

EFFECTIVE JANUARY 24, 2022

The Entire Keightley & Ashner Team Has Joined
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PBGC

Financial Adviser Alert: Pension Insurer Wants Your Expertise

The Pension Benefit Guaranty Corporation says it's likely to need outside help to tackle large and complex cases, and it's looking for financial advisers to step up.

To find qualified advisory firms—those with specialized knowledge but without conflicts of interest—the federal pension insurer says it's renewing a program in which it constructs a list of pre-vetted, go-to financial firms for bids on future contracts.

The advisers will, “on an as-needed-basis,” be asked to submit proposals to assist the PBGC's in-house staff with cases “possibly involving bankruptcies, distress liquidations or the agency's early warning program,” Karen Morris, PBGC's chief of Negotiations and Restructuring, told Bloomberg BNA April 20. The agency is inviting companies to apply for the program and plans to establish a list of pre-approved advisers in October.

When pension plan sponsors are in negotiations with the PBGC, it's often valuable for the agency to have an adviser to talk directly to the sponsor's financial adviser, Adi Berger, director of the PBGC's Corporate Finance & Restructuring Department, told Bloomberg BNA April 20.

When the PBGC has assistance from a firm with an astute view of the marketplace or that can properly value assets, “this can often inform resolution of negotiations,” she said.

Advisers to plan sponsors had favorable comments about the program.

“It provides the PBGC with more current industry-specialized expertise, which should make the PBGC's positions more realistic and increase the probability of a mutually agreed resolution in any dispute,” James J. Keightley, partner with Keightley & Ashner LLP in Washington, told Bloomberg BNA April 20.

Having this expertise available will, in some litigation, “improve the PBGC's chances of success,” said Keightley, who previously served as the PBGC's general counsel.

Consistent with Keightley's observation, Berger admitted that it's possible that the agency will use advisers in court as experts witnesses.

Need for Specialized Knowledge The PBGC previously has used advisers with specialized industry knowledge of, for example, airlines, real estate or manufacturing to help the agency evaluate bankruptcy or transactional cases.

Among the companies previously on the agency's pre-approved list were Barclays, Duff & Phelps, Ernst & Young, Grant Thornton and Everhill & Co. That list, which was good for five years, expired recently.

The agency plans in early May to post an invitation on the *FedBizOpps* website explaining the steps advisory firms must take to be considered for work on future PBGC cases. Even firms previously on the pre-approved list must reapply.

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