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PBGC

PBGC Says It Will Forgo Rulemaking Related to the Timing of Annuity Purchases

The Pension Benefit Guaranty Corporation said in a notice issued Dec. 28 that it plans no immediate regulatory activity or guidance related to plan sponsors purchasing annuities outside the standard process for terminating defined benefit pension plans, a decision that the agency said it reached after receiving 10 public comments on the issue.

In November 2009, the PBGC issued a request for comments on the purchase of irrevocable commitments to pay benefits before standard terminations (74 Fed. Reg. 61,074, 11/23/09; 223 PBD, 11/23/09; 36 BPR 2675, 11/24/09).

The agency provided no explanation in the notice for its decision not to pursue rulemaking or guidance related to what several commenters said has become standard industry practice: purchasing group annuity contracts to manage longevity and interest rate risks associated with defined benefit plans (16 PBD, 1/27/10; 37 BPR 249, 2/2/10).

In lieu of rulemaking or issuing new guidance, “PBGC will continue monitoring industry practices to determine whether further regulatory action or specific guidance is needed in the future,” the notice said. “PBGC will also continue to audit all plans that make a final distribution of plan assets before or without filing a standard termination notice and take enforcement action where appropriate,” it said.

Practitioner Response. The decision not to issue further guidance deprives plan sponsors of greater certainty about permissible practices, Harold J. Ashner, a

former assistant general counsel at the agency who is a partner at Keightley & Ashner, a Washington, D.C., law firm that focuses on PBGC-related matters, told BNA Dec. 28. “This means that PBGC will be proceeding, as it has been for some time, on a case-by-case basis,” Ashner said. “Pending future guidance, there will continue to be significant uncertainty as to PBGC’s interpretive positions in this area.”

In its November 2009 request for comments, the PBGC said it had several major concerns about plan sponsors purchasing group annuities before initiating related standard terminations:

- that those purchases might be used to avoid various statutory and regulatory requirements for ending defined benefit plans through a standard termination process;
- that the PBGC would be unable to get information it requires to verify whether defined benefit plan participants are receiving the correct benefit amounts owed to them; and
- that plans might be left with inadequate assets to pay participants’ benefits if or when those plans are terminated and benefits are distributed.

The notice is expected to be published in the *Federal Register* Dec. 29.

BY FLORENCE OLSEN

The text of the notice is at <http://op.bna.com/pen.nsf/r?Open=foln-8ckk7t>. Comments submitted to the PBGC are at <http://www.pbgc.gov/docs/purchaseofirrevocablecomments.pdf>.