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Benefit Reductions to Participants in Delphi Pension Plans

Introduction

Delphi Technologies is a parts and components supplier to auto makers that was spun off from General Motors (GM) in 1999. In May 2009, Delphi's pension plans were terminated and responsibility for the payment of plan participants' benefits was turned over to the Pension Benefit Guaranty Corporation (PBGC), which is a government-run corporation that insures benefits for workers in private-sector defined benefit (DB) pension plans. PBGC operates separate insurance programs for single-employer and multiemployer DB plans. Delphi sponsored six single-employer pension plans. Although most workers in pension plans that are taken over by PBGC receive all of their promised benefits, some workers may receive less than their full benefit. This is because PBGC may not pay an individual more than a statutory maximum benefit. Some participants in Delphi pension plans whose benefits were reduced by PBGC claimed that their pension plan was wrongly terminated and have sought relief via both judicial and legislative processes.

Defined Benefit Pensions and PBGC

DB pensions are employer-funded pension plans in which retirees are typically paid a monthly dollar amount in retirement. The benefit is calculated using a formula typically based on a combination of the number of years of service and salary. For example, a plan might offer a benefit of 1.5% multiplied by the number of years of an employee's service multiplied by the average of the employee's highest five years of salary. A worker who was employed for 30 years and averaged a salary of $50,000 for the final five years of employment would receive a benefit of $22,500 per year or $1,875 per month. Employers are responsible for ensuring that there is sufficient funding for their DB pension plans to pay for current and future benefit payments. PBGC typically becomes the trustee of a single-employer DB plan when the employer that sponsors the plan declares bankruptcy and the plan has insufficient assets from which to pay all of its promised benefits.

When PBGC becomes the trustee of a single-employer DB pension plan, plan participants receive their full benefits up to a statutory maximum benefit. Benefits that are higher than the maximum guarantee are reduced to the guarantee amount. The maximum guarantee for a single-employer pension that was terminated in 2009, the year of Delphi's bankruptcy, was $4,500 per month ($54,000 per year) for retirees who began receiving pensions for their remainder of their lives (a *straight-life annuity*) at the age of 65. The maximum benefit amounts are reduced so that retirees receive *actuarially neutral* pension benefits if they choose benefits in a form other a straight-life annuity or if they begin receiving benefits before or after the age of 65. For example, the maximum benefit for individuals in plans terminated in 2009, who retire at 65 years old, and chose a joint and 50% survivor annuity benefit was $4,050 per month ($48,600 per year). For retirees who chose to receive single life annuity benefits at 55 years old, the maximum benefit was $2,025 per month ($24,300 per year). PBGC reported in 2019 that 84% of retirees who receive benefits from PBGC are paid the full benefit amounts they earned under their retirement plans (i.e., do not have their benefits reduced to the maximum benefit guarantee).

Background on Delphi Pension Plans

In 1999, GM and some unions representing Delphi workers negotiated an agreement as part of the spin-off. Delphi's workforce consisted of hourly employees and salaried employees. In general, the hourly workers were union members whereas the salaried workers were not. The two groups of workers had separate benefit plans. To receive the unions' approval for the spin-off, GM agreed to protect certain post-retirement health and pension benefits for hourly workers. These *Benefit Guarantee Agreements* obligated GM, in the event of the termination of the Delphi hourly pension plans, to supplement the benefits for workers whose benefits were reduced due to PBGC's statutory maximum guarantee. GM agreed to pay (or *top up*) each covered employee the difference between the benefit received from PBGC and the benefit the individual would have received had the plan not been terminated.

Six DB pension plans covered Delphi workers, of which the two largest were the Delphi Hourly-Rate Employees Pension Plan, with 47,176 participants in 2009, and the Delphi Retirement Program For Salaried Employees, with 20,203 participants in 2009. The four other DB plans had a total of 2,229 participants in 2009.

Because they were non-union and therefore not subject to collective bargaining procedures, GM did not need the salaried workers' approval for the spin-off and salaried workers did not receive any benefit guarantees.

Termination of Delphi Pension Plans

Delphi filed for bankruptcy in October 2005. As part of the bankruptcy reorganization plan, GM agreed to the transfer of up to $3.4 billion of liabilities from the Delphi Hourly Plan to the GM Hourly-Rate Employees Pension Plan. GM initially transferred approximately $2.6 billion of liability from the Delphi Hourly Plan to the GM plan. On June 1, 2009, GM filed for bankruptcy and subsequently received U.S. government financial assistance to assist with its reorganization. In July 2009, GM advised Delphi that it would not assume the Hourly Plan and would not transfer additional liabilities from Delphi to the GM pension plan. Because GM declined to assume the additional liabilities from the Delphi pension plans, PBGC terminated the Delphi pension plans, effective July 31, 2009.

Under Title 29, Section 1342(a), of the *U.S. Code*, PBGC may initiate involuntary termination proceedings of a single-employer DB pension plan if one of several criteria is met. PBGC indicated that the Delphi plans met several of the criteria for termination. For example, Delphi had not made required contributions to the pension plans in the previous four years and the plan had assets to pay for only half of its benefit obligations.

Some contend that GM honored the top-up agreement under pressure from the Presidential Task Force on the Auto Industry and that the Delphi pension plans were terminated to facilitate restructuring in the auto industry. The Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) issued a report on August 15, 2013, which noted that the decision to honor the top-up agreement was a joint decision by the U.S. Treasury and GM. The top-up agreement was honored because of the need to have the United Auto Workers (UAW) approve GM's bankruptcy. The report also noted that GM did not top up the pensions of other former employees at Delphi because they did not have active employees at GM and had no leverage to hold up GM's bankruptcy.

Lawsuit by Delphi Salaried Employee Association

In 2009, the Delphi Salaried Retiree Association (DSRA) and others filed a lawsuit against, among others, PBGC, the U.S. Treasury Department, and the Presidential Task Force on the Auto Industry. Some of the DSRA's claims included the following:

- The termination of the Delphi Retirement Program for Salaried Employees violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- The termination of the Delphi Retirement Program for Salaried Employees violated the Employee Retirement Income Security Act of 1974 (ERISA, P.L. 93-406), a federal law that governs private-sector pension plans;
- The agreement between GM and the unions representing hourly employees to top-up the hourly employees' pensions violated the Equal Protection Clause of the Fifth Amendment to the U.S. Constitution. The DSRA said that GM, acting as a government actor owing to the U.S. Treasury's role in the GM bankruptcy, unfairly discriminated against the salaried employees "solely on the basis of their choice not to associate with a union." The DSRA claimed that GM's bankruptcy in June 2009 voided the 1999 top-up agreements and that GM renegotiated and provided the top-up to the unions' pension plans for political motivations.

Federal district and appellate courts rejected the plaintiffs' claims, and in January 2022 the Supreme Court declined to hear the case.

Recent Executive and Legislative Actions

In October 2020, President Donald J. Trump issued a memorandum directing the Secretaries of the Treasury, Commerce, and Labor to review Delphi's benefit reductions and report back within 90 days with actions that could be taken. In response to Congressional inquiries about the status of the Administration's report, in August 2022, the Deputy Assistant Secretary for Banking and Finance Office of Legislative Affairs in the U.S. Treasury indicated that "the Departments of Treasury, Labor, and Commerce concluded that Congressional action would be required to restore these lost pension benefits. Therefore, we have not taken further steps on this issue."

The Susan Muffley Act of 2022, introduced as H.R. 6929, by Representative Daniel Kildee on March 3, 2022, and as S. 3766, by Senator Sherrod Brown on March 7, 2022, are nearly identical bills that would require PBGC to recalculate and restore the monthly benefits of participants who are not covered by the top-up agreements in the six Delphi plans terminated by PBGC. In addition, participants not covered by the top-up agreements in these plans would receive lump-sum payments with interest for the benefits that had been reduced as a result of PBGC's maximum guarantee. The additional benefits to participants would be taxable. The taxes on the lump-sum payments could be spread out over three years (in 2023, 2024, and 2025). The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated that H.R. 6929 would result in an increase in spending of $912 million in FY2023-FY2032. The bill would accelerate the single-employer, variable-rate premium due date by one month (from FY2033 to FY2032), which CBO and JCT estimated would increase revenues by $1.2 billion from FY2023 to FY2032. H.R. 6929 passed the House on July 27, 2022.

For Further Information

CRS Report R42076, *Delphi Corporation: Pension Plans and Bankruptcy*

Dennis Black, et al. v. The Pension Benefit Guaranty Corporation, et al., Case No. 2:09-cv-13616, (E.D. Mich.)

Delphi Pensions: Key Events Leading to Plan Terminations, GAO-13-854T, https://www.gao.gov/assets/gao-13-854t.pdf

Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees, https://www.sigtarp.gov/sites/sigtarp/files/Audit_Reports/SIGTARP_Delphi_Report.pdf

Estimated Budgetary Effects of H.R. 6929, the Susan Muffley Act of 2022, Cost Estimate, as Posted on the Website of the House Committee on Rules on July 20, 2022, https://www.cbo.gov/system/files/2022-07/hr6929table.pdf

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