

September 2007

**EMPLOYER-
SPONSORED
BENEFITS**

**Many Factors Affect
the Treatment of
Pension and Health
Benefits in Chapter 11
Bankruptcy**





Highlights of [GAO-07-1101](#), a report to congressional requesters

EMPLOYER-SPONSORED BENEFITS

Many Factors Affect the Treatment of Pension and Health Benefits in Chapter 11 Bankruptcy

Why GAO Did This Study

In recent years, considerable debate has centered on companies using the chapter 11 bankruptcy reorganization process to reduce or eliminate employer-sponsored benefits in an effort to become more competitive. Congress recently enacted several laws, in part, to help address this issue. Most notably, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) and the Pension Protection Act of 2006 (PPA). BAPCPA contained provisions related to chapter 11 business bankruptcies and sought to address the treatment of benefits during the bankruptcy process. In addition, the PPA amended several Employee Retirement Income Security Act of 1974 (ERISA) provisions related to defined benefit (DB) plans in bankruptcy.

This report addresses (1) how, if at all, recent legislative changes affected the treatment of pension and health benefits during chapter 11 bankruptcies, and (2) what is known about the extent to which businesses have modified employee or retiree pension and health benefits. GAO reviewed filings of 115 public companies that filed for bankruptcy between October 17, 2004 and October 17, 2006, and conducted interviews with various experts on the treatment of benefits in the bankruptcy process. Relevant federal agencies agreed with the findings contained in this report.

www.gao.gov/cgi-bin/getrpt?GAO-07-1101.

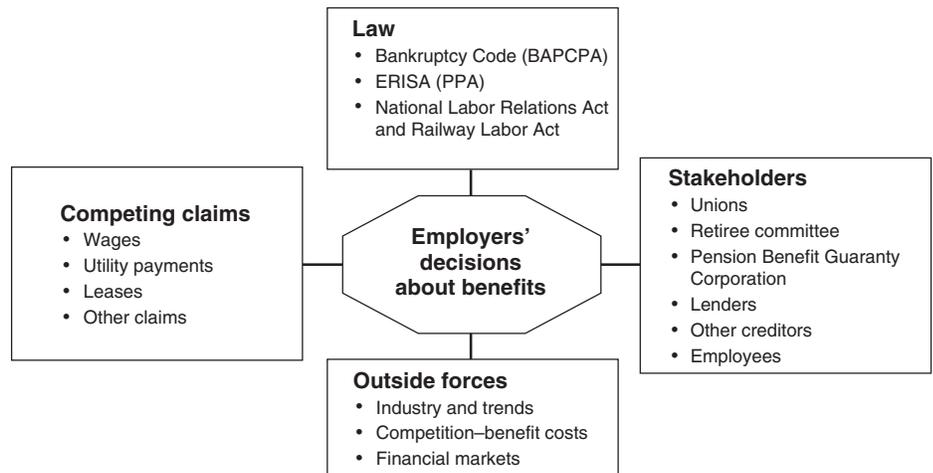
To view the full product, including the scope and methodology, click on the link above. For more information, contact Barbara Bobbjerg at (202) 512-7215 or bovbjergb@gao.gov.

What GAO Found

The effects of recent legislation, including BAPCPA and PPA, on employers' decisions to modify benefits are difficult to distinguish from the effects of other factors that lead to changes in benefits both within and outside of the bankruptcy process. Most bankruptcy professionals agreed that while BAPCPA included some changes that will affect the treatment of employer-sponsored benefits—such as the look-back period for the reinstatement of retiree health benefits—it will not substantially affect employers' decisions to modify benefits. Some bankruptcy professionals suggested that PPA may affect employers' decisions to maintain their defined benefit (DB) plans. Bankrupt employers consider many other factors when trying to reorganize successfully, including competing claims, their stakeholders and creditors, and outside forces such as the financial market and industry competition.

More information is known about the extent to which selected employers made benefit changes resulting in court decisions—i.e., changes to DB plans, retiree health benefits, and benefits covered by a collective bargaining agreement (CBA)—than changes not resulting in them—i.e., changes to defined contribution (DC) plans and active employee health benefits not covered by a CBA. Most of the 115 employers we reviewed did not offer benefits that specifically needed court approval to change. We found only 20 of these employers had DB plans, 18 had retiree health benefits, and 28 had employees covered by a CBA. Nine employers terminated at least one of their DB plans, and 3 have terminations pending; 5 sought to modify their retiree health benefits; and 8 sought to modify or reject CBAs. While most employers received approval to continue employee benefits in their initial motions, it is unknown how many employers that offered health benefits to active employees or DC plans continued to fund them because employers do not always need to seek court approval to change these benefits.

Factors That May Affect Employers' Decisions Regarding Benefits



Source: GAO analysis.

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Abbreviations

AOUSC	Administrative Office of the United States Courts
BAPCPA	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
CBA	collective bargaining agreement
DB	defined benefit
DC	defined contribution
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
PACER	Public Access to Court Electronic Records
PBGC	Pension Benefit Guaranty Corporation
PPA	Pension Protection Act of 2006
SEC	Securities and Exchange Commission

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United States Government Accountability Office
Washington, DC 20548

September 6, 2007

Congressional Requesters

Each year, thousands of employers file for chapter 11 bankruptcy to reorganize their finances in an attempt to become profitable.¹ This process can often be contentious, as many stakeholders, including creditors, and employee and retiree groups, may be competing for diminishing portions of the employers' remaining assets. In recent years, considerable debate has centered on the use of the chapter 11 bankruptcy process by employers to reduce or eliminate benefit obligations in an effort to become more competitive, and whether such benefit obligations have disproportionately affected employers in certain industries. For example, structural problems in industries such as airlines, steel, and automotive parts manufacturing have led large employers to declare bankruptcy and terminate their defined benefit (DB) plans.² These recent high-profile bankruptcy reorganizations have frequently resulted in significant reductions of jobs and employee benefits—including wages, retirement, and health benefits—and resulted in the Pension Benefit Guaranty Corporation (PBGC) assuming billions of dollars in underfunded pension benefit obligations.

In recent years, Congress enacted several laws to, in part, help address some of these issues. Most notably, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) and the Pension Protection Act of 2006 (PPA). BAPCPA sought to reduce the number of perceived abuses in consumer and corporate bankruptcy filings. Although BAPCPA mainly focused on consumer bankruptcies, it contained certain provisions related to chapter 11 business bankruptcies

¹ In this report, we refer to companies that filed for chapter 11 protection under the Bankruptcy Code as employers. In the legislation, these employers are referred to as debtors, and if the management of such employers continue to operate the business during the pendency of the chapter 11 case, they are also referred to as debtors in possession.

² DB plans generally provide a guaranteed pension based on salary and years of service, and are often provided as part of a collective bargaining agreement (CBA)—a written agreement or contract between an employer and a union that includes provisions on conditions of employment and the procedures to be used in settling disputes during the term of the contract. Employers may also offer a defined contribution (DC) plan in which the employer, participants, or both make contributions to an individual account, and the benefits are paid based on the contributions to and investment returns on this account.

and sought to address the ways in which employer-sponsored benefits are treated during the bankruptcy process. For example, BAPCPA established a “look-back” period allowing courts to reinstate retiree health benefits to what they were before any modification by the employer during the 180 days prior to filing for bankruptcy. Among other things, PPA amended the Employee Retirement Income Security Act of 1974 (ERISA), including several provisions related to the termination and funding of DB plans in bankruptcy. In response to your interest in the effects of business bankruptcies on employee and retiree pension and health benefits, this report addresses (1) how, if at all, recent legislative changes have affected how businesses may treat pension and health benefits during chapter 11 bankruptcies, and (2) what is known about the extent to which businesses have modified employee or retiree pension or health benefits in chapter 11 bankruptcies before and after changes in the bankruptcy law took effect.

To address these questions, we focused on the 115 public employers³ identified by the Securities and Exchange Commission (SEC) that filed for chapter 11 bankruptcy the year prior to and the year following BAPCPA’s general enactment date—October 17, 2005. Therefore, our analysis covers bankruptcy cases filed between October 17, 2004, and October 17, 2006. To identify key changes to the U. S. Bankruptcy Code and ERISA, we reviewed BAPCPA and PPA as well as other laws that affected the treatment of benefits. We interviewed bankruptcy professionals, including researchers, federal bankruptcy judges, and attorneys, to gain their insights on these changes and the potential effects they may have on benefits. The attorneys we interviewed have represented various stakeholders in the chapter 11 process including unions, retiree committees, debtor employers, and creditors. We also interviewed officials that represented the government and the public at the PBGC, Administrative Office of the United States Courts (AOUSC), Department of Justice’s U.S. Trustee Program, Department of Labor’s Employee Benefits Security Administration (EBSA), and Department of the Treasury to obtain their insights on how recent legislative changes could affect the treatment of benefits in bankruptcy. Additionally, we interviewed officials at SEC to gain an understanding of public companies’ SEC filings. We reviewed documents submitted in connection with court motions to change certain

³ For detailed information on the 115 employers we reviewed, see appendix II.

benefits (including DB plans, retiree health benefits,⁴ and benefits covered by collective bargaining agreements (CBA)), first day orders, and motions to continue employee benefits. We obtained and reviewed these publicly available documents from the Public Access to Court Electronic Records system (PACER). We also reviewed company information from annual SEC filings to identify employers' various benefit obligations. To provide contextual information, we obtained and analyzed data from AOUSC on all chapter 11 cases filed over the period. We found these data to be sufficiently reliable for our purposes. The newness of BAPCPA and PPA and the small number of changes they contain affecting how employers can treat benefits, as well as the limited information readily available on benefit changes proposed and approved, made it difficult to assess the effects of these laws. We conducted our work between October 2006 and September 2007 in accordance with generally accepted government auditing standards. On August 23, 2007 and August 28, 2007, we briefed your staff on the results of our work using the briefing slides we include in appendix I. The report formally conveys the information provided during our briefings.

Summary of Findings

In summary, the effects of recent legislation on employers' decisions to modify benefits are difficult to distinguish from the effects of other factors—both within and outside of the bankruptcy process. Several laws may affect the way employers treat employee and retiree benefit plans in bankruptcy, including the Bankruptcy Code and ERISA. BAPCPA and PPA—which amended the Bankruptcy Code and ERISA, respectively—included some provisions related to the ways that employers can treat benefits in the bankruptcy process. While BAPCPA included some changes that will affect the treatment of employer-sponsored benefits in bankruptcy—such as the possible reinstatement of retiree health benefits to what they were before any modification by the employer during the 180 days prior to filing for bankruptcy—most professionals agreed that the act will not substantially affect employers' decisions to change benefits. Some bankruptcy professionals said that PPA may impact employers' treatment of benefits in bankruptcy and, in particular, how employers may seek to modify DB pension plans. For example, some bankruptcy professionals said that the additional time given to airlines to fund their DB plans

⁴ While we refer to "health benefits," which are a focus of this report, the Bankruptcy Code requires court approval for modification of retiree medical, surgical, or hospital care benefits, and any retiree benefits in the event of sickness, accident, disability, or death. 11 U.S.C. § 1114(a) and (e).

contributed to at least two major airlines retaining some or all of their plans in bankruptcy; other professionals, however, said this change may not fully protect these DB plans in the long-term. Further, the National Labor Relations Act⁵ outlines how most employers can treat benefits covered by collective bargaining agreements, and the Railway Labor Act⁶ can affect the treatment of benefits affecting airline and railroad employees. Bankrupt employers may also consider other factors when trying to successfully reorganize. For example, competing claims in bankruptcy, stakeholders and creditors, and other outside forces such as the financial market and industry competition, may contribute to employers' decisions to modify their employee benefit plans.

More information is known about the extent to which employers made benefit changes that involved specific court approval—such as the termination of DB plans, or changes to retiree health benefits or benefits covered by CBAs—than those that can usually be made without specific court involvement or approval—such as changes to DC plans or benefits for active employees not covered by CBAs. Most of the 115 employers we reviewed did not offer benefits that specifically needed court approval to change. Specifically, we found that 20 of these employers offered DB plans, 18 offered retiree health benefits, and 28 offered at least some employees benefits covered by a CBA⁷ Fewer than half of the employers with these types of benefits sought to modify them in bankruptcy. For example, in the year prior to and the year after the enactment of BAPCPA, nine employers terminated their DB plans, resulting in a \$1.4 billion liability to PBGC. An additional three employers had terminations pending. Five employers sought approval to modify their retiree health benefits. The presence of a CBA adds another layer of complexity to how employers may treat benefits in bankruptcy. Generally, employers and unions negotiate any changes to a CBA—changes that often include benefit and wage cuts—outside the courts. Eight of the employers that reported having at least some employees with union representation sought to modify or reject at least one of their collective bargaining agreements. While most employers received approval to continue employee benefit

⁵ 29 U.S.C. § 141 et seq.

⁶ 45 U.S.C. § 151 et seq.

⁷ The benefits that employers offer are not mutually exclusive. For example, one employer may offer (and seek to change) pension benefits, retiree health benefits, and benefits covered under a collective bargaining agreement. In total, 15 employers sought to change at least some of their benefits.

plans in their first day orders, it is unknown how many employers that offered health benefits to active employees or defined contribution plans continued to fund them. In particular, employers do not need court approval to change these benefits if they are outside of a contractual agreement, although some employers may still seek such approval. Some bankruptcy professionals said that employers may stop making matching contributions to these plans or may not remit payments in a timely manner. However, experts stated that this information is often difficult to track.

Concluding Observations

Employers continue to play a primary role in financing retirement income and health benefits for many workers. However, many are finding it challenging to provide these benefits in an increasingly competitive environment. Modifying benefit offerings as a cost-cutting measure is not unique to bankruptcy, and is a trend that is also occurring outside the bankruptcy process. In addition, changes in benefits, such as the shift from defined benefit to defined contribution plans, means that fewer employers may file motions to modify benefits in the future because these changes typically do not involve specific court approval. While additional time may be needed to more fully understand how recent legislation has affected employers' treatment of benefits in specific cases, the full impact of both of these laws on individuals' benefits or related federal programs may never be known because employers' decisions to modify benefits are part of a complex process, of which bankruptcy and pension laws are only a part.

Many stakeholders are involved in the decision to modify benefits, and striking a balance between maintaining employee benefits and successful reorganization can be difficult for all parties involved. Achieving this balance will often require successful negotiations between various stakeholders such as unions, creditors, debtors, and in some cases PBGC. Few employers have sought to modify their benefit plans in bankruptcy. However, when such modifications are made, the effect on employees, retirees, and related federal programs may be substantial.

Agency Comments and Our Evaluation

We obtained technical comments on a draft of the briefing slides from cognizant agency officials, which we incorporated where appropriate prior to briefing your staff. After the briefing, we provided a draft of the entire report to officials of the Department of Labor, PBGC, Department of Justice, and the AOUSC. We received technical comments from PBGC and EBSA, which we have incorporated where appropriate. The Interim

Director of the Pension Benefit Guaranty Corporation provided written comments on a draft of this report in a September 4, 2007 letter. PBGC agreed with our findings and highlighted that PBGC will continue to monitor the effects of both the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and the Pension Protection Act of 2006 on PBGC's insurance programs. The Department of Justice and AOUSC did not provide comments.

We plan to provide copies of this report to the Secretaries of Labor, Justice, and the Treasury. We will also send copies to EBSA, the Department of Justice's U.S. Trustee Program, AOUSC, PBGC, and interested congressional offices. We will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staff have any questions about this report, please contact me at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.



Barbara D. Bovbjerg
Director, Education, Workforce,
and Income Security Issues

Congressional Requesters

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Richard J. Durbin
The Honorable Russell D. Feingold
The Honorable Edward M. Kennedy
United States Senate

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
House of Representatives

The Honorable Howard L. Berman
The Honorable William D. Delahunt
The Honorable Sheila Jackson-Lee
The Honorable Zoe Lofgren
The Honorable Jerrold Nadler
The Honorable Robert C. Scott
The Honorable Chris Van Hollen, Jr.
The Honorable Debbie Wasserman Schultz
The Honorable Melvin L. Watt
House of Representatives

Appendix I: Briefing Slides

Employer-Sponsored Benefits: Many Factors Affect the Treatment of Pension and Health Benefits in Chapter 11 Bankruptcy

Briefing for Senate and House
Committees on the Judiciary
August 2007

Introduction

- In recent years, considerable debate has centered on the use of the chapter 11 bankruptcy process by employers to reduce or eliminate employer-sponsored benefit obligations.
 - In part, because of these concerns, Congress passed legislation that included provisions affecting how employers may treat benefits in chapter 11 bankruptcy.
 - The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) amended the Bankruptcy Code.
 - The Pension Protection Act of 2006 (PPA) amended the Employee Retirement Income Security Act of 1974 (ERISA).
-

Key Questions

-
- How, if at all, have recent legislative changes affected the treatment of pension and health benefits during chapter 11 bankruptcies?
 - What is known about the extent to which businesses have modified employee or retiree pension and health benefits in chapter 11 bankruptcies before and after changes in the bankruptcy law took effect?

Scope and Methodology

To answer these questions, we:

- Reviewed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and other laws, including the Pension Protection Act of 2006, to identify how they affect the way that businesses may treat benefits in bankruptcy.
- Reviewed publicly available court documents of the 115 public companies identified by the Securities and Exchange Commission (SEC) as having filed for chapter 11 bankruptcy in the years before and after BAPCPA's general enactment date—October 17, 2005, (76 companies before, 39 after), including motions to change benefits, such as defined benefit (DB) plans, retiree health benefits, and those protected by collective bargaining agreements (CBA). We also reviewed whether employers sought approval to continue benefit programs. The scope of analysis was limited to public companies due to data limitations and is not generalizable to all companies in bankruptcy.
- Interviewed selected bankruptcy professionals, including researchers, judges, and attorneys who have represented various stakeholders including unions, retiree committees, debtor employers, and creditors, as well as officials who have represented the government and the public at the Pension Benefit Guaranty Corporation (PBGC), Administrative Office of the United States Courts, Department of Justice's U.S. Trustee Program, Department of Labor's Employee Benefits Security Administration (EBSA), Department of the Treasury, and SEC.
- Our work was performed between October 2006 and July 2007 in accordance with generally accepted government auditing standards.

Summary of Findings

- The effects of recent legislation, including BAPCPA and PPA, on employers' decisions to modify benefits are difficult to distinguish from the effects of other factors that lead to changes in benefits both within the bankruptcy process and outside of the bankruptcy process such as competitive pressures in certain industries.
- More is known about benefit changes subject to court approval—such as the termination of DB plans, and changes to retiree health benefits* or benefits covered by collective bargaining agreements—than about other types of benefits such as defined contribution plans.
 - Nearly one-half of the employers we reviewed with DB plans terminated them in bankruptcy.
 - About 28 percent of employers we reviewed with retiree health obligations sought to modify these benefits.
 - About 29 percent of employers we reviewed with collective bargaining agreements sought to reject these agreements.

*While we refer to "health benefits," which are a focus of this report, the Bankruptcy Code requires court approval for modification of retiree medical, surgical, or hospital care benefits, and any retiree benefits in the event of sickness, accident, disability, or death. 11 U.S.C. § 1114(a) and (e).

Background: Examples of Employer-Sponsored Benefits

- Employers generally can sponsor two types of pension plans.
 - Defined benefit (DB) plans provide a pension benefit that is typically expressed as a monthly benefit based on a formula that generally combines salary and years of service to the company.
 - Defined contribution (DC) plans, which include 401(k) plans, base retirement benefits on employee and/or employer contributions to and investment returns on individual accounts; participants may be able to direct the investment of the assets in their individual accounts.
 - Employers may sponsor several types of health benefits, and the amounts they contribute can vary.
 - Benefits may be offered as part of a collective bargaining agreement (CBA)—a written agreement or contract between an employer and a union or professional or trade association. Typically, labor and management negotiate the terms of employment, which include salaries, work rules, and health and pension benefits.
-

Background: Treatment of Benefits under the Bankruptcy Code and the Employee Retirement Income Security Act of 1974 (ERISA)

Bankruptcy Code:

Generally, employers will file for bankruptcy protection either under chapter 7 (liquidation) or chapter 11 (reorganization). Chapter 11 provides an opportunity for a debtor to reorganize its financial obligations during which time the debtor may continue to conduct its business.

BAPCPA amended the Bankruptcy Code. Many of the changes focused on consumer bankruptcies, but it also contained provisions related to chapter 11.

ERISA:

Pension

Sets certain standards for most voluntarily-established employer-sponsored pension benefit plans in the private sector. Generally, employers may seek to terminate a pension plan, in the absence of a contractual agreement prohibiting it, if they meet certain requirements. Employers may not decrease participants' DB benefits or increase benefits during bankruptcy if the plan is underfunded. PPA amended several ERISA provisions related to DB plan funding and termination, among other things.

Health

While ERISA generally governs employee health benefit plans, these plans are subject to less extensive requirements than pension plans.

Background (cont.): Treatment of Pension Benefits under the Bankruptcy Code and ERISA

Bankruptcy Code:

Pension assets that have been deposited into the trust are not part of the debtor's estate.

BAPCPA specified that the definition of "property of the estate" excludes employee contributions to benefit plans, protecting contributions that were withheld but not yet deposited into the trust.

ERISA:

Contributions made to a pension plan must be maintained for the exclusive benefit of participants and their beneficiaries.

- DB plans are typically insured by PBGC. An employer's DB plan can be terminated in one of three ways:
 - Standard termination—the employer wants to end its DB plan and the plan has sufficient funds to pay all benefits owed to participants.
 - Distress termination—the employer is in financial distress and must prove it cannot remain in business unless the plan is terminated.
 - Involuntary termination—PBGC can end the plan if it determines that the termination is needed to protect the interests of plan participants or the PBGC insurance program.

Defined contribution plans, e.g., 401(k) plans, are held in trust and not insured by PBGC.

Background (cont.): Treatment of Retiree Health Benefits under the Bankruptcy Code and ERISA

Bankruptcy Code:

To modify or terminate retiree health benefits, the debtor must be able to show that:

- It negotiated in good faith with authorized representatives of the retirees.
- The retirees' authorized representative refused the proposal without good cause.
- The modification is necessary to permit the reorganization, assures that all parties are treated equitably, and is clearly favored by the balance of the equities.

BAPCPA amended the law to allow the court to reinstate retiree health benefits that were modified within 180 days prior to filing for bankruptcy.

ERISA:

Generally, employers can reserve the right to modify or terminate employee health benefit plans.* Employers must provide employees with a minimum of 60 days advanced notice of its intent to terminate a plan.

*In the event of the elimination or substantial elimination of health benefits during bankruptcy, covered employees and retirees must be offered continuation coverage at their own expense. 29 U.S.C. §§ 1161-1167. If an employee's or retiree's spouse has access to an employee health plan, coverage may also be available through it.

Background (cont.): Treatment of Benefits Covered by a Collective Bargaining Agreement

Bankruptcy Code:

To terminate or change a CBA, the debtor must be able to show that:

- Prior to filing the motion, the debtor made a proposal based on the most complete and reliable information and that the proposal treats all affected parties fairly and equitably.
- The employees' authorized representative refused the proposal without good cause.
- The balance of the equities clearly favors rejection.**

National Labor Relations Act* and ERISA:

A CBA may require that an employer establish or maintain pension and health benefits for employees and/or retirees. These agreements generally cannot be changed without negotiations and agreement by both parties. PBGC may, however, terminate a DB plan (involuntary termination) or undo a termination—restoring the plan to the employer as the trustee—regardless of whether the plan is part of a CBA.

*The National Labor Relations Act is the primary law governing relations between unions and employers in the private sector. In the airline and railroad industries, labor relations are regulated by the Railway Labor Act (RLA). Under the RLA, CBAs do not expire but, rather, become amendable.

**Courts may consider various criteria in evaluating the balance of equities, including the likelihood of an employer's liquidating if the CBA is not rejected or other creditors' claims.

Background (cont.): Other Key Changes in BAPCPA

- Increased the amount of wages and benefits allowed as a priority claim (those paid before other unsecured claims) from \$4,925 per covered employee earned within 90 days of the bankruptcy to \$10,000 earned within 180 days prior to bankruptcy.
- Limited the amount of and approval procedures for key employee retention plans (KERP), including limiting certain retention or severance payments to executives to, for example, 10 times the average amount of similar payments to nonmanagement employees.
- Shortened the possible exclusivity period—where debtors have the exclusive right to file a reorganization plan—limiting the maximum exclusivity period to 18 months.

Background (cont.): Other Key Changes to ERISA

PPA amended ERISA and included several provisions specifically related to the treatment of pension plans in bankruptcy, including:

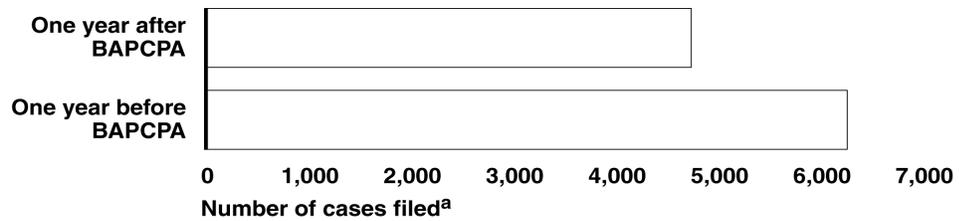
- Made permanent the \$1,250 per participant premium, added by the Deficit Reduction Act of 2005, that an employer is required to pay to PBGC if its DB plan is terminated during chapter 11 bankruptcy. These employers are to pay this premium for 3 years after they emerge from bankruptcy.
- For terminated DB plans, PPA changed the date used to calculate the pension guarantee from the plan termination date to the bankruptcy petition filing date.
- In response to financial weakness of the commercial airline industry, allowed an alternative funding schedule for airlines' DB plans. Airlines may amortize their unfunded liabilities over 17 years if benefit accruals are frozen or 10 years if benefit accruals are not frozen.
- Taxed benefits set aside to prefund certain deferred compensation plans for top executives—known as nonqualified plans—if, among other things, the employer is in bankruptcy.

Background (cont.): Role of Federal Agencies

- The Department of Justice's U.S. Trustee Program
 - Oversees the administration of bankruptcy cases and private trustees.
 - The Department of Labor's Employee Benefits Security Administration
 - Administers and enforces the fiduciary, reporting, disclosure, and other provisions of ERISA.
 - Administrative Office of the United States Courts
 - Among other things, provides a wide range of administrative, legal, financial, management, program, and information technology services to the federal courts.
 - Pension Benefit Guaranty Corporation
 - Insures certain DB pension plans and becomes statutory trustee of terminated plans when an employer has insufficient assets to pay the benefits that participants are owed.
-

Background (cont.): Information on All Chapter 11 Bankruptcies Filed

Figure 1: Chapter 11 Bankruptcy Filings in the Year Before and the Year After BAPCPA's Effective Date (October 17, 2005)



Source: GAO analysis of AOUSC data.

^aThis includes the 115 public companies that we reviewed.

Effects of Recent Legislation

The Effects of Recent Legislation on Employers' Decisions to Modify Benefits Are Difficult to Distinguish from Those of Other Factors

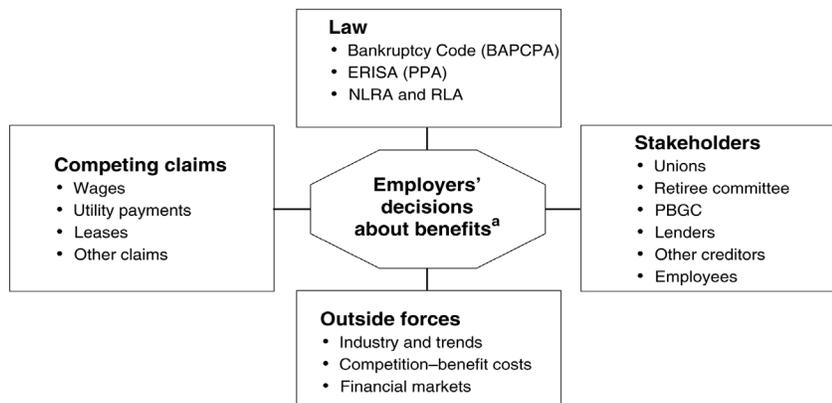
- Bankruptcy professionals generally agreed that BAPCPA will have a limited effect on employers' decisions to modify benefits.
- Changes included in the PPA, such as the change in termination date and to funding rules, may affect employers' decisions to maintain their DB plans.
- Several other factors such as market conditions and benefit obligations can also influence employers' decisions in bankruptcy.

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Effects of Recent Legislation

Many Factors Affect Employers' Benefit Decisions

Figure 2: Factors That May Affect Employers' Decisions Regarding Benefits



Source: GAO.

^aWhile similar factors contribute to employers' decision making, the facts and circumstances of cases are highly case-specific. Additional factors such as tax issues or securities law disclosure issues may also influence employers' decisions during reorganization.

Effects of Recent Legislation

BAPCPA Had Few Provisions Affecting Treatment of Benefits

Bankruptcy professionals identified two changes directly affecting benefits in chapter 11.

- **Possible reinstatement of retiree health benefits modified within 180 days prior to filing for bankruptcy:** Some professionals stated this was a positive change; others stated that it addressed a nonexistent problem. Bankruptcy professionals said that they were not aware of any cases filed since BAPCPA involving such retiree benefit changes.
 - **Increase in the amount of employee wages and benefits considered priority payments:** While this change increased the potential amount of funds available to pay wages and benefits, professionals varied in their opinions of how this change would affect benefits. Some stated it may not be enough and would all be used on wages; others stated most participants would not reach the \$10,000 limit, with the exception of highly paid employees.
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Effects of Recent Legislation

BAPCPA Had Few Provisions Affecting Treatment of Benefits (cont.)

Bankruptcy professionals identified some provisions not directly related to benefits that might affect how employers treat benefits and the amount of benefits that employees receive.

- **Lease assumptions and utility payments:** The tightening of the time for assuming leases and enhanced protection for utility payments could contribute to employers seeking savings elsewhere (including by modifying benefits).
- **Key employee retention plans:** Several professionals said that the restrictions on KERPs—which were meant, in part, to curb employers from awarding large executive bonuses while cutting employees’ benefits—may not be effective. For example, employers can try to circumvent the provision by proposing incentive plans rather than retention plans.* Others felt that the restrictions were too stringent and could hinder successful reorganization.
- **Exclusivity period:** Shortening the time for filing a reorganization plan decreases the amount of time employers have to negotiate and make decisions, which could cause some employers to cut benefits without exploring alternatives. Employers are just now reaching the 18-month exclusivity limit, so the effect of the change is unknown.

*A recent case concerning Dana Corporation dealt with KERPs. The Bankruptcy Court for the Southern District of New York ruled that the original proposed incentive plan was a “pay to stay” retention plan subject to the restrictions established by BAPCPA and not a “produce value for pay” plan, i.e., a true incentive plan. *In re: Dana Corp.*, 351 B.R. 96 (Bankr. S.D.N.Y. 2006). Dana modified its plan by incorporating more stringent performance targets, and the court approved it. *In re: Dana Corp.*, 358 B.R. 567 (Bankr. S.D.N.Y. 2006).

Effects of Recent Legislation

PPA Had Some Provisions That May Affect the Treatment of DB Plans in Bankruptcy

- **Termination premium:** While this premium may provide additional revenue to PBGC, some professionals stated the cost could cause more employers to liquidate their assets instead of reorganizing—generally eliminating any employee benefit obligations.
 - **Termination date:** Some professionals stated that this could reduce an individual's benefit because of the decrease in time used to calculate the guaranteed benefits. The change may also reduce an employer's incentive to delay plan termination. For example, PBGC officials said that prior to PPA, employers could have delayed plan termination, increasing the amount for which PBGC was liable.
 - **Airline “stretch-out”:** Some professionals stated this contributed to Delta Air Lines maintaining plans for its ground employees and Northwest Airlines maintaining its employee plans throughout the bankruptcy process. However, it is unknown whether either will be able to fund its plans by the end of the stretch-out period.
-

Effects of Recent Legislation

Professionals Cited Other Factors That May Influence Employers' Treatment of Benefits

- Competing pressures between maintaining benefits and long-term stability after reorganization.
- Employers with high employee benefit costs and in specific industries—such as airlines or automotive manufacturing—may find it difficult to compete given the potential cost of these obligations.*
- Lenders may affect employers' treatment of benefits. For example, in at least one case, the lender would only provide financing if the DB plan were terminated. In another instance, an employer was able to retain its DB plan because it received additional financing.
- The composition and actions of the creditors or creditors' committee may affect employers' treatment of benefits.
- The cost and risk factors of providing benefits also influence employers' decisions to modify these benefits outside the bankruptcy process.**

*See GAO, *Commercial Aviation: Bankruptcy and Pension Problems Are Symptoms of Underlying Structural Issues*, GAO-05-945 (Washington, D.C.: Sept. 6, 2005).

**See GAO, *Employer-Sponsored Health and Retirement Benefits: Efforts to Control Employer Costs and the Implications for Workers*, GAO-07-355 (Washington, D.C.: Mar. 30, 2007).

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval

- More is known about the extent to which employers make benefit changes subject to court approval, including changes to:
 - DB pensions,
 - retiree health benefits, and
 - benefits covered by a CBA.

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Extent of Benefit Modifications

More is Known about Benefit Changes Subject to Court Approval: DB Plans

- Employers may consider terminating DB plans in bankruptcy because they are a large liability. However, while DB plan obligations topped several billion dollars for some employers, not all of them terminated their plans.
 - Several employers froze their DB plans prior to filing for bankruptcy.
 - In the year prior to and after BAPCPA, 20 of the 115 employers offered at least one DB plan:
 - 9 of these terminated their plans in bankruptcy (4 post-BAPCPA cases);
 - 3 of these have terminations pending (2 post-BAPCPA cases); and
 - 8 of these emerged or are planning to emerge with their plans intact (2 post-BAPCPA cases).
-

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: DB Plans

The employers that terminated pension plans during bankruptcy resulted in an estimated \$1.4 billion liability to PBGC, as shown below.

Table 1: Liability of DB Pension Terminations and Number Affected, as of Plan Termination Date

Plan sponsors filing for bankruptcy between October 17, 2004, and October 17, 2006	Pension plan termination finalized date	Unfunded guaranteed benefit liability (UGL) (dollars in millions)	Number of employees and retirees affected	Funded percentage (assets/benefit liabilities)
Amcast Industrial Corporation	07/01/05	\$83.0	6,200	53%
Collins & Aikman Corporation	03/29/07	161.0	21,000	42
Delta Air Lines, Inc. ^a	09/02/06	944.6	13,294	35
Commercial Furniture Group (Falcon Products) ^b	08/31/05	31.8	2,432	48
Huffy Corporation	01/14/05	80.0	3,700	53
Oneida LTD	05/01/06	48.3	1,900	69
Tom's Foods Inc.	12/06	42.5	3,000	49
Tropical Sportswear Int'l Corporation	08/18/05	5.4	977	55
USA Commercial Mortgage	01/12/07	0.6	30	56
Total		\$1,397.2	52,533	

Source: PBGC.

^aThe termination of Delta's pilots' plan represents the sixth largest claim in PBGC's history.

^bPBGC disputed the termination of one of Falcon's DB plans, but lost the appeal. The termination of this plan which covers 72 employees and represents a UGL of about \$974,000 is pending.

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: DB Plans

- Employees may still receive some DB benefits when a DB plan is terminated.
- While covered participants receive a pension benefit from the PBGC, the level of guarantee varies.* PBGC officials stated that most individuals receive their full benefit if the pension is terminated. However, the percentage receiving their full benefit when a plan terminates has decreased. This is, in part, attributable to the rise in terminations of airline pilots' pension plans.**
- According to PBGC, it does not collect data on the percentage of benefits that individuals receive.
- Some employers that terminated their DB plans created "follow-on" DC plans or increased their contributions to an existing DC plan. For example, Delta Air Lines, which recently emerged from bankruptcy, increased its DC plan contribution.
- PBGC may file claims against the debtor for the unfunded benefit liability amount, among other things. PBGC officials stated that PBGC uses a portion of the recoveries on claims to pay non-guaranteed benefits to plan participants.

*The maximum amount that PBGC guarantees is set each year under provisions of ERISA. This guarantee amount may be higher or lower, in part depending on the age of the individual receiving benefits.

**Pilots typically have higher pension accruals and retire at an earlier age. These two factors contribute to a potential reduction in their pension benefits when they are derived from PBGC.

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: Retiree Health Benefits

- Several bankruptcy professionals stated that employers consider changing retiree health benefits, in part, because they often carry a high cost and are not usually prefunded.
 - In the year prior to and after BAPCPA, 18 of the 115 employers reported retiree health benefit obligations.
 - 5 of these (one post-BAPCPA case) sought to modify benefits. Several others changed their benefits prior to bankruptcy.

Table 2: Information on Employers That Filed to Modify Retiree Health Benefits, Year Prior to Filing for Bankruptcy (dollars in millions)

Employer ^a	Other postretirement benefit obligations (OPEB) ^b	Total employer liabilities
Delphi Corporation	\$9,605	\$19,934
Delta Air Lines, Inc.	1,835	26,789
Dana Corporation	1,543	6,608
Northwest Airlines Corporation	926	16,866
Tower Automotive, Inc.	173	2,681

Source: Most recently available SEC 10-k filings prior to bankruptcy.

^aAllied Holdings, Inc., withdrew its motion to terminate certain nonunion retiree health benefits.

^bPostemployment benefit obligations across companies are not comparable because companies have wide latitude in the assumptions they use to calculate these obligations. Other postretirement benefits may include medical, life, dental, vision, or other insurance benefits.

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: Retiree Health Benefits

- Several bankruptcy professionals stated that modifications to retiree health benefits will have the biggest effect on individuals because these benefits generally are not insured by the government or funded and held in trust. Similarly, participants do not generally have statutory vesting rights.
- To help mitigate some of the potential negative effect on participants, some employers created a fund to help pay for certain retiree health benefits. For example, the Dana Corporation and Tower Automotive both set up voluntary employee beneficiary associations (VEBA)* and funded these accounts for retirees whose health coverage was eliminated.
- Some federal provisions such as those requiring employers to offer continuation coverage, or the Health Coverage Tax Credit (HCTC),** may also help to mitigate the potential negative effect.

*VEBA's are trusts that an employer may establish to fund retiree health benefits such as medical, dental, disability, severance, and life insurance. According to Treasury, VEBA assets are not available to creditors in bankruptcy.

**The HCTC is available to individuals age 55 or over who are currently being paid PBGC benefits or received a lump sum from PBGC after August 5, 2002, among other groups. The tax credit can be used to pay 65 percent of the cost of qualified health insurance.

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: CBAs

- The presence of a collective bargaining agreement adds another layer of complexity to how employers may treat benefits. Twenty-eight of the 115 public employers reported having at least some employees who were represented by a union.
 - Eight of the 28 employers that reported union representation sought to modify or reject their CBAs.
 - Generally, employers and unions negotiate the changes to the CBA. Negotiations often include wage and benefit cuts.
 - Many of the employers terminating their DB plans, and all 5 employers modifying retiree health benefits had CBAs.
 - Changes to wages or benefit packages may be made to the CBA leading up to bankruptcy filing.
-

Extent of Benefit Modifications

More Is Known about Benefit Changes Subject to Court Approval: CBAs

Table 3: Examples of Changes Made to Collective Bargaining Agreements

Employer	Examples of CBA changes
ATA Holdings Corporation	<ul style="list-style-type: none"> • 20 percent wage cut • Stopped some employer contributions to the DC plan
Dana Corporation	<ul style="list-style-type: none"> • Terminated nonpension retiree benefits for autoworker and steelworker union employees and started a VEBA • Froze DB plan for employees with less than 20 years of services and replaced it with a DC plan • Changed wage structure
Delphi Corporation^a	<ul style="list-style-type: none"> • Froze DB pensions and started a 401(k) plan with a 7 percent employer contribution for Delphi employees • Terminated other postretirement benefits and provided an additional 1 percent employer contribution to the 401(k) plan for Delphi employees
Delta Air Lines, Inc.	<ul style="list-style-type: none"> • Terminated pilots' DB plan
Falcon Products, Inc.	<ul style="list-style-type: none"> • Terminated DB plan (previously froze nonunion DB plan) and started a 401(k) with no match • Modified medical benefits • Modified work rules
FLYi, Inc.	<ul style="list-style-type: none"> • Granted interim relief to modify CBAs (under §1113(e)) through liquidation
Northwest Airlines Corporation	<ul style="list-style-type: none"> • 21 percent wage reduction for the flight attendants' employee union • Froze DB plan and replaced it with DC plan that included a 5 percent employer contribution • Machinists' union employees—replacement DB plan • Increases to unions' health premiums ranging from 5 percent to 25 percent depending on the union affected
Tower Automotive, Inc.	<ul style="list-style-type: none"> • 4 percent wage reduction • Froze DB pensions and started a 401(k) with a 2-5 percent employer contribution depending on the union affected

Source: GAO review of court documents and news articles.

^aDelphi was spun off from General Motors (GM) in 1999, and the separation agreement included language that made GM contingently liable for postretirement benefits for Delphi employees who worked for GM before the separation. Some eligible Delphi employees retain their DB pension benefits. GM provides postretirement medical and employer paid postretirement life insurance to some eligible Delphi employees.

Extent of Benefit Modifications

Limited Information Is Available on Benefit Changes Not Subject to Court Approval

- In most of the cases we reviewed, employers received court approval—usually in first day orders—to continue employee benefits. While court approval allows employers to continue their benefit programs, it may not require them to do so.
- Employers may stop making matching contributions during bankruptcy or seek to terminate their DC plans, but absent a contractual agreement often do not file for approval from the court. Several of the employers halted their contributions (at least temporarily) prior to bankruptcy.
- Some professionals stated that employers may miss DC plan or health plan contribution payments or not remit pension contributions to the trusts in a timely manner, and this could lessen individuals' benefits. According to EBSA officials, employee contributions not remitted to the trust are sometimes difficult to track.
- To the extent an employer fails to remit certain employee benefit plan contributions, such as DC plan or health plan contributions owed, EBSA may file a proof of claim and/or commence an adversary proceeding against a debtor.

Concluding Observations

- Many stakeholders are involved in the decision to modify benefits, and striking a balance between maintaining employee benefit programs and successful reorganization can be difficult for all parties involved.
- While additional time may be needed to more fully understand how some aspects of BAPCPA and PPA affect benefits in specific cases, the full impact of both pieces of legislation on individuals' benefits or federal agencies may never be known because employers' decisions to modify benefits are part of a more complex process, and bankruptcy and pension laws are only part of this process.

Appendix II: Select Information on Bankruptcy Cases Reviewed

(Dollars in millions)

Company name ^a	File date	Total assets	Total liabilities	DB Obligations at Bankruptcy ^{b,c,d}	Other postretirement benefit obligations at bankruptcy ^{b,c}	Collective bargaining agreement
Post-BAPCPA cases						
Sea Containers Ltd.	2006-10-15	2.4	1.9			
Delta Woodside Industries, Inc.	2006-10-13	38.2	2.2			
Anvil Holdings, Inc.	2006-10-02	108.3	231.1			
Global Power Equipment Group, Inc.	2006-09-28	366.9	204.5			
The Rowe Companies	2006-09-18	134.2	86.6			
Naturade, Inc.	2006-08-31	12.0	13.2			
Portrait Corporation of America, Inc.	2006-08-31	0.2	0.3			
Unicomp, Inc.	2006-08-25	NA	NA			
Fischer Imaging Corporation	2006-08-22	14.7	9.7			
Deja Foods, Inc.	2006-08-14	NA	NA			
Vesta Insurance Group, Inc.	2006-07-18	1,980.8	1,880.7			
OneTravel Holdings, Inc.	2006-07-07	84.3	76.6			
Image Innovations Holdings Inc.	2006-07-06	7.5	2.2			
Transcapital Financial Corporation	2006-06-19	NA	NA			
America Capital Corporation	2006-06-19	NA	NA			
Werner Holding Co.	2006-06-12	283.6	463.7	67.9	3.3	Yes
Airnet Communications Corporation	2006-05-22	29.0	8.1			
Silicon Graphics, Inc.	2006-05-08	452.1	643.3			
IDI Global, Inc.	2006-04-17	2.2	3.6			
USA Commerical Mortgage Company	2006-04-13	NA	NA			
Prosoft Learning Corporation	2006-04-12	8.6	4.8			
Verilink Corporation	2006-04-09	42.3	26.6			
Trans-Industries, Inc.	2006-04-03	15.7	13.3			Yes
SeraCare Life Sciences, Inc.	2006-03-22	89.1	43.4			
Oneida Ltd.	2006-03-19	300.2	333.5	79.6	2.5	Yes
Televideo, Inc.	2006-03-14	9.1	14.2			
The Plusfunds Group, Inc.	2006-03-06	NA	NA			
Dana Corporation	2006-03-03	9,019.0	6,608.0	2,151.0	1,543.0	Yes
Integrated Electrical Services, Inc.	2006-02-14	580.9	437.8			
Glycogenesys, Inc.	2006-02-02	3.1	1.8			
Large Scale Biology Corporation	2006-01-09	12.8	1.1			
Calpine Corporation	2005-12-20	27,216.1	22,235.0			Yes

**Appendix II: Select Information on
Bankruptcy Cases Reviewed**

(Dollars in millions)

Company name^a	File date	Total assets	Total liabilities	DB Obligations at Bankruptcy^{b,c,d}	Other postretirement benefit obligations at bankruptcy^{b,c}	Collective bargaining agreement
Desert Health Products, Inc.	2005-12-15	0.3	4.6			
Syndicated Food Service International, Inc.	2005-12-14	9.0	11.5			
FLYi, Inc.	2005-11-07	677.7	510.5			Yes
21st Century Technologies, Inc.	2005-11-01	13.5	2.0			
McLeodusa Incorporated	2005-10-28	1,025.8	997.2			
Refco, Inc.	2005-10-17	NA	NA			
Pre-BAPCPA cases						
The Boyds Collection, Ltd.	2005-10-16	223.0	85.0			
Pliant Corporation	2006-01-03	820.9	1,455.8	87.2		Yes
Gardenburger, Inc.	2005-10-14	19.9	101.8			
Dynamic Sciences International	2005-10-14	NA	NA			
Cyber Care, Inc.	2005-10-14	NA	NA			
Jacobson Resonance Enterprises, Inc.	2005-10-13	0.3	2.4			
Stassi Interaxx, Inc.	2005-10-13	NA	NA			
Delphi Corporation	2005-10-08	16,593.0	19,934.0	12,872.0	9,605.0	Yes
Epixtar Corp.	2005-10-06	18.0	18.8			
Tectonic Network, Inc.	2005-10-03	10.8	6.4			
GB Holdings, Inc.	2005-09-29	217.0	181.7			Yes
Home Directors, Inc.	2005-09-28	8.7	2.7			
Thermoview Industries Inc.	2005-09-26	30.2	33.8			Yes
Entergy New Orleans, Inc.	2005-09-23	662.8	488.5	78.4	54.8	Yes
Foamex International	2005-09-19	645.7	1,004.0	143.9	1.2	Yes
Northwest Airlines Corporation	2005-09-14	14,042.0	16,866.0	9,245.0	926.0	Yes
Delta Air Lines, Inc.	2005-09-14	21,801.0	27,597.0	12,100.0	1,835.0	Yes
Three-five Systems Inc.	2005-09-08	111.8	46.0			
Trans Max Technologies, Inc.	2005-09-08	1.8	2.4			
Arlington Hospitality, Inc.	2005-08-31	103.4	90.5			
Anchor Glass Container Corporation	2005-08-08	657.2	472.0	55.8	53.8	Yes
Teraforce Technology Corp.	2005-08-03	3.0	11.4			
Allied Holdings, Inc.	2005-07-31	421.5	463.1	52.9	15.9	Yes
Able Laboratories, Inc.	2005-07-18	104.3	8.0			
The Project Group, Inc.	2005-07-15	0.4	1.0			
Frontier Insurance Group, Inc.	2005-07-05	NA	NA			

**Appendix II: Select Information on
Bankruptcy Cases Reviewed**

(Dollars in millions)

Company name^a	File date	Total assets	Total liabilities	Obligations at Bankruptcy^{b,c,d}	DB postretirement benefit obligations at bankruptcy^{b,c}	Other postretirement benefit obligations at bankruptcy^{b,c}	Collective bargaining agreement
Torch Offshore, Inc.	2005-01-07	169.9	99.2				
Aura Systems, Inc.	2005-06-24	17.8	20.7				
Heartland Technology, Inc.	2005-06-15	11.7	6.5				
Skyway Communications Holding	2005-06-14	7.0	4.1				
Proxim Corporation	2005-06-11	63.6	108.5				
Universal Automotive Industries, Inc.	2005-05-26	32.6	30.0				
Greentech USA, Inc.	2005-05-24	3.4	2.1				
Western Water Company	2005-05-24	16.9	9.9				
Global Environmental Energy Co.	2005-05-19	35.7	35.4				Yes
Collins & Aikman Corporation	2005-05-17	3,191.2	2,750.9	444.6		100.2	Yes
Certified HR Services Company	2005-05-12	NA	NA				
AAIPHARMA Inc.	2005-05-10	339.1	451.0				
Natural Golf Corporation	2005-05-10	1.2	2.2				
Composite Technology Corporation	2005-05-05	18.1	12.5				
Composite Solutions, Inc.	2005-05-05	914.1	900.5				
Summit National Group, Inc.	2005-04-21	NA	NA				
Eagle Picher Holdings, Inc.	2005-04-11	598.8	740.8	259.8		9.3	Yes
Southern Investors Service Company	2005-04-08	2.4	8.6				
Tom's Foods Inc.	2005-04-06	101.3	108.4	57.1			
Claremont Technologies Corporation	2005-03-25	0.0	0.3				
Intercell International Corporation	2005-03-16	0.3	0.3				
V-one Corporation	2005-03-11	0.9	2.7				
WHX Corporation	2005-03-07	311.9	408.8	410.2		8.6	Yes
Skin Nuvo International, LLC	2005-03-07	NA	NA				
HealthEssentials Solutions, Inc.	2005-03-01	NA	NA				
Veritec Inc.	2005-02-28	1.7	3.3				
Las Americas Broadband Inc.	2005-02-28	0.8	3.8				
Terra Telecommunications Corp	2005-02-22	NA	NA				
WINN-DIXIE Stores, Inc.	2005-02-21	2,618.9	1,701.5	68.8		17.0	
Syratech Corporation	2005-02-16	118.6	174.4				
Tower Automotive, Inc.	2005-02-02	2,560.8	2,681.7	280.7		173.0	Yes
Falcon Products, Inc.	2005-01-31	266.5	228.0	41.7			Yes
American Business Financial Services, Inc.	2005-01-21	1,042.9	1,031.0				

**Appendix II: Select Information on
Bankruptcy Cases Reviewed**

(Dollars in millions)

Company name^a	File date	Total assets	Total liabilities	DB Obligations at Bankruptcy^{b,c,d}	Other postretirement benefit obligations at bankruptcy^{b,c}	Collective bargaining agreement
First Virtual Communications, Inc.	2005-01-20	6.8	8.1			
SGD Holdings, LTD	2005-01-20	6.8	4.4			
American Banknote Corporation	2005-01-19	184.3	178.0		1.5	
Friedman's Inc.	2005-01-14	NA	NA			
Ultimate Electronics, Inc.	2005-01-11	336.2	137.3			
Acceptance Insurance Companies, Inc.	2005-01-07	279.3	376.7			
Trico Marine Service, Inc.	2004-12-21	585.2	443.2			
The MIIX Group, Inc.	2004-12-20	1,278.6	1,557.2	13.6		
Tropical Sportswear Int'l Corporation	2004-12-16	214.3	191.5	10.7		Yes
Yukos Oil Company	2004-12-14	NA	NA			
Applied Extrusion Technologies, Inc.	2004-12-01	407.5	413.3			Yes
Amcast Industrial Corporation	2004-11-30	230.3	272.3	114.4	0.6	Yes
Trump Hotel & Casino Resorts, Inc.	2004-11-21	1,396.5	1,482.9			Yes
Shreveport Capital Corporation	2004-10-30	141.7	164.1			
eB2B Commerce Inc.	2004-10-27	NA	NA			
ATA Holdings Corporation	2004-10-26	651.1	1,571.6			Yes
Epicus Communications Group, Inc.	2004-10-25	7.6	16.9			
Huffy Corporation	2004-10-20	293.0	220.3	110.4	4.2	Yes

NA = Not Available

Source: GAO review of SEC 10-k filing data for the most recent year available prior to employer's bankruptcy filing and PACER documents.

^a Company data may include information on all of its operating subsidiaries.

^b Benefit obligations may not be comparable across companies, because companies may have used different assumptions in calculating these obligations.

^c Blank cells means that no DB benefit obligations or OPEBs for non-executives were reported.

^d Some of the DB plans may have been terminated prior to bankruptcy.

Appendix III: Comments from the Pension Benefit Guaranty Corporation



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

SEP 04 2007

Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to comment on the draft version of your report entitled, "Employer-Sponsored Benefits: Many Factors Affect the Treatment of Pension and Health Benefits in Chapter 11 Bankruptcy."

We especially appreciate your work in reviewing the factors that may impact decisions to seek to terminate a defined benefit pension plan or modify its provisions during the bankruptcy process. Your efforts are particularly noteworthy given the complexity of the subject.

PBGC is monitoring the effects of both Bankruptcy Abuse Prevention and Consumer Protection Act and Pension Protection Act of 2006 on PBGC's insurance programs. To help protect those programs, PBGC actively monitors the financial health of plan sponsors that are in or facing bankruptcy as well as related corporate transactions.

We look forward to continuing to work with your office in highlighting matters which may impact the defined benefit pension plans which PBGC insures.

Sincerely,

Charles E. F. Millard
Interim Director

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

Barbara D. Bovbjerg, Director (202) 512-7215

Staff Acknowledgments

The following staff members made major contributions to this report: David R. Lehrer, Assistant Director; Nyree M. Ryder, Analyst-in-Charge; Mee-Yong Rao; John J. Larsen; Susannah L. Compton; Gloria Hernandez-Saunders; Walter K. Vance; and Craig H. Winslow.

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