to single-employer defined benefit pension plans under the Labor Code provisions of ERISA.

market value. However, the value of plan assets may be determined on the basis of the averaging of fair market values, as specified under regulations.

Rules for multiemployer plans

The Pension Protection Act of 2006 also modified the minimum funding rules for multiemployer defined benefit pension plans. These modifications are generally effective for plan years beginning after 2007. In general, contributions must be made to the multiemployer plan to ensure that the plan does not have an accumulated funding deficiency as of the end of the plan year. An accumulated funding deficiency arises when total charges to the “funding standard account” of the plan for all plan years exceeds total credits to the account. As an administrative aid to the application of the minimum funding rules, a multiemployer defined benefit pension plan is required to maintain a special account called a funding standard account to which specified charges and credits are made each plan year, including for example a charge for the plan’s normal cost for benefits earned or accrued during the year and credits for contributions. Other credits or charges may apply as a result of plan amendments or experience gains or losses (for example, experience gains and losses would include investment earnings or mortality rates that are more or less than expected).

Failure to comply with minimum funding rules

The Secretary of the Treasury is authorized to waive a minimum funding contribution in the case of business hardship. However, the Secretary is generally required to provide notice to the PBGC of a waiver application from a single-employer plan and is required to consider the PBGC’s comments on the waiver application. If unpaid minimum funding contributions for a single-employer plan exceed \$1,000,000, a lien arises in favor of the plan upon all property and rights to property (real or personal) belonging to the sponsoring employer (or member of the sponsoring employer’s controlled group) in an amount equal to the unpaid minimum contributions. Notice must be given to the PBGC of a funding failure that gives rise to a lien, and generally the lien is enforceable by the PBGC.

A two-level excise tax is imposed under the Code with respect to a failure to comply with the minimum funding rules.²³ The initial tax is ten percent of aggregate unpaid contributions for single-employer plans and is five percent of the accumulated funding deficiency for multiemployer plans. An additional tax is imposed if the failure is not corrected before the date that a notice of deficiency with respect to the initial tax is mailed to the employer by the Internal Revenue Service (or the date of assessment by the Internal Revenue Service of the initial tax). The additional tax is equal to 100 percent of the unpaid contributions or accumulated funding deficiency. Before issuing a notice of deficiency with respect to the excise tax, the Secretary of the Treasury must notify the Secretary of Labor to provide him with a reasonable opportunity to require the employer to correct the deficiency or comment on the imposition of the tax. A

²³ Code sec. 4971.

similar opportunity must be given to the PBGC in the case of certain multiemployer plans that are in reorganization under the multiemployer insurance program.

D. Funding

1. In general

The PBGC is funded by: (1) premiums paid with respect to covered plans; (2) assets in terminated plans for which the PBGC becomes trustee; (3) amounts recovered from employers who terminate underfunded plans; and (4) investment earnings. The PBGC is not funded by general tax revenues.

2. Premiums

Single-employer plans

All covered single-employer plans are required to pay a flat, per participant premium and underfunded plans are subject to an additional variable premium based on the level of underfunding.

Under ERISA, as originally enacted, covered plans were required to pay a flat annual premium to the PBGC of \$1 per plan participant. The annual flat-rate per participant premium has been increased several times since the enactment of ERISA. The Deficit Reduction Act of 2005 set the flat rate premium at \$30 for plan years beginning after December 31, 2005, with indexing after 2006 based on increases in average wages. For 2008, the flat-rate premium is \$33 per participant.²⁴

Under the Omnibus Budget Reconciliation Act of 1987, additional PBGC premiums are imposed on certain plans for plan years beginning after December 31, 1987. In the case of an underfunded plan, additional premiums are required in the amount of \$9 per \$1,000 of unfunded vested benefits. These premiums are referred to as “variable rate premiums.” The Pension Protection Act of 2006 provided that in the case of a small employer (25 or fewer employees), the per-participant premium is no more than \$5 multiplied by the number of plan participants in the plan (as of the end of the preceding plan year).

Under the Deficit Reduction Act of 2005, a new premium generally applies in the case of certain plan terminations occurring after 2005 and before 2011. A premium of \$1,250 per participant is imposed generally for the year of the termination and each of the following two years. The premium applies in the case of a plan termination by the PBGC or a distress termination due to reorganization in bankruptcy, the inability of the employer to pay its debts when due, or a determination that a termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the workforce. In the case of a termination due to bankruptcy reorganization, the liability does not arise until the employer is discharged from the

²⁴ ERISA sec. 4006(a).

reorganization proceeding. The Pension Protection Act of 2006 made the termination premium permanent.

Multiemployer plans

Under ERISA as originally enacted, the premium rate for multiemployer plans was \$0.50 per participant. The rate has been increased over the years. The Deficit Reduction Act of 2005 set the flat rate premium at \$8 per-participant for plan years beginning after December 31, 2005, with indexing after 2006 based on increases in average wages.²⁵ For 2008, the rate is \$9 per participant. This flat-rate per-participant premium is the only premium paid to the PBGC for multiemployer plans.

3. Plan assets

When the PBGC becomes the trustee of an underfunded plan, the PBGC takes control of the plan's assets (if any) and assumes responsibility for liabilities under the plan.²⁶

4. Recoveries from employers

Following a distress or involuntary termination of a single-employer defined benefit pension plan, the plan's contributing sponsor and every member of that sponsor's controlled group is generally liable to the PBGC for the excess of the value of the plan's liabilities as of the date of plan termination over the fair market value of the plan's assets on the date of termination.²⁷ The liability is joint and several, meaning that each member of the controlled group can be held responsible for the entire liability. Generally, the obligation is payable in cash or negotiable securities to the PBGC on the date of termination. Failure to pay this amount upon demand by the PBGC may trigger a lien on the property of the contributing employer's controlled group for up to 30 percent of its net worth.²⁸ Obligations in excess of this amount are to be paid on commercially reasonable terms acceptable to the PBGC.

5. Earnings from investment assets

The PBGC's investment assets consist of premium revenues, held in three revolving funds, and assets obtained from terminated plans and recovered from plan sponsors, held in the PBGC trust fund. Under ERISA, the PBGC and its property and income (including the income

²⁵ ERISA sec. 4006(a)(3).

²⁶ ERISA sec. 4042(b).

²⁷ ERISA sec. 4062.

²⁸ ERISA sec. 4068.

of any revolving fund) are exempt from taxation imposed by the United States (other than certain employment tax obligations) and are generally exempt from state and local taxation.²⁹

ERISA authorizes the establishment of up to seven revolving PBGC funds, but only three of the seven funds have been established.³⁰ Funds one and seven³¹ are credited with premiums collected under the single-employer program, and fund two is credited with premiums collected under the multiemployer plan program. Funds one and two are required to be invested in obligations issued or guaranteed by the United States, while portions of fund seven may be invested in other debt obligations.³² The assets of the revolving funds generally may be used to pay the operational and administrative expenses of the PBGC; however, fund seven may not be used to pay the PBGC's administrative expenses or the benefits of any plan terminated prior to October 1, 1988, unless no other amounts are available.³³

The PBGC created a trust fund to hold assets that it collects pursuant to its termination insurance program other than premium payments (i.e., the assets of terminated plans and amounts recovered from plan sponsors). The assets of the trust fund are generally held by custodian banks. The assets provide a portion of benefit payments and support the operational functions of the PBGC.

As of September 30, 2007, the value of the PBGC's total investments was approximately \$62.6 billion. The revolving funds' value was \$14.5 billion and the trust fund's value was \$48.1 billion. Approximately 72 percent of total assets were invested in cash and fixed-income securities, while approximately 28 percent were invested in equity securities. A very small portion of the PBGC's investment assets were invested in real estate and other financial securities. The total return on investment assets was 7.2 percent in 2007 (or \$4.76 billion in investment income).³⁴

²⁹ ERISA sec. 4002(g).

³⁰ ERISA sec. 4005. Funds two through six are authorized under ERISA for special purposes that have not been used by PBGC. For example, the third and fourth funds were intended to be used in connection with a PBGC guarantee of nonbasic benefits. To date, however, the PBGC has not instituted a nonbasic benefits guarantee.

³¹ Fund seven is credited with all single-employer program premiums in excess of \$8.50 per participant. ERISA sec. 4005(f)(1).

³² ERISA secs. 4005(b)(3) and (f)(3).

³³ ERISA secs. 4005(b)(2) and (f)(2).

³⁴ 2007 Annual Report, page 21. Note that the 2007 Annual Report lists the total assets of the single-employer and multiemployer programs as \$68.483 billion (see page 32). The difference between the total investment assets (\$62.604 billion) and total assets of the programs (\$68.438 billion)

6. Shift in investment strategy

Over the years the PBGC has invested primarily in fixed income and domestic equities, with the proportion of assets allocated to each class shifting according to changes in investment strategy. The most recent change in strategy came in February 2008 when, facing a shortfall of \$14 billion, the PBGC adopted a more diversified approach to investments.³⁵ The new strategy, adopted after a six month review process, recognizes the PBGC's ability to invest pursuant to a long-term investment horizon and allocates 45 percent of the PBGC's assets to equity investments, 45 percent to fixed income, and ten percent to alternative investments such as private equity. In contrast, the asset allocation strategy immediately prior to February 2008 was 75 to 85 percent fixed-income investments.

The strategy of increased diversification aims to maximize returns and provide increased downside risk protection. According to PBGC estimates, the new strategy increases from 19 percent to 57 percent the likelihood that the PBGC will achieve full funding over the next ten years, and increases that likelihood from 37 percent to 76 percent over the next 20 years.

In a July 2008 report GAO raised several concerns about the new investment strategy.³⁶ Most broadly, GAO observed that despite several changes in investment policy over the years, the PBGC's board has never taken an active role in ensuring that investment objectives are met. More particularly, while acknowledging that the new investment strategy was developed in response to large deficits, GAO pointed out that the degree of risk inherent in the new investment strategy is as yet unknown and that relying solely on investment income to remedy the PBGC's financial troubles will likely to lead to increases in risky investment behavior. GAO observed that the PBGC's new investment strategy closely matches the investment policy of many defined benefit plans, exposing the PBGC to the possibility of an economic downturn that forces plans into PBGC trusteeship at the same time that the PBGC's own assets have declined. GAO strongly encouraged the PBGC to gain a better understanding of the risks involved in the new strategy prior to its implementation.

GAO made three recommendations for executive action by the PBGC with respect to the new investment strategy: (1) require the board to approve a written implementation plan outlining investment accountability measures (for example, key objectives, milestones, and time frames); (2) require the director to make periodic reports on progress made in meeting

is comprised of receivables exclusive of receivable investment income (i.e., \$5.793 billion, or \$6.079 billion less \$286 million) and capital assets (\$41 million).

³⁵ Millard, Charles E.F., Director, PBGC, *PBGC's New Diversified Investment Policy*, Pension & Benefits Daily, Vol. 8, No. 4 (March 4, 2008).

³⁶ *PBGC Assets: Implementation of New Investment Policy Will Need Stronger Board Oversight*, GAO-08-667, July 2008.

investment objectives; and (3) justify any deviations from the approved implementation plan and document the board's agreement or disagreement with any such deviations.

The Congressional Budget Office ("CBO") has also expressed concern regarding the new strategy. In a letter to Representative Miller in April 2008, CBO noted that while increased diversification is likely to produce higher returns over the long run, it also increases the risk that the PBGC will not have sufficient assets to cover its liabilities when the economy and financial markets are weak, especially if interest rates fall and the present value of accrued benefits are thus increased.³⁷ A recently issued Congressional Research Service report expresses concerns with the new PBGC investment strategy similar to those raised by the GAO report and CBO letter.³⁸

7. Funding sufficiency

As of September 30, 2007, the PBGC reported a total deficit of \$14.1 billion, the bulk of which is attributable to the single-employer program.³⁹ This is a \$4.81 billion improvement over fiscal year 2006 for which a \$18.9 billion deficit was reported.

During fiscal year 2007, the net position of the single-employer program improved by \$5.03 billion, while the multiemployer program's net position declined by \$216 million. The single-employer program reported a gain of \$5 billion for fiscal year 2007, resulting in a deficit of \$13.1 billion. In the previous fiscal year, the program reported a gain of \$4.6 billion and a deficit of \$18.1 billion. For fiscal year 2007, the multiemployer plan program reported a net loss of \$216 million, resulting in a deficit of \$955 million. For fiscal year 2006, the multiemployer program reported a loss of \$404 million, resulting in a deficit of \$739 million.

As of September 30, 2007, the value of the PBGC's assets in the single-employer and multiemployer programs was approximately \$68.4 billion. This is an increase from approximately \$61.1 billion as of September 30, 2006. Investment income for fiscal year 2007 was \$4.76 billion which is more than twice the fiscal year 2006 amount of \$2.18 billion.

The PBGC paid over \$4.3 billion in benefits in fiscal year 2007. At the end of 2007, the PBGC was directly responsible for the pensions of more than 1.3 million people.

The PBGC was in a deficit for the first 21 years of its existence. From 1996 through 2001, a surplus was reported. Since 2002, the PBGC has been in a deficit position. The deficit position has improved (i.e., it has decreased) each year since 2004.

³⁷ Letter dated April 24, 2008, available at www.cbo.gov.

³⁸ Kinneen, Kelly, *Pension Benefit Guaranty Corporation (PBGC) Investment Policy: Issues for Congress*, September 8, 2008.

³⁹ Information on the financial status of the PBGC for fiscal years 2006 and 2007 was obtained from the 2007 Annual Report.

GAO placed the PBGC single-employer program on its high-risk list in 2003.⁴⁰ The PBGC was originally designated high risk in 1990, when GAO began reporting on government operations that it identified as high risk, and was removed from the list in 1995. The program was added to the list again in 2003 because the program's financial health was threatened by structural weaknesses in pension funding rules, the program's premium structure, and the potential for large bankruptcies among sponsors with underfunded plans in weak industries.⁴¹ Following the enactment of the Pension Protection Act of 2006, GAO notes that progress has been made, but that the ultimate effect of the single-employer program's deficit is unclear.⁴² GAO recommends that Congress carefully monitor the effects of the Pension Protection Act's reforms on the PBGC.

Tables 9 and 10, below, summarize the PBGC's financial position and net income for fiscal years 2006 and 2007.

⁴⁰ *High Risk Series, An Update*, GAO-07-301, January 2007. Since 1990, GAO periodically reports on government operations that it has designated as high risk. GAO's audits and evaluations identify Federal programs and operations that are high risk due to their greater vulnerabilities to fraud, waste, abuse, and mismanagement. GAO also identifies high-risk areas to focus on the need for broad-based changes to address major economy, efficiency, or effectiveness challenges.

⁴¹ *Id.*

⁴² *Id.*

**Table 9.—Summary of PBGC Financial Position
(millions)**

	Fiscal Year 2006	Fiscal Year 2007
Single-employer program assets	\$59,972	\$67,241
Single-employer program liabilities	\$78,114	\$80,352
Single-employer program surplus/(deficit) ¹	(\$18,142)	(\$13,111)
Multiemployer program assets	\$1,166	\$1,197
Multiemployer program liabilities	\$1,905	\$2,152
Multiemployer program surplus/(deficit)	(\$739)	(\$955)
Combined surplus/(deficit)	(\$18,881)	(\$14,066)

¹ The program's surplus is its assets less liabilities.

**Table 10.—PBGC Net Income/(Loss)
(millions)**

	Fiscal Year 2006	Fiscal Year 2007
Single-employer program income/(loss)	\$4,634	\$5,031
Multiemployer program income/(loss)	(\$404)	(\$216)
Combined income/(loss)	\$4,230	\$4,815

E. Information Reported to the PBGC

In general

Defined benefit pension plans are required to provide certain information related to funding and the funded status of the plan to the IRS, the Department of Labor, and the PBGC. Failure to comply with these requirements may result in the imposition of monetary penalties. In certain cases, such as a willful violation of an ERISA requirement, criminal penalties may apply.

Annual report

The plan administrator of a qualified retirement plan generally must submit an annual report of certain information with respect to the qualification, financial condition, and operation of the plan.⁴³ The annual report with respect to a plan year generally must be filed by the end of the seventh month after the end of the plan year unless an extension applies. Information provided in the annual report is generally available to the public.⁴⁴ The PBGC and the Departments of the Treasury and Labor have coordinated the filing requirements so that the annual return is filed on Form 5500 with the Employee Benefits Security Administration (an agency of the Department of Labor).

In the case of a defined benefit pension plan, the annual report must include an actuarial report.⁴⁵ The report must include, for example, information as to the value of plan assets, the plan's normal costs and accrued liabilities, and contributions made to the plan. The report must be signed by an actuary enrolled to practice before the Internal Revenue Service, the Department of Labor, and the PBGC.

Payment of premiums

In general, PBGC premium payments must be filed on-line, using the forms and filing portal available on the PBGC's website (www.pbtc.gov). For small plans (plans with fewer than 100 participants), both the flat-rate and variable rate premium are due on the last day of the sixteenth full calendar month following the end of the plan year that precedes the plan year for which the payment is made (e.g., April 30, 2009, for premium payments for 2008 for a calendar year plan). For mid-size plans (plans with at least 100 but fewer than 500 participants), the due date for the flat-rate and variable-rate premiums is generally the fifteenth day of the tenth

⁴³ Code sec. 6058; ERISA secs. 103-104. The annual report is made as a single submission to the Department of Labor on the Form 5500, which forwards copies to the Internal Revenue Service and the PBGC.

⁴⁴ Code sec. 6104; ERISA sec. 106.

⁴⁵ Code sec. 6059; ERISA sec. 103(d). The actuarial report is provided on Schedule B of the Form 5500.

calendar month in the plan year (e.g., October 15, 2008, for premium payments for 2008 for a calendar year plan). For large plans (500 or more participants), the flat-rate premium is due the last day of the second calendar month in the plan year (e.g., February 29, 2008, for premium payments for 2008 for a calendar year plan). The variable-rate premium for large plans is due at the same time as mid-size plans. Penalties and interest charges may apply in the case of late payment of PBGC premiums.

Failure to satisfy minimum contribution rules

If an employer fails to make a required contribution to a single-employer plan and fails to obtain a funding waiver, the employer must notify the PBGC if the total contributions the employer failed to make exceeds \$1 million and the plan's funding target attainment percentage (generally, the ratio of plan assets to the plan's funding target for the year) is less than 100 percent.⁴⁶

Multiemployer plans in endangered or critical status

The sponsor of a multiemployer plan must give notice to the PBGC if the plan reaches endangered or critical status. A plan will reach such status if the ratio of plan assets to liabilities falls below specified thresholds.

Additional information

In some cases, certain financial information with respect to the members of a controlled group and actuarial information with respect to plans maintained by members of the controlled group must be reported annually to the PBGC.⁴⁷ This reporting is required if: (1) the funding target attainment percentage at the end of the preceding plan year of a plan maintained by the sponsor or any member of its controlled group is less than 80 percent; (2) the conditions for imposition of a lien (i.e., required contributions totaling more than \$1 million have not been made) have occurred with respect to an underfunded plan maintained by a member of the controlled group; or (3) minimum funding waivers in excess of \$1 million have been granted with respect to a plan maintained by any member of the controlled group and any portion of the waived amount is still outstanding.

Plan sponsors and plan administrators are required to notify the PBGC as to the occurrence of certain events ("reportable" events) unless the PBGC has waived the notice

⁴⁶ Code sec. 430(k)(4)(A); ERISA sec. 303(k)(4)(A).

⁴⁷ ERISA sec. 4010.

requirement.⁴⁸ These events include, for example, failure to meet the minimum funding requirements and inability to pay benefits under a plan when due.

Information provided to the PBGC in accordance with these requirements is not available to the public.

⁴⁸ ERISA sec. 4043.

III. TERMINATION INSURANCE PROGRAMS

A. Single-Employer Plans

1. In general

An employer may voluntarily terminate a single-employer plan only in a standard termination or a distress termination.⁴⁹ The participants and the PBGC must be provided notice of the intent to terminate. The PBGC may also require that a plan be terminated involuntarily (that is, the termination is not voluntary on the part of the employer).

2. Standard terminations

A standard termination is permitted only if plan assets are sufficient to cover benefit liabilities.⁵⁰ Generally, benefit liabilities equal all benefits earned to date by plan participants, including vested and nonvested benefits (which automatically become vested at the time of termination), and including certain early retirement supplements and subsidies.⁵¹ Benefit liabilities may also include certain contingent benefits (for example, early retirement subsidies). If assets are sufficient to cover benefit liabilities (and other termination requirements, such as notice to employees, have not been violated), the plan may terminate by distributing benefits to participants. The plan may provide for the benefit payments it owes by purchasing annuity contracts from an insurance company or otherwise providing for the payment of benefits, for example by making lump-sum distributions.

If certain requirements are satisfied, and the plan so provides, assets in excess of the amounts necessary to cover benefit liabilities may be recovered by the employer in an asset reversion. Reversions are subject to an excise tax.⁵²

3. Distress and involuntary terminations

Distress terminations

If assets in a plan are not sufficient to cover benefit liabilities, the employer may not terminate the plan unless the employer meets one of four criteria necessary for a “distress” termination:

⁴⁹ ERISA sec. 4041.

⁵⁰ *Id.*

⁵¹ ERISA sec. 4001(a)(16).

⁵² Code sec. 4980. The excise tax is 20 percent of the amount of the reversion, and the rate generally is increased to 50 percent unless the employer establishes a qualified replacement plan.

- The contributing sponsor, and every member of the controlled group of which the sponsor is a member, is being liquidated in bankruptcy or any similar Federal law or other similar State insolvency proceeding;
- The contributing sponsor and every member of the sponsor's controlled group is being reorganized in bankruptcy or similar State proceeding;
- The PBGC determines that termination is necessary to allow the employer to pay its debts when due; or
- The PBGC determines that termination is necessary to avoid unreasonably burdensome pension costs caused solely by a decline in the employer's work force.⁵³

These requirements are designed to ensure that the liabilities of an underfunded plan remain the responsibility of the employer, rather than being shifted to the responsibility of the PBGC, unless the employer meets strict standards of financial need indicating genuine inability to continue funding the plan.

Involuntary terminations by the PBGC

The PBGC may institute proceedings to terminate a plan if it determines that the plan in question has not met the minimum funding standards, will be unable to pay benefits when due, or has a substantial owner who has received a distribution greater than \$10,000 (other than by reason of death) while the plan has unfunded nonforfeitable benefits, or that the PBGC's long-run loss with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated. The PBGC must institute proceedings to terminate a plan if the plan is unable to pay benefits that are currently due.⁵⁴

4. Plan restoration

ERISA authorizes the PBGC to restore a terminated pension plan to its sponsoring employer if the PBGC determines that restoration is appropriate and consistent with its duties under ERISA.⁵⁵ The PBGC has restored a pension plan only once, in the case of an employer that set up new plans (called "follow-on plans") to provide employees with the benefits under the original plans that were not guaranteed by the PBGC.⁵⁶

⁵³ ERISA sec. 4041(c).

⁵⁴ ERISA sec. 4042.

⁵⁵ ERISA sec. 4047.

⁵⁶ See *Pension Benefit Guaranty Corporation v. LTV Corporation*, 496 U.S. 633 (1990). The opinion notes that the PBGC views follow-on plans as an abuse of the PBGC insurance program, under which the PBGC is responsible for benefits under a terminated plan. The establishment of a follow-on

5. PBGC benefit payments

In general

When an underfunded single-employer plan terminates, the amount of benefits that participants receive depends on the plan terms, the degree of the plan's funding, legal limits on the amount of guaranteed benefits that the PBGC can pay to covered participants, asset allocation rules, and recovery by the PBGC on its claims for unpaid employer contributions and employer liability. Guaranteed benefits are paid regardless of plan funding.

When a plan terminates in a distress termination and assets are sufficient to pay guaranteed benefits of plan participants, the plan pays those benefits.⁵⁷ When an underfunded plan terminates in a distress or involuntary termination and benefits are insufficient to pay guaranteed benefits, the plan effectively goes into PBGC receivership. The PBGC seeks a court order to become the trustee of the plan, and if the order is granted, the PBGC takes control of any plan assets and assumes responsibility for liabilities under the plan.⁵⁸

Guaranteed benefits

The PBGC guarantees the payment of nonforfeitable benefits provided under an underfunded, terminating plan (other than benefits that become nonforfeitable solely on account of the termination of the plan). Guaranteed (or "basic") benefits generally are benefits accrued before a plan terminates, including (1) benefits at normal retirement age; (2) most early retirement benefits; (3) disability benefits for disabilities that occurred before the plan was terminated; and (4) certain benefits for survivors of plan participants. Retirement benefits that begin before normal retirement age are guaranteed, provided they meet the other conditions of guarantee (such as that before the date the plan terminates, the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit other than application for the benefit). Certain contingent benefits (for example, subsidized early retirement benefits) are guaranteed only if the triggering event occurs before plan termination.

Three rules limit the amount of the PBGC guaranteed benefit: (1) the accrued-at-normal limitation; (2) the maximum insurance limitation; and (3) the phase-in limitation. A special limit applies in the case of benefits provided to a majority owner of the entity sponsoring the plan.⁵⁹

plan for benefits not covered by the terminated plan means that, in effect, the insurance program is being used to subsidize an ongoing retirement program.

⁵⁷ ERISA sec. 4022(c)(3)(B)(ii).

⁵⁸ ERISA sec. 4022(c)(3)(B)(iii).

⁵⁹ A majority owner generally is an individual who: (1) owns the entire interest in an unincorporated trade or business; (2) in the case of a partnership, is a partner who owns, directly or

Under the accrued-at-normal limitation, the amount of the guaranteed benefit is limited to a monthly amount that is no greater than the amount of the monthly benefit provided as a straight life annuity under the plan at the plan's normal retirement age. For example, a plan may provide that a participant is entitled to a straight life annuity of \$1,000 per month at age 65 (the plan's normal retirement age), but early retirees who commence benefits at age 60 are entitled to a benefit of \$750 per month with a temporary supplement of \$400 per month from ages 60 to 62 (for a total benefit of \$1,150 per month). The accrued-at-normal limitation reduces the early retiree's benefit to \$1,000 per month (a reduction of \$150) from age 60 to 62, and the PBGC would pay the participant \$750 per month from age 62 onwards (since the plan's terms only provide for the supplemental payment from age 60 to 62).

The maximum insurance limitation is a dollar cap on the amount that can be paid by the PBGC as a guaranteed benefit. For plans terminating in 2008, the maximum guaranteed benefit for an individual who begins receiving benefits from the PBGC at age 65 is \$4,312.50 per month or \$51,750.00 per year, payable for the life of the recipient. The dollar limit is indexed annually for inflation. The guaranteed amount is reduced if PBGC payments start before age 65 and are increased if benefits start after age 65. The dollar limit is reduced if a benefit is payable to a beneficiary upon the recipient's death (e.g., a joint and survivor annuity). If an individual is a participant in more than one terminated plan, the PBGC's combined payments to that individual from PBGC guaranteed funds cannot exceed the maximum guarantee.

The phase-in limitation applies in the case of a plan or plan amendment that has been in effect for less than five years before plan termination. Under the limitation, the amount guaranteed is phased in by 20 percent per year, beginning with the later of the adoption date or effective date of the plan or amendment.⁶⁰ An unpredictable contingent event benefit provided under a plan is treated as if the benefit were provided pursuant to a plan amendment adopted on the date of the event giving rise to the benefit. Thus phase-in of an unpredictable contingent event benefit begins at the latest of the adoption date or effective date of the plan or plan amendment or the date the event occurs. An unpredictable contingent event benefit includes a benefit that is payable solely by reason of a plant shutdown, or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

If a contributing sponsor for a plan enters bankruptcy or a similar proceeding, the amount of guaranteed benefits payable by the PBGC is frozen. If the plan terminates during the

indirectly, 50 percent or more of either the capital interest or the profits interest in the partnership; (3) in the case of a corporation, owns, directly or indirectly, fifty percent or more in value of either the voting stock of the corporation or all the stock of the corporation; or (4) at any time within the preceding 60 months was a majority owner under the plan. ERISA sec. 4022(b)(5).

⁶⁰ If the increase is less than \$100 per month, the amount phased in each year is \$20 per month until the full increase is phased in.

sponsor's bankruptcy, the amount of guaranteed benefits payable by the PBGC is determined based on plan provisions, salary, service, and the guarantee in effect on the date the employer entered bankruptcy. The rule applies to bankruptcies (or similar proceedings) initiated on or after September 16, 2006.

Asset allocation

ERISA contains rules for allocating the assets of a single-employer plan when the plan terminates.⁶¹ Plan assets available to pay for benefits under a terminating plan include all plan assets other than those required for expenses incurred or benefit payments due prior to plan termination. On termination, the plan administrator must allocate plan assets available to pay for benefits under the plan in the manner prescribed by ERISA.

In general, plan assets available to pay for benefits under the plan are allocated to six priority categories.⁶² If the plan has sufficient assets to pay for all benefits in a particular priority category, the remaining assets are allocated to the next priority category. This process is repeated until all benefits in the priority category are provided or until all available plan assets have been allocated. Thus, an underfunded plan may have sufficient assets to pay certain participants more than the guaranteed benefit amount, depending on the priority category of the participant's particular benefit. Special rules apply in allocating assets within a priority category if there are not sufficient assets to pay for all benefits in the category.

The six priority categories are as follows:

- Priority category one consists of the portion of a participant's accrued benefit derived from voluntary contributions to the plan by the participant.
- Priority category two consists of the portion of a participant's accrued benefit derived from mandatory participant contributions.
- Priority category three consists of benefits that were in pay status (i.e., currently being paid by the plan to a retired participant) or could have been in pay status three years before the plan termination date. The benefit amount is the lowest amount under plan provisions in effect during the five-year period preceding the termination date. If the contributing sponsor is in a bankruptcy or similar proceeding when the plan terminates, the benefits in priority category three are determined as of the bankruptcy filing date rather than the plan termination date. This rule applies to bankruptcies (or similar proceedings) initiated on or after September 16, 2006.

⁶¹ ERISA sec. 4044(a).

⁶² *Id.*

- Priority category four consists of all other benefits of participants under the plan guaranteed under the PBGC termination insurance program and benefits that would be guaranteed but for the special limitations that apply to majority owners.
- Priority category five consists of all other nonforfeitable benefits under the plan.
- Priority category six consists of all other benefits under the plan.

Asset recoveries

In addition to the basic guaranteed benefits described above, ERISA provides that the PBGC pay the portion of a plan's recovery ratio to a plan participant to the extent that the amount of the recovery ratio funds the participant's benefits (other than basic guaranteed benefits).⁶³ The numerator of the recovery ratio is the amount recovered by the PBGC from the employer responsible for the terminated plan, and the denominator is the total amount of unfunded benefit liabilities under the plan. For example, if PBGC recovers \$100,000 on a \$2 million claim for unfunded benefit liabilities, the PBGC pays five percent of the unfunded non-guaranteed benefit liabilities of the plan. The allocation of the recovery ratio among the unfunded benefits of participants follows the asset allocation priorities described above, except that the monies are allocated only to unfunded non-guaranteed benefits. For plans with unfunded benefit liabilities equal to \$20 million or less (generally small plans), however, the recovery ratio is determined by an average recovery ratio computed based on the PBGC's recovery experience in recent past years.⁶⁴

6. Procedures for payment of benefits

Prior to the appointment of the PBGC as trustee for a terminated plan, the plan administrator continues to administer the plan, including the payment of participant benefits. At the time that the PBGC is appointed as trustee for the plan, the PBGC assumes plan administration and issues an estimate to each plan participant of the benefits that the PBGC is permitted to pay the participant. In the case of a participant in pay status at the time the PBGC is appointed trustee, the estimate is the amount that the PBGC pays to the participant so that the participant continues to receive plan benefits without interruption.

The estimate is based on information that the PBGC is able to gather regarding the plan and participant benefits during the initial transition period prior to and immediately after the PBGC becomes trustee. Factors that affect whether the estimate is accurate include the complexity of the plan provisions and the quality of records as to plan provisions and data on participants.

⁶³ ERISA sec. 4022(c).

⁶⁴ A similar average recovery approach is used to determine the value of unpaid contribution recoveries to be allocated along with other plan assets.

After sending the estimate, the PBGC conducts a review of the terminated plan so that it can issue a formal benefit determination to each participant. This process can take up to three years because of the complexity of many plans (which can be exacerbated by such factors as prior plan mergers). In more unusual circumstances, such as litigation over the termination date, final benefit determinations may take longer. In the event that the estimate issued by the PBGC was too low, the PBGC makes an additional payment with interest to the participant. In the event that the estimate was too high, the participant's benefit is reduced to recover the prior overpayment amount. As a general matter, the PBGC limits the reduction in future benefits for recoupment of overpayments to no more than ten percent of a participant's final monthly benefit payable by the PBGC.

A reduction in benefits may also occur on account of payments that were made by a plan's pre-PBGC plan administrator for the period after the plan's termination date and prior to the appointment of the PBGC as plan trustee. In determining the total amount of payments that the PBGC may pay a participant, the PBGC must take into account such payments. An adjustment in a participant's future benefit payments is necessary if the plan's pre-PBGC administrator over-paid or under-paid the participant.

A participant has the right to appeal the formal determination of benefits issued by the PBGC. Such an appeal generally must be filed with an appeals board within 45 days of the date of the formal determination. If a participant does not seek review by the appeals board, the participant may not be able to seek review of the formal determination in court.⁶⁵

7. Data regarding plan terminations

Table 11 provides information regarding the number of terminating plans (standard, distress, and involuntary terminations) and the size of the liabilities resulting from distress terminations from 1975 to 2007. Table 12 provides a state-by-state list of the number of covered plans and participants in the state as of 2006, the number of cumulative distress terminations in the state since inception of the single-employer program (through 2006), and the aggregate amount of benefits paid by the PBGC to residents of the state in 2007 (and the number of payees that the aggregate amount of benefits represents).

⁶⁵ See 29 C.F.R. sec. 4003.1 through 4003.61 for rules relating to PBGC administrative appeals procedures.

Table 11
PBGC Terminations and Claims (1975-2007)
Single-Employer Program

Fiscal Year	Standard Terminations	Trusteed Terminations	Assets (in millions)	Liabilities (in millions)	Gross Claims (in millions)	Recoveries (in millions)	Net Claims (in millions)
1975-1979	28,572	586	\$145.2	\$397.4	\$252.2	\$56.4	\$195.8
1980-1984	29,236	621	513.8	1,257.3	743.5	157.8	585.7
1985-1989	48,519	537	651.1	2,351.4	1,700.3	159.2	1,541.0
1990-1994	36,340	694	2,274.8	5,116.8	2,841.9	446.7	2,395.3
1995	3,870	121	235.3	397.5	162.1	7.3	154.8
1996	3,809	96	256.7	425.1	168.4	32.1	136.3
1997	3,497	82	463.8	671.6	207.8	15.1	192.7
1998	2,475	65	175.1	250.9	75.8	6.2	69.6
1999	1,969	76	282.1	450.7	168.6	13.1	155.5
2000	1,882	72	266.0	366.2	100.2	15.3	84.9
2001	1,565	117	2,534.8	3,686.8	1,152.0	184.8	967.2
2002	1,214	184	4,513.8	8,248.5	3,734.7	279.1	3,455.7
2003	1,119	164	6,934.2	13,342.1	6,407.9	156.4	6,251.4
2004	1,189	155	2,823.0	5,956.9	3,133.9	480.7	2,653.2
2005	1,266	115	10,230.7	21,746.1	11,515.4	1,763.2	9,752.2
2006	1,248	65	2,411.6	4,670.2	2,258.7	1,221.0	1,037.7
2007	1,576	33	435.6	751.2	315.5	3.1	312.4
TOTAL	169,346	3,783	\$35,147.5	\$70,086.6	\$34,939.0	\$4,997.5	\$29,941.5

Sources: 2006 Data Book, Table S-3, 2007 figures (and revisions to prior year's figures) are estimates provided by PBGC staff.

Due to rounding of individual items, numbers may not add up across columns.

Trusteed terminations include plans pending trusteeship.

Claims figures shown in this table are calculated on a plan basis and identified with fiscal year of plan termination for each plan.

The annual numbers of trustee terminations shown in this table may differ from those reported elsewhere as they reflect the fiscal year of plan termination rather than the fiscal year in which the loss was incurred. For example, PBGC became responsible for 110 underfunded terminated plans during FY 2007, but only 33 of these plans had termination dates during FY 2007.

The rest had termination dates in earlier fiscal years and are allocated to those years.

Values are subject to change as PBGC completes reviews, establishes termination dates and determines recoveries.

Table 12.—STATE BY STATE PENSION PLAN INFORMATION

State	Covered Participants (2006)	Insured Plans (2006)	Failed Plans (1975-2006)	Benefits Paid (2007)	Payees (2007)	State	Covered Participants (2006)	Insured Plans (2006)	Failed Plans (1975-2006)	Benefits Paid (2007)	Payees (2007)
Alabama	412,000	238	19	\$46.6 M	12,600	Montana	117,000	39	4	3.6 M	440
Alaska	86,000	23	6	1.9 M	222	Nebraska	255,000	146	4	\$6.4 M	1,300
Arizona	541,000	466	26	59.4 M	7,200	Nevada	188,000	153	9	37.3 M	3,500
Arkansas	164,000	123	12	12.8 M	3,500	New Hampshire	193,000	118	25	19.2 M	3,100
California	3.2 M	3,836	195	300.9 M	32,700	New Jersey	1.2 M	1,617	201	70.4 M	13,400
Colorado	480,000	307	18	91.6 M	7,900	New Mexico	88,000	114	7	8.3 M	1,400
Connecticut	500,000	758	115	34.4 M	7,300	New York	2.4 M	3,837	490	195.1 M	34,200
D.C.	83,000	238	15	1.8 M	347	North Carolina	1.1 M	472	47	131.0 M	30,200
Delaware	138,000	121	11	8.9 M	1,300	North Dakota	69,000	34	3	477,000	107
Florida	2.0 M	880	80	312.0 M	43,400	Ohio	1.6 M	1,599	342	391.8 M	60,600
Georgia	738,000	513	63	90.5 M	19,900	Oklahoma	430,000	173	23	15.9 M	3,100
Hawaii	119,000	216	23	27.3 M	3,200	Oregon	506,000	216	21	22.1 M	2,600
Idaho	141,000	63	7	12.3 M	1,700	Pennsylvania	2 M	1,827	346	572.2 M	83,400
Illinois	1.7 M	1,719	260	298.7 M	35,100	Rhode Island	90,000	121	47	6.5 M	1,700
Indiana	860,000	471	109	216.9 M	25,500	South Carolina	396,000	173	19	53.0 M	14,500
Iowa	425,000	335	42	22.0 M	6,300	South Dakota	63,000	31	---	2.0 M	235
Kansas	257,000	160	24	16.7 M	2,600	Tennessee	548,000	350	45	63.3 M	14,100
Kentucky	611,000	263	25	25.4 M	5,400	Texas	1.9 M	1,250	113	87.2 M	17,100
Louisiana	489,000	214	25	25.9 M	4,900	Utah	202,000	129	8	12.6 M	2,100
Maine	150,000	97	13	8.6 M	2,100	Vermont	54,000	70	13	7.5 M	1,500
Maryland	722,000	548	69	176.2 M	18,800	Virginia	876,000	625	48	75.1 M	12,400
Massachusetts	824,000	925	207	98.7 M	14,300	Washington	706,000	323	23	92.8 M	8,900
Michigan	1.5 M	1,069	304	155.9 M	26,100	West Virginia	183,000	151	53	115.8 M	12,700
Minnesota	680,000	478	46	62.2 M	8,900	Wisconsin	832,000	642	84	50.7 M	9,600
Mississippi	232,000	115	11	14.0 M	4,000	Wyoming	48,000	25	1	2.3 M	271
Missouri	716,000	404	69	82.2 M	12,700	Source: Figures are estimates provided by PBGC staff.					

B. Insolvency of Multiemployer Plans

In the case of multiemployer plans, the PBGC insures plan insolvency, rather than plan termination. Accordingly, a multiemployer plan need not be terminated to qualify for PBGC financial assistance, but must be found to be insolvent. A plan is insolvent when its available resources are not sufficient to pay the plan benefits for the plan year in question, or when the sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources will not be sufficient to pay benefits that come due in the next plan year. If it appears that available resources will not support the payment of benefits at the guaranteed level, the PBGC will provide the additional resources needed as a loan. The PBGC may provide loans to the plan for multiple years. If the plan recovers from insolvency, it must begin repaying loans on reasonable terms in accordance with regulations.

Under ERISA, an employer that withdraws from a multiemployer plan in a complete or partial withdrawal is liable to the plan in the amount determined to be the withdrawal liability.⁶⁶ In general, "complete withdrawal" means the employer has permanently ceased operations under the plan or has permanently ceased to have an obligation to contribute.⁶⁷ A "partial withdrawal" generally occurs if, on the last day of a plan year, there is a 70-percent contribution decline for such plan year or there is a partial cessation of the employer's contribution obligation.⁶⁸ When an employer withdraws from a multiemployer plan, the plan sponsor is required to determine the amount of the employer's withdrawal liability, notify the employer of the amount of the withdrawal liability, and collect the amount of the withdrawal liability from the employer.⁶⁹ The employer's withdrawal liability generally is based on the extent of the plan's unfunded vested benefits for the plan years preceding the withdrawal.⁷⁰

The PBGC guarantees benefits under a multiemployer plan of the same type as those guaranteed under a single-employer plan, but a different guarantee ceiling applies. The limit for multiemployer plans is the sum of 100 percent of the first \$11 of monthly benefits and 75 percent of the next \$33 of monthly benefits for each year of service (i.e., a limit of \$35.75 for each year of service).⁷¹

⁶⁶ ERISA sec. 4201.

⁶⁷ ERISA sec. 4203.

⁶⁸ ERISA sec. 4205.

⁶⁹ ERISA sec. 4202.

⁷⁰ ERISA secs. 4209 and 4211.

⁷¹ ERISA sec. 4022A(c).