

Client Alert

PBGC Expands its Mediation Program for Pension Plan Terminations, Corporate Transactions and Fiduciary Breaches

January 28, 2019 – On January 24, 2019, the Pension Benefit Guaranty Corporation (“PBGC”) expanded and made permanent its mediation program (see announcement [here](#)). The PBCG is the federal agency charged with insuring and overseeing the funding of workers’ retirement benefits provided under defined benefit pension plans.

The PBGC mediation program, initially launched as a temporary project in 2017, permits eligible pension plan sponsors to mediate PBGC claims for pension underfunding liabilities arising from plan terminations (“termination liability cases”) and corporate transactions (“early warning cases”). The mediation program has now been expanded to also cover PBGC claims against fiduciaries of terminated pension plans (“fiduciary breach cases”), and has been made permanent.

Mediation is voluntary for plan sponsors, as an alternative to litigating PBGC claims. Mediation is not available if the sponsor has minimal ability to pay the claim, if there is a pending court proceeding, or, where the PBGC’s time to bring a claim is running out, if the sponsor refuses to sign a tolling agreement. In the context of corporate transaction-related “early warning cases”, mediation must be completed before the closing of the transaction.

The PBGC mediation program is intended to promote a faster and more cost-effective resolution of PBGC claims than traditional litigation. Particularly in the context of time-sensitive corporate transactions, the mediation program may be a valuable tool for sponsors facing the PBGC’s early warning claims. Litigation and mediation each have advantages and disadvantages, and the potential benefits of mediation should be carefully weighed based on the unique circumstances of each case.

For questions about the PBGC mediation program or any other aspects of pension plan administration, please contact Alec Nealon or Brian Snarr.

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