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PBGC Nominee to Navigate Concerns Over Agency's Pension Bailouts

By Ben Miller

Deep Dive

- Deva Kyle brings pension reform, benefits lawyer bona fides
- PBGC has dealt with pushback after plan overpayment error

The nominee to head the federal government's private pension insurer stands to lead an agency that is flush with cash, but first she must confront criticism of its work, including scrutiny of a mistaken overpayment of bailout funds to a Teamsters' plan.

Deva Kyle has an insider's view of the Pension Benefit Guaranty Corporation, as a former agency employee for 13 years who has also held government roles at the Treasury Department and the House of Representatives.

If confirmed by the Senate following her July 11 nomination, Kyle would bring a different background to the position than former director Gordon Hartogensis, brother-in-law of Senate Minority Leader Mitch McConnell (R-Ky.), who stepped down after his five-year term ended in April. Trump appointee Hartogensis had previously worked predominantly as an entrepreneur before joining the PBGC.

The PBGC covers pensions for more than 31 million participants and beneficiaries across the US, serving as an insurer for the sponsors of single- and multiemployer plans, who pay premiums to the agency. The PBGC has more than 900 total employees.

“We need an insider for this, pensions are really complicated and the competing needs for all constituent groups that are relevant to PBGC, whether that’s Treasury, participants, or plan sponsors, their concerns matter,” said Michael Kreps, principal and chair of Groom Law Group’s retirement services group. “Deva is in the best position of anybody to be able to balance those, since she’s in a career where she’s dealt with employer concerns, she’s dealt with the Hill, she’s been in the agency, so she’ll do great there.”

The American Rescue Plan Act of 2021 buoyed the PBGC’s ailing finances with a more than $90 billion total bailout for pensions, leading to the agency reporting a surplus of over $46 billion across its single and multiemployer insurance programs for fiscal year 2023. PBGC had previously faced shortfalls due to a series of big pension plan bankruptcies following the Great Recession.

“There have been times, decades on end sometimes, when they ran a deficit, when there was considerable risk in the system and exposure to companies that were less than investment-grade risks,” said Israel Goldowitz, partner at Wagner Law Group and former chief council at the PBGC.

A White House spokesperson declined to provide comment from Kyle, currently counsel at Cohen, Weiss and Simon LLP, on her potential new role. There is no date set yet for a hearing on her nomination, and she would have to be renominated by the president if she is not confirmed by the end of the Congressional term on Jan. 3, 2025.

Funding Mistakes, Premiums

Effectively administering a historically huge pension bailout, with $67 billion in funds approved as of Aug. 1, is a challenge in and of itself for the PBGC, currently run by acting chief Ann Orr.

Kyle, if confirmed, will also have to contend with ongoing criticism over bailout funds that were previously misappropriated.

More than $127 million was wrongly distributed to the Teamsters’ Central States Pension Plan because the agency said it failed to crosscheck its records with a more accurate Social Security database, leading to a payouts that incorrectly included nearly 3,500 deceased Teamsters.

Other pension plans were overpaid as well due to the same mistakes, the Labor Department has said.

Any new director would need to address concerns raised by lawmakers including Sen. Bill Cassidy (R-La.) and Rep. Virginia Foxx (R-N.C.), who subpoenaed internal documents related to the bailout payments.

The PBGC said in an April statement that Central States has returned the overpayment, and that the agency continues to probe other possible overpayments to plans based on the same calculation errors.

Any incoming director would also have to deal with emerging complaints about insurance premiums charged to employers.

They present an "extraordinary financial burden that is driving plan sponsors from the defined benefit structure," said Constance Donovan, the PBGC's participant and plan sponsor advocate, in a 2023 report.

"This [agency] surplus is not taxpayer money, but money from plan sponsors who, for years now, have not only made significant contributions to their pension plans but have also overpaid PBGC premiums to cover a level of risk associated with the defined benefit system that simply no longer exists," Donovan wrote.

Kyle also stands to inherit a battle between the agency and trucking company Yellow Corp. which filed for bankruptcy in August 2023, and has asked a court to find that the PBGC overstepped its authority in defining how unfunded vested benefits and employer liability should be calculated under the American Rescue Plan.

The agency's regulations improperly treat bailout funds received by pension plans as separate from plan assets when making those calculations, according to the debtors.

"Yellow is saying, 'the Central States plan got all this funding, they're no longer underfunded, why are we faced with this withdrawal liability?,'" said Greg Ossi, a partner at Norton Rose Fulbright LLP.

Kyle has direct experience handling challenges with multiemployer plans in general and the Central States pension in particular, having worked with former special master Ken Feinberg at the Treasury to craft the Multiemployer Pension Reform Act, which established a new process for reducing pension benefits if a plan is projected to run out of assets.

"We had to deal with the very thorny political issue—whether the Central States Teamsters pension plan was to go belly up in seven years because there were too many claims and not enough payors in the Teamsters paying in, as the industry consolidated," Feinberg said. "She really in the line of battle demonstrated her judgment, her skill, and her political savvy."

No 'Ideologue'

Kyle started her career at the PBGC in 2004, where she worked her way through the attorney ranks, ultimately taking on the role of staff director in the agency's Office of Policy and External Affairs.

After her stint with Treasury in the 2010s, she returned to PBGC to serve as acting deputy chief of negotiations and restructuring, helping to lead the single- and multiemployer insurance programs.

There she was involved in single-employer early warning program negotiations and oversaw multiemployer requests under the Alternative Withdrawal Liability Rule, as well as benefit suspension applications, mergers, and partitions.

In 2017, Kyle became a detailee to the US House of Representatives Ways & Means Committee, where she spent more than a year as tax counsel on the Democratic staff.

Kyle pivoted to Washington, D.C. law firm Bredhoff & Kaiser in 2019, where she spent three years involved in providing advice to pension and benefit funds, as well as the plans' boards of trustees, before moving over to Cohen, Weiss and Simon LLP, where she is now counsel.

Anne Mayerson, member at Bredhoff Kaiser and a former colleague of Kyle's, said she "really adapted to understanding multiple viewpoints" in MPRA application review at the firm.

"What she really learned to do was not be an ideologue in any way, and that was something that was developed during her many years at the PBGC," Mayerson said.

Aside from her work with government stakeholders and private practice clients, Kyle has used her work to highlight disparities in retirement access and savings by race, gender, and class, also touting the positive impact of union membership on closing gaps.

"I am an attorney who sees these disparities in my work every day," she said in 2021 testimony before the Senate Committee on Health, Education, Labor & Pensions. "While the numbers differ for each of these groups, the story is the same—retirement policy that relies solely on the ability of individuals to save will only exacerbate the income inequality already present in this country."

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