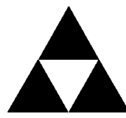

AMERICAN ACADEMY *of* ACTUARIES

U.S Department of Labor
ERISA Advisory Council

Advisory Council on Employee Welfare and Pension Benefit Plans

Working Group Exploring Use of Surplus Pension Assets

Testimony Presented by
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Testimony before the ERISA Advisory Council
Working Group Exploring the Possibility of Using Surplus Pension Assets

Good afternoon and thank you for inviting me to speak on “What is surplus?” and “How much surplus is necessary to ensure benefit security?” As your chairperson, Mike Gulotta and vice chair, Michael Stapley noted, I am with the American Academy of Actuaries, which is the non-partisan professional public-policy organization for actuaries in the United States.

No position: While the Academy does not take a position on whether plan sponsors should be able to access their pension surplus[1], we recommend that the following questions be considered before allowing access to pension surplus: Will the pension benefits of workers be protected? Is PBGC adequately protected? Does it maintain or improve incentives to save for retirement? Is it part of a consistent retirement income policy? Will the advantages from the alternative uses of the surplus outweigh the disadvantages from a policy perspective?

In my testimony below, I list the advantages and disadvantages of allowing employers access to the surplus in their pension plans and then I analyze some of the provisions that would be in such a proposal.

Advantages

There are advantages to allowing transfers and withdrawals of pension surplus.
More reward for the risk: Now that the law requires employers to assume all of the risk of pension underfunding[2] in DB plans, there is frustration among sponsors that they don’t reap commensurate rewards for over-funding. Currently, surplus assets can reduce future contributions, and the sponsor could even get a funding holiday for a year or more. However, in some DB plans, assets have performed so well that they exceed the present value of all benefits and will never be needed.[3] Thus, the extra surplus won’t help the pension plan at all, but it could have helped the sponsor’s retiree health plan or one of their underfunded pension plans, or possibly have kept them from being terminated. To the extent that it could be put to use in other areas of the employer's operations, it could improve profitability and protect the jobs of current employees. Thus, it can help employees too.

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[1] Some people have said that we opposed the asset withdrawal proposals debated by Congress in 1995. That would be an incorrect reading of history. I can provide you a letter we wrote to Members of Congress in 1995, which shows that our concern was with some of the specifics. For example, we were concerned that the threshold might be set too low.

[2] At one time, DB plans only had to pay benefits to the extent funded. Now they must pay all liabilities promised to date of termination, or be subject to PBGC’s claim for the full underfunding amount.

[3] The surplus could also be due to inflation and salary increases (upon which benefits are based) being less than expected or terminations of employment being higher than expected. If someone terminates from employment before being eligible for a retirement benefit, the value of the benefit they receive can be much less. This is because employers are required to fund their salary-related pension plans smoothly toward the value of the retirement benefit for those employees that they expect to reach retirement. This is appropriate so that large unforseen costs don’t cause problems as participants age. However, this funding is often faster than the amount needed to fund the benefits accrued by the participant who quits early.

For example, in 1973 and 1974 some plans lost half their assets. Under current funding rules, the plan sponsor would have to make up the loss to the plan in 3 or 4 years. If the company was in bankruptcy, it could be sued for the whole amount immediately. On the other hand, over the past few years, the assets in some plans have doubled. Except for §420 asset transfers, the sponsor can not take this money out. At best, they can look forward to many years of contribution holidays. If the employer needed the funds right away for other purposes or wanted to wrap up the business soon, 85% of those funds could be lost to income and excise taxes[4].

Reduces bias in favor of DC plans: Without commensurate rewards (when investment returns exceed expectations) in qualified DB plans, the rules bias the decision of employers towards Defined Contribution plans, where employers don't have this risk. However, DC plans shift the risk to employees, which may not be the preferred policy outcome. Giving employers greater access to assets in pension funds will improve the flexibility of DB plans from the employer's perspective and add to the attractiveness of that form of retirement arrangement and encourage their adoption and maintenance.

Discourages Plan Terminations, etc. in order to get surplus: Giving employers greater access to surplus pension funds could discourage plan terminations. This would be a plus for participants and it would eliminate the cost of terminating the plan for employers who needed some of the surplus money. In fact, it might encourage employers to access the surplus, so that prospective buyers don't take over the company just to terminate the pension plan and take the surplus.

Encourages better funding: Employers might fund their plans better if they knew that they wouldn't lose the ability to benefit from surplus, if through unusually good experience some prior contributions turned out not to have been necessary.

Strengthening employer solvency can create more security for pension plan: In addition, surplus assets could be helpful to strengthen a company at an important time, which ultimately is the best way to improve the chances that individuals will get their full DB benefit at retirement, since the best insurance is a strong employer.

Encourage Post-Retirement Health Plans: It might encourage employers to maintain their post-retirement health plans (which generally can't be advance funded with tax advantages) if they were the primary recipient of surplus pension funds.

Disadvantages

Affects benefit security: There is no perfect threshold above which there is no risk, since we can't control where pensions put their assets and we can't predict what those assets will do. Thus, withdrawing assets could affect benefit security for participants. However, this is not only a function of the threshold. It is also a function of the strength of the employer and its willingness to

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[4] Section 4980(d) can reduce this tax to 55% (20% excise tax plus 35% income tax) if a qualified replacement plan is created or benefits are improved pro-rata.

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continue the plan (which could be improved if it could more readily access surplus). Thus, a threshold could be set such that the risk of accrued benefits being lost is very remote, but the severity of constraints on the plan might discourage the sponsor from continuing the plan and thereby put the security of future benefits at risk. A lower threshold may marginally decrease the security of accrued benefits but the use of the money could appreciably improve the chances that the company would remain strong (and thus continue the pension plan).

Could hurt PBGC: Weak companies may also use this proposal to access pension assets. This could increase the exposure of the PBGC to risk, especially if the threshold is set inappropriately low. For this reason, PBGC may want a role in this debate on where to set the threshold. They may also want to modify their premium rules, so that better funded plans pay less premiums (e.g., the negative variable premium idea discussed later). In fact, PBGC might not want companies in bankruptcy to be able to withdraw surplus assets from their pension plan (or even employers with very poor credit ratings). On the other hand, allowing these companies access to a withdrawal could be exactly what is needed to turn the company around. One suggestion would be to give PBGC advance notice if the company has poor credit ratings. PBGC could have rules similar to those that IRS has for contribution waivers. If PBGC determines that a weak company's financial problems are temporary, they could allow access to some of the pension surplus (possibly with certain stipulations, such as using it to pay off corporate debt, setting up a lien perfectible by the plan, faster payback, reimbursement from the parent corporation if the company goes under, etc.), and the threshold in these situations could use Termination Liability. Of course, an appropriate threshold is still needed for companies with good ratings, because they could still go under in the future.

Corporate Raids/Takeovers: The proposal should be constructed so that it doesn't encourage employers to raid other companies in order to access their pension surplus. Thus, if a complete withdrawal of surplus is allowed, excise taxes for withdrawals shouldn't be much better than those for terminations. (Also, see the hierarchy of uses below.) Another suggestion in 1995 was to only allow withdrawals every 10 years. There was concern however, that it would just encourage the surplus to build up and the raids would only occur every 10 years. In that case, it might be better to not have such a rule.

Analysis

As I mentioned earlier, we are not taking a position on whether employers should be able to withdraw some of their pension surplus; that is a policy call for Congress. Generally, our role as actuaries is to encourage adequate funding of pension plans. However, if Congress were to allow withdrawals, then we have the following comments.

First, the ability of an employer to access the full amount of surplus without a plan termination must be compared with the rules that apply on plan termination, to ensure that there are no inappropriate incentives to utilize a withdrawal provision that flaunts the policy behind the plan termination rules. Depending on the amount of surplus to be accessed, and the other participant protections that are required when employers access surplus, more or less similarity to the plan termination requirements may be necessary. (For a discussion of current law protections and trade-offs see

"Hierarchies for accessing surplus" below.)

As a way of helping you consider the issues before you, I will provide you our analysis of the 1995 Ways and Means proposal. It would have allowed withdrawals between 1995 and 1999 from a pension plan for *any purpose*, and would have reduced the reversion tax to 6.5% (0% if the withdrawal occurred in the first year). Surplus was defined as (a) less (b) where,

(a) was the lesser of the market value of assets and actuarial value of assets, and

(b) was the greater of the full funding limit (with the current liability cap) and 125% of current liability (CL).

Both (a) and (b) were to be determined as of the most recent valuation date. All surplus could have been withdrawn at one point in time, potentially allowing sponsors to avoid the requirements and participant protections that apply on plan termination.

Why have a threshold in addition to the Full Funding Limit (FFL)? The FFL is the limit at which an employer cannot deduct any additional contributions.[5] If the government doesn't see a reason for any additional deductions, then one might assume the plan must not need any additional assets. Then why can't the employer access the additional assets over the FFL? It's because the FFL may not be appropriate in the following situations:

(1) non-pay related plans cannot project the benefit formula for minimum or maximum funding purposes due to IRS regulation §1.412(c)(3)-1(d) on reasonable funding methods, even though pay-related plans must project salaries. An alternative to having another threshold, would be to fix the FFL rule for these plans, to include projected increases in the benefit formula.

(2) plans which use interest assumptions for funding which reflect long term expectations of asset returns rather than conservative insurance company annuity pricing assumptions could have an FFL less than termination liabilities. This can occur in non-pay related plans and in mature plans with lots of retirees. For example, there is no margin for retirees in the FFL, which could be a concern for PBGC or the participants if the company were to become bankrupt. The alternative here would be to require the FFL with a cap on the interest rate used (such as 110% of Treasuries or a Corporate bond rate). However, then a pension plan with just retirees and its pension assets invested in stocks will never need all of its surplus.

Termination Liability or Current Liability? Current liability is designed to be more stable and predictable for employers to calculate than is termination liability. Stability and predictability, however, mean that there will be occasions when the measures diverge for some period of time. A margin above current liability provides a greater likelihood that it will exceed TL and, through time, the plan will be able to meet liabilities on plan termination. However, for the1995 proposals, the Academy was successful in convincing Congress that using Termination Liability was more appropriate than Current Liability. We explained how 125% of current liability can be less than the amount needed to terminate a pension plan and pay all accrued benefits in some circumstances.

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[5] An ongoing plan that has assets at the FFL is considered, under the funding rules, to have satisfied its obligations for the year. The FFL is overridden when a plan is severely underfunded for current liabilities (when assets fall below 80% of current liabilities or are persistently less than 90% of current liabilities.)

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This would be a concern for the PBGC and participants if a weak company withdrew surplus down to 125% of current liability and then had to terminate its pension plan soon thereafter. It would not be a concern at most companies which are in good financial shape. Thus, you might require the use of Termination Liability only if the company's credit rating was below investment grade (or give the authority to the PBGC to handle withdrawals at these weak companies).

How can 125% of current liability be less than termination liability? Some reasons are:

(a) When interest rates are decreasing, the current liability interest rate can be much higher than interest rates in effect at termination (which reduces liability amounts). For example, a permissible current liability interest rate on 1/1/87 was 358 basis points higher than the Treasury rate in effect then.[6] This could easily produce a situation where the current liability is $100 million and the termination liability is $150 million. Thus, a non-pay-related plan with these numbers would be allowed to withdraw assets down to $125 million, creating an unfunded termination liability of $25 million.

(b) The mortality table that is currently required for another current liability measure (and thus often used in this situation) is old and can produce results which are about 10% too low for many pension plans.

(c) Current Liability excludes some benefits that are in Termination Liability, such as subsidies in Lump Sum benefits and unpredictable contingent benefits (such as shutdown benefits or poison pill benefits which could be triggered by a plan termination). These can easily increase costs by 30%.

On the other hand, the use of Current Liability can produce numbers much higher than TL. For example, in times of rising interest rates, 125% of CL could be twice termination liability. In that case, the plan's termination liability could be $100 million and 125% of CL could be $200 million, and they wouldn't be able to touch any of it. Some might not like this result of the current §420. However, some might argue that this could be a temporary result of unusually low annuity prices or unusually good returns. I note that the Reagan Administration proposal for withdrawing surplus assets also used 125% of *Termination* Liability. That would have solved this problem.

Using termination liability has some problems. Current liability can be found in the annual actuarial report, because it is required for IRS funding purposes. It is used to determine whether a plan is underfunded and needs to accelerate contributions. Determining termination liability would be a new expense for some plans[7] that wanted to withdraw pension surplus and it would add to the number of confusing different measures that a plan sponsor needs to track on how well it is funded. However, the expense of determining TL is not large in comparison to the amount of withdrawal, so the expense would generally not affect an employer's decision on whether to do an asset withdrawal. To accommodate this concern, proposals could permit reasonable estimates of this number, since the 25% margin is a political compromise.

Alternatives would be to revise the IRS definition of current liability to include some or all of the

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[6] This is due to IRC §412(b)(5)(b)(ii) which determines an interest rate with a 4 year smoothing formula, so that funding contributions don't change dramatically each year. It also allows a permissible range of up to 110% of such interest rate.

[7] Many plans wouldn't need an exact calculation of Termination Liability because they could quickly determine that 125% of it would be less than the full funding liability.

benefits mentioned in (c) above. In addition, when the 83GAM mortality table required for another CL measure is updated, more plans will likely use it for this CL measure too. Furthermore, the current liability interest rate could be more closely tied to interest rates in affect at the time of withdrawal. However, this would make the current liability number jump around too much, and that is not appropriate for funding (which is where current liability is used). Employers don't want their pension contributions jumping around each year. Thus, a separate CL could be determined for transfers or withdrawals that used a more current interest rate.

Assets: The 1995 proposal used the lesser of the Actuarial Value of Assets (AVA) for funding purposes and Market Value of Assets (MVA). In order to keep plans from changing their method of determining AVA to market value, just to provide a larger withdrawal, the rules could just specify MVA.

Which actuarial assumptions? The 1995 proposal was modified in conference to determine Termination Liability under §414(l), using PBGC's actuarial assumptions. We note that PBGC's assumptions were developed to determine guaranteed and vested liabilities, not termination liabilities (which include contingent benefits). Even PBGC has noted informally that their assumptions are not always appropriate for determining termination liability. Thus, we recommend that the enrolled actuary's best estimate assumptions of liabilities in a plan termination be allowed, with a caveat that PBGC's assumptions be deemed reasonable (in case the actuary would prefer to reduce his exposure to suit). Since PBGC's retirement assumptions can be complex (and also inappropriate for many pension plans), the law could allow actuaries to use a simpler, but more appropriate, retirement assumption (such as the retirement assumption used for funding).

Why a Margin? While the Academy did not specifically decide that 25% was the correct number for the margin, our 1995 memo did provide reasons to support a margin on top of Termination Liability. A margin is desirable because:

(1) Additional benefit accruals after the asset withdrawal would typically amount to 5% to 10% per year. (Note: the FFL usually takes care of this problem in pay-related plans.)

(2) Asset losses are possible. For example, the October 1987 stock market crash lowered plan assets by 20% in some cases. While these losses were recouped fairly quickly, the 1973-1974 recession saw equities drop by 50% and it took 8 years to regain its former level.

(3) For every 1% drop in interest rates, liabilities can increase by 8% to 20% depending on the average age of participants. (Note: the FFL generally creates a larger margin for young workforces in pay-related plans where the higher loadings on TL would otherwise be needed.)

(4) There might be a large number of employees reaching their subsidized early retirement age right after the asset withdrawal. (FFL often takes care of this concern.)

(5) A plant shutdown occurring soon after an asset withdrawal could cause liabilities to jump by 10% to 50% depending on how much benefits increase and how much was already predicted in calculating Termination Liability.

(6) The employer could increase pension liabilities by creating an early retirement window to encourage certain employees to retire early.

Thus, there are some good arguments for requiring a margin on top of TL, especially in non-pay related plans where FFL is inadequate. However, there is no perfect threshold above which there is no risk and below which there is risk. Thus, I can't say that a 24% margin presents risk, but a

margin of 25% is safe. Furthermore, we cannot promise you that there will be no risk to the PBGC or participants if 25% is used (or 50% for that matter), because benefit security is also a function of future funding actions of the employer. On the other hand, the risk to the PBGC and participants gets more remote the higher it goes up, especially if this rule only applies to companies with good credit ratings.

A problem caused by a margin is that you then need to think about revising the termination and 414(l) spinoff rules. If you don't, employers will be able to access more funds from a termination or spinoff than a withdrawal. Alternatives would be to decrease the margin or have a lower excise tax for withdrawals, or require using some of the surplus gained in a termination or spinoff for other purposes (e.g., §4980(d) and the Reagan Administration proposals discussed below).

Lower Margins for Certain Plans: There are advantages and disadvantages for having different thresholds for different plans[8]. If you review the above list, you will note that less surplus would be needed for the retiree liability or for plans holding annuities, plans with immunized bond portfolios, or plans with less risky assets. You might want to allow for lower margins in these situations (e.g., 5% for retirees and 25% for others).

In addition, Congress might prefer certain uses of pension surplus and vary the margin depending on its use. For example, only 20% margins could be required for asset transfers for causes Congress deems worthy and a higher margin or excise tax for other causes, including unrestricted withdrawals. (See the section on hierarchies later.) However, the higher the margin is set, the more employers will consider terminating their plans, so that they can get the whole margin. Thus, the margin should not be set too high.

Other ways to encourage employers to keep a higher margin: At present, underfunded plans are encouraged to improve their funding through the variable rate premium. The more they improve their plan's funding level (up to vested current liability using the required interest rate), the smaller their premium. This could be applied to well-funded plans as well. A plan funded at 150% of termination liability could have a smaller premium than if it was only 125% funded. This could be accomplished very easily under PBGC's current rules, just by *allowing the variable premium to be negative for well-funded plans, and to let this amount offset the plan's per person premium.*

Why determine the surplus "as of the Transfer Date"? As discussed above, surplus assets can decrease quickly, so the Academy convinced the bill's sponsors in 1995 that the surplus should be determined as of the transfer date. We noted that projections could be prepared from the latest valuation and would not cost much to produce. One concern was that employers could put more assets into a plan and then withdraw them out later, thus reducing their taxes and managing their tax liability. However, this forgets three important points:

(3) Surplus that is withdrawn gets an excise tax which undoes the tax advantage that the funds accrued while in the pension trust (unless the surplus is used for another purpose that Congress wants to encourage, such as funding health costs).

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[8] The advantages are more flexibility and a more correct result that could encourage something good, while the disadvantages are more complexity and greater concern that the rules could be manipulated.

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(4) The maximum and minimum contribution rules are much tighter today than in the past.
(5) Assumptions must be individually reasonable under both IRC and actuarial standards.

Why the Full Funding Limit (without cap)? In 1995, the Academy successfully convinced the bill sponsors that there was no surplus, unless assets exceeded the actuarial accrued liability - also known as the full funding limit (FFL) without cap. Our reason for including the full funding limit (without the cap) is a little more difficult to explain, but embodies an important actuarial concept.

Funding methods used by actuaries to determine the annual cost of a pension plan do not just fund to termination liabilities each year (in fact, that wouldn't be permitted under the IRC for pay-related pension plans). The reason is that when the workforce is aging, the annual cost of a pension plan would escalate unacceptably from year to year if salaries were not projected in calculating the annual cost. The cost recognized by an employer in a plan's early years would be unrealistically low, so that decisions on benefit levels would be based on untenable perceptions of the plan's true cost. When a company's workforce begins to age - and that will eventually happen in most companies - its pension costs will create an accelerating burden as a percentage of pay. The continuation and/or solvency of the plan will be in jeopardy, as will employees' benefit expectations.

The result of using a projected salary method, on the other hand, is that cost patterns are more level, even when the workforce is aging. Everyone's expectation s regarding costs and benefits are on a more secure footing. Projected salary methods are now normal actuarial practice in virtually all developed countries where defined benefit plans are common, and in fact, are required by IRS regulations for funding purposes and US accounting standards for statement purposes.

The actuarial liability is the amount that would be in the fund under a smooth funding method. Actuaries do not consider a plan whose assets are less than the funding target to be in a surplus position. The actuarial liability has always been the profession's threshold for what ongoing plan assets should be. Thus, actuarial funding methods smooth out the cost of a pension plan over its lifetime.

In order to discourage employers from switching to the Projected Unit Credit Cost Method (in order to increase their permissible withdrawal), the calculation of the FFL could be determined using the Projected Unit Credit Method, regardless of the method used by the plan for funding. This is how the Reagan Administration proposal handled it.

Setting the Excise Tax Rate: The excise tax proposed for withdrawals in 1995 was 6.5% for 5 years. The Academy noted that 6.5% was considerably lower than the tax advantages that pension plans get through deferring income tax, and thus might encourage abuse of the provision. Employers would contribute the maximum in good years to reduce their surplus earnings, get tax free accumulation, and then withdraw the excess funds in bad years, with only a 6.5% excise tax on top of the income tax rate, which could be zero in such years, due to offsetting losses.

Permanency: The Academy was concerned that the excise tax in the first year was 0%. This would have encouraged hasty actions on the part of plan sponsors to withdraw as many assets as possible in the first year. That action could then have lead to larger contributions over the next 10 years, which might encourage the employer to rethink having the pension plan - not a good result.

Likewise, it would increase government revenue today at the expense of future tax revenues. Thus, it appeared that this special provision was primarily to raise tax revenue to pay for other provisions in the bill, not for a rational retirement income policy.

Making the provision permanent would alleviate some of the problems that the proposal could have created. In addition, limiting the withdrawal of surplus to once every ten years would allow plans time for the funds to be replenished yet still keep the employer from being a tempting target for takeover (in order to access the pension surplus). However, it could make them tempting targets in the 9th year. Thus, you may not want to limit the use of the provision.

Encouraging Plan Continuation: Participant rights groups were concerned that if enacted, the provision would have provided a window of opportunity for employers to scale back or eliminate their DB plan, especially if the provision were temporary. Use of the Full Funding Limit and Termination Liability (with margin) thresholds would discourage such activity. So would requiring the assets be used only for other ERISA plans. Other uses might require an excise tax equal to the excise tax for terminations.

Top Up Underfunded Plans in the Controlled Group: The Reagan Administration proposal would have required that before the company could withdraw the surplus, it would first have to reduce underfunding in other plans of the Controlled Group (CG). This has advantages for the PBGC and the participants in those underfunded plans, but could also force similar changes in the rules for terminating plans.

Hierarchies for accessing surplus: Congress wrote into §§420 and 4980(d) a hierarchy for preferred ways to access pension surplus. Transferring surplus to a retiree health plan was encouraged since it was the easiest and cheapest (there is no excise tax, sponsors need not incur the economic cost of annuitization and employers ability to plan future withdrawals is encouraged by basing the determination of surplus on relatively stable definitions of assets and liabilities of the plan). (Note, however, that in exchange for the relative ease of withdrawal of surplus under 420, the sponsor provides significant additional protections to participants of the pension plan and to the participants in the retiree medical plan.) Pro-rata benefit increases are evidently preferred over replacement plans, since less assets are required to have a qualifying pro-rata benefit increases. Similarly, the Reagan administration would have required tougher rules for terminations than for withdrawals. Their proposal would have required funding up underfunded plans in the controlled group before any plan was terminated. In addition, 25% of the termination liabilities (the margin discussed earlier for withdrawals) would have to be spread to other plans in the controlled group. Otherwise, plan terminations could access more surplus and would be preferred over withdrawing assets. However, this rule might push Controlled Groups to terminate all of their plans in order to get the surplus, so other advantages were needed for asset withdrawals. Thus, their proposal would have required vesting for plan terminations, but not for asset withdrawals. Another idea would be to have a lower excise tax for withdrawals. However, then plans would do a withdrawal first before a termination to get the lower excise tax. In that case, rules might be needed to bump up the excise tax on the withdrawal if it was quickly followed by a termination.

Easier rules for Transfers than for Withdrawals: Section 420 transfers have encouraged the maintenance of health benefits for retirees, a worthwhile social purpose. One idea could be to relax some of the requirements for §420 health transfers (such as dropping the rule requiring vesting of

everyone in the pension plan or allowing more than one year's costs to be transferred). In addition, the excise tax could be lower, or possibly zero (as in §420), if the transfers are accomplishing other important goals of Congress, such as encouraging greater health coverage, starting a Long Term Care plan, helping underfunded pension plans, or other benefits that employees bargain for. In addition, transfers to 414(k) accounts could be specifically allowed to eliminate fears that it is a reversion or would disqualify the plan for violating the exclusive benefits rule. The excise tax could be set at 0% or a slightly larger amount to encourage helping retiree health or underfunded DB plans first.

Encouraging transfers to poorly-funded plans, even if unrelated: Currently, employers with lots of surplus have sought PBGC's assistance in merging their overfunded plans with underfunded pension plans of unrelated businesses. Because it reduces the employer's excise tax, they are willing to sell their surplus for less than the amount transferred. However, there is fear that IRS will deem them a reversion, and charge the full excise tax on the gain the employer gets on the sale of his pension plan. If Congress wishes to encourage reducing these underfunded plans, they could encourage asset transfers to underfunded plans by clarifying that such a transfer would not be a "deemed reversion" and therefore subject to high excise taxes (or disqualification). Using pension surpluses to help an underfunded plan keeps the money in the qualified pension system and it reduces the risks to participants that they won't get benefits and that PBGC will have to take over another underfunded plan.

Other Issues to consider

Start slow for withdrawals? Some pension plans are funded beyond the present value of all benefits and are so clearly overfunded that they will never use some of these assets. You may decide that their sponsors should be able to withdraw these funds without requiring they be used in certain ways. If withdrawals are a concern, then you could start out with a higher margin and an excise tax.

Proposals to increase pension limits: There are some suggestions within the administration that pension benefit limits be increased, so that the employer's decision-makers will care about the company pension plan more. If the decision-maker's benefits were moved from their non-qualified plan to the qualified plan, their benefits would be more secure and the employer would get more tax advantages. They would then also care more about the benefits for rank and file employees. This would also be another use for the current surplus in DB plans, however it is unlikely to use significant amounts of surplus. Other proposals would allow combining DB and DC features in one plan. This would effectively create a way for DB surpluses to be used for any retirement benefit funded thru the plan.

Conclusion

Rules allowing access to surplus pension assets can help or hurt participants, employers, and the PBGC. Hopefully, the above discussion has provided helpful issues to think about in setting these rules. In addition, we are available to help you in the future if you ever have any questions.