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Trump's PBGC Head Could Reshape Bailout for Union Pension Plans

Deep Dive

- **Employers want withdrawal liability prohibitions lifted**
- **Ex-EEOC chair's employer background could be helpful**

President Donald Trump's nominee to manage the federal government's private-sector pension insurer faces pressure from Republican and industry allies to reconfigure a contentious $90 billion Biden-era union bailout.

Former US Equal Employment Opportunity Commission Chair Janet Dhillon is in line to serve as director of the Pension Benefit Guaranty Corporation. The independent government agency formed in 1974 is entering its fourth year cutting taxpayer-funded checks for severely underfunded union-brokered multiemployer plans.

That special financial assistance program formed under President Joe Biden has been a political sore spot for GOP lawmakers, especially after an agency watchdog in 2023 discovered nearly 70 plans were inadvertently overpaid millions of dollars because dead participants were counted in their funding applications.

That gives Trump political leverage to reshape bailout funding at the agency with Dhillon at the helm, pending Senate confirmation, former PBGC officials told Bloomberg Law.

"The administration can now encourage the agency to take another look at these rules and see if there's any tweaking that can be done to avoid overpayment or address pushback from the employer side about withdrawal liability provisions," said Katherine Kohn, a Thompson Hine LLP partner and former PBGC staff attorney.

Special financial assistance featured in Biden's American Rescue Plan Act, which narrowly passed Congress and became law in 2021. Republicans and some Democrats wanted to insert riders into the legislation that would require plans to pad themselves against future economic downturns in order to qualify for assistance. But what emerged instead was a blank check funded by the Treasury Department to bail out nearly 200 union-brokered plans.

Agency auditors have recovered $181.9 million from 43 union pension plans that failed to compare their bailout funding applications with the Social Security Administration's Death Master File, according to the PBGC. Staff are more than halfway through the auditing process, said former PBGC Director Gordon Hartogensis, who was appointed during Trump's first term in office and also served under Biden.

Withdrawal Liability

The final rule PBGC promulgated to administer the funding program prohibited employers who participate in multiemployer plans from counting bailout money as part of their withdrawal liability—the cost of exiting an underfunded plan.

Bankrupt transportation holding company Yellow Corp. lost its initial bid in September to challenge whether the federal stimulus that buoyed its union pension plan could be credited toward the beleaguered company's withdrawal calculus. Last month, however, the former trucking giant won a partial victory in bankruptcy court that could subtract from the $540 million bill the pension first charged.

The case is likely to serve as fodder for the administration should it attempt to ease withdrawal liability prohibitions, Kohn said. Dhillon, a longtime Trump-aligned Republican donor and general counsel for four Fortune 500 companies, could be the administration's last best chance at reopening the rulemaking under the auspices of correcting the overpayment debacle, she added.

"Janet's corporate general counsel experience is extremely broad," said former EEOC Commissioner and Acting Chair Victoria Lipnic, who served alongside Dhillon. "That level of experience lets her see compliance issues for companies that are profit-making entities and will certainly serve her well at PBGC."

Hartogensis said he believes the work the PBGC is doing to audit overpaid plans is enough to satisfy congressional demands. There is no need to adjust the rule the agency issued under his watch, he said.

Withdrawal liability has served as a linchpin in propping up traditional, private-sector pensions amid an industry push to abandon defined benefits for cheaper 401(k)s. Pensions remain in pocket industries centered in regions of the US critical to Trump's electoral majority in 2024, which could moderate the administration's employer-friendly reflexes, said Israel Goldowitz, a partner at the Wagner Law Group PC and former PBGC deputy general counsel.

"This administration has significant blue-collar support, and many of the prospective recipients of special financial assistance live in purple or swing states," he said.

Corporate Premiums

Dhillon's experience with defined-benefit pensions dates back to her time as a senior vice president and general counsel for US Airways as the company faced financial trouble in the lead-up to its 2013 merger with American Airlines Group Inc.

As the company began a series of post-9/11 restructurings under her watch, three pensions for pilots, flight attendants, and mechanics were terminated and transferred under the PBGC's control. The shift in responsibility and reduction in benefits prompted retired pilots to sue US Airways and the PBGC. The US Court of Appeals for the District of Columbia Circuit ultimately ruled in the company's favor, because the parties had failed to exhaust their administrative appeals.

If confirmed by the Senate, Dhillon, who would be only the second woman to serve as PBGC director, would stand out among the agency's leaders because her background is in employment law rather than finance or insurance, said Goldowitz. The Senate has not scheduled Dhillon's confirmation hearing.

While her lack of pension experience may appear to be a drawback, Dhillon's executive leadership background could help her connect with the plan sponsor community on issues including withdrawal liability as well as pension premiums, said Hartogensis.

PBGC is sitting on a $55 billion surplus, yet the premiums it charges plans haven't been reduced in years. Trade groups are pressuring Congress to reduce the premiums or scale them according to the agency's financial position.

"That's a big opportunity for the Trump administration and Dhillon," said Hartogensis.

The stumbling block to a reduction in premiums isn't the White House or the agency, but lawmakers on both sides of the aisle, said Goldowitz. PBGC's massive surplus is a helpful aid when the Congressional Budget Office scores a government funding bill. Dhillon may not be able to sway lawmakers eager to preserve the agency's surplus, but she could serve as an emissary of the Trump administration's pro-business agenda, said Kohn.

Even if Congress doesn't budge on premium reductions, "Dhillon could be a helpful messenger for employers," she added.

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