United States Government Accountability Office

Report to the Ranking Member, Committee on Education and the Workforce, House of Representatives

September 2023

RETIREMENT PLANS

Improved Communication Needed on Church Plan Eligibility for Federal Insurance Coverage

Accessible Version

GAO-23-105080

GAO Highlights

Highlights of GAO-23-105080,a report to the Ranking Member, Committee on Education and the Workforce, House of Representatives

Why GAO Did This Study

Church plans are generally exempt from most ERISA requirements, including rules to fund plans, disclose information, and insure benefits. Media reports have described retirees losing benefits because their church plan was underfunded and uninsured. GAO was asked to review church plans. This report addresses (1) data available on church plans and plan administration, (2) federal and state roles regarding church plans, and (3) expected outcomes for participant benefits from church plan litigation.

GAO analyzed aggregated tax data, federal employer data, and data provided by church plan sponsors and administrators; reviewed relevant federal laws, regulations, and agency guidance; and selected five states for review, based in part on states' oversight activity of church plans. GAO also conducted a non-generalizable review of four cases where employers provided a church plan and filed for bankruptcy between 2005 and 2021; and reviewed three settled civil lawsuits brought by church plan participants who alleged underfunding and benefit cuts by the sponsor and that had settlement agreements approved by the court. GAO interviewed officials from churches and denominations and from federal and state agencies, and industry experts.

What GAO Recommends

GAO recommends PBGC preemptively communicate with potential church plans to inform them of federal rules governing their plans and eligibility for insurance coverage under federal law. PBGC concurred and described actions to address the recommendation.

View GAO-23-105080. For more information, contact Tranchau (Kris) T. Nguyen at (202) 512-7215 or nguyentt@gao.gov.

September 2023

RETIREMENT PLANS

Improved Communication Needed on Church Plan Eligibility for Federal Insurance Coverage

What GAO Found

Church plans are retirement plans sponsored by a church or church-associated organization. Because sponsors of church plans are generally exempt from reporting requirements in the Employee Retirement Income Security Act of 1974 (ERISA), available data are limited. According to an Internal Revenue Service (IRS) analysis of 2019 tax filings, the most current data available at the time of our analysis, nearly 33,000 church employers reported plan contributions from 589,000 participants. These data do not include church-associated entities, such as hospitals or schools. GAO obtained documentation from selected church plan sponsors and administrators for 2018-2022 showing these plans held over $89 billion in assets. Employers in church-associated healthcare and education organizations also offer these plans. Officials representing four denominations said the ERISA church plan exemption provided certain flexibilities, such as using religious doctrines to help guide their investments.

Federal involvement with church plans is limited; states can also provide oversight. The IRS, if asked by a sponsor, can determine if a plan qualifies as a church plan. Church plans are generally ineligible for federal insurance from the Pension Benefit Guaranty Corporation (PBGC). However, GAO identified 120 potential church plans that paid PBGC premiums in 2018. PBGC determined the eligibility of 11 of these plans, which it does generally at the plan's request (see fig.). Despite possibly not insuring these plans, PBGC does not communicate with potential church plan sponsors that they may be paying premiums in error. Until PBGC takes steps to preemptively contact potential church plans that pay premiums to the agency, these plans may continue to pay premiums erroneously and remain unaware of their potential ineligibility for PBGC insurance. For church plans that are exempted from ERISA, states can have a potential role in their oversight. GAO found that two of the states in its review reported enacting laws that apply to church plans.

Pension Benefit Guaranty Corporation (PBGC) Policy Determining Defined Benefit Plan Insurance Coverage

Source: PBGC documentation and interviews with PBGC officials. GAO (icons). | GAO-23-105080

Expected outcomes for church plan participants varied among the selected bankruptcy cases and settlement agreements GAO reviewed. In the bankruptcy cases reviewed, participant benefits were expected to be protected and kept whole at pre-bankruptcy levels to the extent they were funded and vested at the time their employer filed for bankruptcy. In the settlement agreements reviewed, participants who had allegedly lost benefits pursued litigation to compel sponsors to sufficiently fund their church plans. Settlements in these cases awarded money to participants to help protect their benefits and in some cases included agreements to provide participants financial disclosures similar to those required by ERISA.

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Abbreviations

DOL	Department of Labor
EIN	Employer Identification Number
ERISA	Employee Retirement Income Security Act of 1974
IRC	Internal Revenue Code
IRS	Internal Revenue Service
OAG	Office of the Attorney General
PBGC	Pension Benefit Guaranty Corporation
SEP	Simplified Employee Pension Plan
Treasury	U.S. Department of the Treasury

441 G St. N.W.
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September 29, 2023

The Honorable Robert C. “Bobby” Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives
Dear Mr. Scott:

Church plans are retirement plans that are established and maintained by churches or religious organizations, or by entities controlled by or associated with a church-associated organization, such as hospitals and universities. These churches and church-associated organizations are often the sponsor of these church plans. Church plans are generally exempted from many provisions of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, although they may be subject to state laws and oversight by state agencies.[1] ERISA establishes minimum standards and requirements for private-sector employee benefit plans, including employer-sponsored defined benefit and defined contribution retirement plans, to protect the interests of plan participants and beneficiaries.[2] Church plans are generally exempt from many of ERISA’s substantive requirements, including its rules relating to funding, participating and vesting, reporting and disclosure, and fiduciary responsibility. As a result, church plans generally do not provide certain

[1]29 U.S.C. § 1003(b)(2). For reporting purposes, we will refer to these plans as “church plans” and their sponsoring organizations as “churches or “church-associated organizations.” Church plans may be offered by other houses of worship, such as synagogues, mosques, or temples, as well as organizations controlled by or associated with them. Church plans may also be health and other welfare benefit plans. 29 U.S.C. § 1002(33)(C)(i). This report focuses on church plans that are retirement plans.

[2]ERISA, as amended, sets a framework for most employment-based retirement plans in private industry and provides protection for individuals and beneficiaries participating in these plans. See 29 U.S.C. § 1003. Employment-based retirement plans include defined benefit plans that traditionally promise to provide a benefit over the life of the participant, based on a formula specified in the plan that typically considers factors such as an employee’s salary, years of service, and age at retirement. See 29 U.S.C. § 1002(35). Employment-based plans also include defined contribution plans, such as 401(k) plans or 403(b) plans that allow individuals to accumulate retirement savings in an individual account based on employee and/or employer contributions, and the investment returns (gains and losses) earned on the account. See 29 U.S.C. § 1002(34). For reporting purposes, our references to “church plans” include both defined benefit plans and defined contribution plans unless otherwise clear from context.

ERISA-required reports to federal agencies and disclosures to participants that describe the plan. These plans are also generally not covered by the Pension Benefit Guaranty Corporation's (PBGC) insurance programs.[3]

Media reports and court cases have described allegations of retirees losing benefits because of underfunded and uninsured defined benefit plans that were established and maintained by churches or church-associated organizations. You asked us to examine church plans. This report addresses:

1. The extent to which data are available on church plans and what is known about plan administration;
2. The roles federal and state governments perform with respect to church plans; and
3. How expected outcomes in legal cases involving church plans affect participants' benefits.

To address these objectives, we reviewed relevant federal laws, regulations, and agency guidance. We interviewed officials from the U.S. Department of Labor (DOL), Internal Revenue Service (IRS), PBGC, and the Department of the Treasury (Treasury). We also interviewed representatives of different religious denominations, church plans, and lawyers, plan consultants, and actuaries who are familiar with these plans.[4]

To determine the extent to which data are available on church plans, we reviewed multiple sources of data. We analyzed tax filing data and data provided by plan officials. At our request, IRS provided an aggregate count of houses of worship offering defined contribution retirement plans

[3]The PBGC insurance programs are for defined benefit plans, not defined contribution plans. When a PBGC-covered single-employer defined benefit plan fails, or when a PBGC-covered multiemployer pension plan becomes insolvent, PBGC pays participants their earned benefits up to certain legal limits. A single-employer defined benefit plan is a plan sponsored by one employer. A multiemployer defined benefit plan is created through a collective bargaining agreement typically between two or more employers and a union. The employers are usually in the same or related industries, such as transportation, construction, mining, or hospitality.

[4]For reporting purposes, a representative of a religious denomination is an individual such as a clergy member representing their denomination in interviews. A church plan representative is an individual that works for an entity managing or administering a church plan and representing that plan(s) in interviews.

to employees. We also analyzed data from federal databases for specific industries, including healthcare and education, which identify church-associated organizations. The data we found to be reliable for the purposes of this objective was then used to estimate the number of church plans, participants, and assets as well as the universe of religious organizations that could potentially offer church plans. We also conducted a broad internet search for publicly available church plan data and documentation that allowed us to estimate the number of church plans, participants, and assets, and the universe of church-associated organizations that could potentially offer church plans to their employees. We found the data to be reliable for the purposes of our reporting.

Further, we identified and attempted to contact officials from the 11 largest denominations in the United States, representing over 55 percent of religious affiliations in the United States. The denominational officials that responded to our requests for an interview were from the Episcopalian, United Methodist, Lutheran, Presbyterian, and Southern Baptist denominations, which account for an estimated 27 percent of religious membership. Other denominations either did not provide contact information on their websites or did not respond to requests for an interview.

To understand the role of federal agencies with respect to church plans, we reviewed federal laws, regulations, and agency-specific information on their involvement with church plans. We also reviewed information reported by organizations to federal agencies offering what appear to be some type of church plan based on the plan name on Form 5500 (such as “church” or “temple”), which plans use to report information to the federal government, for 2018.[5] We found the data to be reliable for the purposes of our reporting.

To understand how selected states oversee church plans, we interviewed officials in California, New Jersey, New York, and Rhode Island, and received comments from officials in Illinois.[6] We selected these states based on recommendations made by subject matter experts and our own

[5]The Form 5500 was jointly developed by DOL, PBGC, and IRS so employee benefit plans could satisfy annual reporting requirements under Title I and Title IV of ERISA and the Internal Revenue Code. DOL publishes data from these forms that represent the central federal data source for ERISA-covered pension and retirement savings plans in the United States. Although church plans generally are not required to file the Form 5500, we reviewed these forms to see if any such plans had done so.

[6]Illinois officials provided information via email and we included these in our findings.

research. We included states within which church plans became insolvent or where plan sponsors filed for bankruptcy. In addition, we selected states known to have established some form of statutory requirement for these plans.

To provide insight into the potential outcomes for participant benefits in bankruptcy cases involving church plans, we conducted a non-generalizable review of bankruptcies filed by employers that provided a church plan to their employees. We reviewed bankruptcy cases filed from October 17, 2005—the effective date for most of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005—through August 2, 2021—the most recent at the time of our analysis. The 2005 law made significant changes to federal bankruptcy requirements, including provisions related to Chapter 11 business bankruptcies and the treatment of employee benefits during the bankruptcy process.[7]

From a list of 347 bankruptcies filed during period—identified based on company names sounding similar to churches or church-associated organizations—we reviewed bankruptcy filings to determine if a church plan was in existence at or around the time of the initial bankruptcy filing and whether we were able to identify in court filings estimated recovery percentages for how plan benefits were expected to be resolved through each case. We identified four cases for analysis that were determined to have met these criteria.

In addition, we conducted a review of three civil lawsuits involving church plans. We were alerted to these and other cases based on reporting by the media and interviews with agency officials. We focused our review on cases where church plan participants alleged plan underfunding and benefit cuts by their employer and plan sponsor, where the cases were resolved before or during our review, and where we found settlement agreements that were approved by the court in available court documentation. Because the nature of bankruptcy proceedings and civil litigation depends on the facts and circumstances of each individual case, the results of our analysis are not generalizable, but provide illustrative examples of potential outcomes for participant benefits from such cases.

[7]Bankruptcy is governed by a federal court procedure conducted under the U.S. Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. See generally Title 11 of the U.S. Code. Bankruptcy helps individuals and businesses eliminate or restructure debts they cannot repay and helps creditors receive some payment in an equitable manner. A business debtor may seek reorganization, governed by Chapter 11. A business that successfully reorganizes under Chapter 11 may continue some or all of its operations.

We also interviewed attorneys and academics with expertise in bankruptcy. (For more details on our scope and methodology, see appendix I).

We conducted this performance audit from March 2021 through September 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

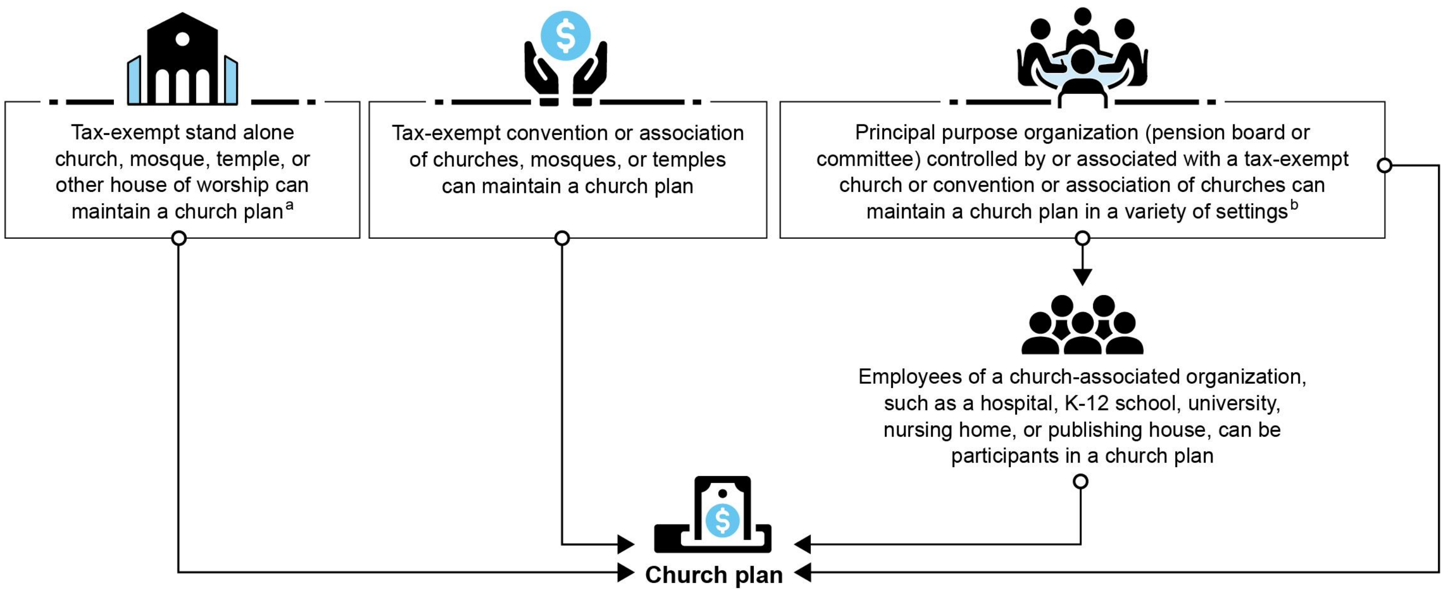
Federal law defines a church plan[8] as a plan established and maintained for its employees or beneficiaries by a church or by a convention or association of churches that are tax-exempt under Internal Revenue Code section 501(a).[9] This definition includes plans maintained by an organization whose principal purpose or function is the administration or funding of the plan for the employees of a church or convention or association of churches (e.g., a pension board that administers benefits for plan participants), if that organization is controlled by or associated with a church or a convention or association of churches. Therefore, church plans include retirement plans established by churches, as well as those maintained by church-associated organizations regardless of

[8]According to IRS guidance, church plans under the Internal Revenue Code can be classified as belonging to one of two general categories: (1) those that made an election under the Internal Revenue Code to have the plan treated as though it were not a church plan (commonly referred to as electing church plans); and (2) those that did not make an election under the Internal Revenue Code (commonly referred to as non-electing church plans).

[9]Statutory definitions of a church plan are found in both the Internal Revenue Code and ERISA. See 26 U.S.C. § 414(e) and 29 U.S.C. § 1002(33). Specifically, churches that meet the requirements of Internal Revenue Code section 501(c)(3) are exempt from taxation under the Internal Revenue Code. Churches that meet the requirements of Internal Revenue Code section 501(c)(3) are considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from IRS. See 26 U.S.C. § 508(c). According to the IRS, neither the Internal Revenue Code nor its underlying regulations define what constitutes a “convention or association of churches,” and this term is not limited in its application to a group of churches of the same denomination. See IRS Revenue Ruling 74-224.

whether the church established the plan (see fig.1).[10] Church plan sponsors generally do not need to obtain approval from any federal agencies to establish their retirement plan as a church plan. Church plans may be defined benefit plans or defined contribution plans; within defined contribution plans, sponsors of church plans offer 401(k) or 403(b) plans.[11]

Figure 1: Types of Organizations that Typically Sponsor Church Plans



Source: GAO analysis of federal requirements applicable to church plans. GAO (icons). | GAO-23-105080

[10]In 2017, the U.S. Supreme Court held that a plan maintained by an organization controlled by or associated with a church or a convention or association of churches, whose principal purpose or function is the plan's administration, funding, or both, for the employees of a church or a convention or association of churches, qualifies as a church plan regardless of who established it. See *Advocate Health Care Network v. Stapleton*, 581 U.S. 468, 483-84 (2017).

[11]A 401(k) plan is an employer-sponsored account-based retirement plan that allows individuals to accumulate tax-advantaged retirement savings in an individual account based on employee or employer contributions and the investment returns (gains and losses) earned on the account. 403(b) plans are account-based defined contribution plans sponsored by employers, and individuals who participate in the plans make investment decisions and bear the investment risk. These plans are often sponsored by public schools and certain tax-exempt organizations, such as churches and church-associated organizations. A 403(b) plan allows participants to defer a portion of their salaries to be held in the participants' individual account within the plan.

[a]Church plans are retirement plans that are established and maintained by a church or by a convention or association of churches that are tax-exempt under Internal Revenue Code section 501(a). See 26 U.S.C. § 414(e) and 29 U.S.C. § 1002(33), respectively.

[b]This definition includes plans "maintained by an organization whose principal purpose or function is the administration or funding of the plan for the employees of a church or convention or association of churches." 26 U.S.C. § 414(e) and 29 U.S.C. § 1002(33) This includes retirement plans established by churches, as well as those maintained by church-associated tax-exempt hospitals and universities, among others, regardless of whether the church established the plan.

Church plans are typically exempt from ERISA, including requirements related to funding, participation and vesting, reporting and disclosure, and fiduciary responsibility. If they wish to, a sponsor of a church plan may elect to have their plan be covered by certain provisions of ERISA and the Internal Revenue Code (a "section 410(d) election.")[12] Very few church plans elect such coverage, according to IRS officials. Specifically, ERISA provides minimum participation standards that require employees to be offered participation in their employer's qualified plan if they are at least age 21 or have at least 1 year of service.[13] ERISA's vesting rule requires participants' benefits to become non-forfeitable after a specified period of time.[14] ERISA requires plan fiduciaries to carry out their duties solely in

[12]26 U.S.C. § 410(d). The process for a church plan to become an ERISA-covered plan is referred to as making a "section 410(d) election." According to Treasury regulations, the election is made by attaching a statement to either (i) the annual return required under section 6058(a) with respect to the plan which is filed for the first plan year for which the election is effective, or (ii) a written request for a determination letter relating to the qualification of the plan under section 401(a), among others. The statement shall indicate (i) that the election is made under section 410(d) of the Internal Revenue Code, and (ii) the first plan year for which it is effective. Once made, the election is irrevocable and the plan will be treated as though it were not an exempt church plan. 26 C.F.R. § 1.410(d)-1. Plans that make this election are sometimes referred to as "electing" church plans and plans that do not make this election are sometimes referred to as "non-electing" church plans.

[13]26 U.S.C. § 410; 29 U.S.C. § 1052.Through the Protecting Americans from Tax Hikes Act of 2015, non-electing church plans are permitted to apply automatic contribution arrangements for its participants. The act supersedes any state law that restricts the ability of a non-electing church plan to have an automatic enrollment feature. Pub. L. No. 114-113, div. Q, § 336, 129 Stat. 2242, 3110–11.

[14]26 U.S.C. § 411; 29 U.S.C. § 1053. Sponsors of qualified non-electing church plans must comply with certain pre-ERISA statutory requirements.

the interest of plan participants and beneficiaries and with the same care and skill that a prudent person acting in a similar capacity would use.[15]

Church plan administrators also typically do not have to file an annual Form 5500, which provides information on plan participants and assets, and for defined benefit plans, information on plan funding and payments of PBGC premiums. These church plan administrators are also not required to provide certain disclosures to participants, such as a summary plan description or a notice of failure to meet minimum funding standards, since church defined benefit plans are generally not required to comply with ERISA's minimum funding and reporting and disclosure rules.[16] Because church plans are exempt from Title I of ERISA, DOL does not oversee or collect data from these plans. Church plans are also typically exempt from Title IV of ERISA, which provides for PBGC to guarantee the payment of benefits, up to statutory limits, to participants in terminated and insolvent defined benefit plans.[17] ERISA preempts state laws insofar as they "relate to" any ERISA-covered employee benefit plan. ERISA preemption would not apply in the context of church plans that are

[15]29 U.S.C. § 1104. Under ERISA, a fiduciary generally includes any person who exercises any discretionary authority or control over plan management; exercises any authority or control over the management or disposition of plan assets; renders investment advice with respect to plan money or property for a fee or other compensation; or has discretionary authority or responsibility for plan administration. See 29 U.S.C. § 1002(21)(A).

[16]ERISA generally requires that defined benefit plans meet minimum funding standards, which specify a funding target that must be met over a specified period of time. Specifically, a sponsor's minimum required contribution to the plan is based on the plan's target normal cost and the difference between the plan's funding target and the value of the plan's assets. The target normal cost for a plan means, for any plan year, the excess of (1) the sum of the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus (2) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over (3) the amount of mandatory employee contributions expected to be made during the plan year. The funding target is the present value of all benefits—including early retirement benefits—already accrued by plan participants as of the beginning of the plan year.

[17]Title IV of ERISA establishes PBGC and lays out its statutory role of insuring participant benefits. See 29 U.S.C. §§ 1301-1461. PBGC insures two types of defined benefit plans: single employer plans and multiemployer plans. A single employer plan is a defined benefit plan sponsored by one employer. A multiemployer plan is a defined benefit plan created through a collective bargaining agreement typically between two or more employers and a union. The employers are usually in the same or related industries, such as transportation, construction, mining, or hospitality.

exempted from ERISA, and states would have a potential role in the oversight of these church plans.[18]

Church plans typically are tax-qualified plans based on Internal Revenue Code requirements, which permit participants to defer income inclusion until benefits are received in retirement.[19] A tax-qualified plan is required to place retirement assets in a trust for the exclusive purpose of paying benefits to participants and beneficiaries.[20] Once assets are placed in such a trust, they no longer belong to the employer and may not be used for other business purposes, including to satisfy claims in bankruptcy proceedings.[21]

[18]If a church plan makes a section 410(d) election, ERISA would preempt such state laws as they relate to the plan. 29 U.S.C. § 1144(a).

[19]To be tax-qualified, private pension plans must satisfy a number of requirements. Tax qualification under the Internal Revenue Code requires employers to place assets into a trust for the exclusive benefit of employees and for the purpose of paying participant benefits. Non-electing church plans are exempt from many of the Internal Revenue Code's section 401(a) qualification requirements otherwise applicable to ERISA-covered plans.

[20] 26 U.S.C. § 401(a).

[21]26 U.S.C. § 401(a)(2). According to DOL, provisions under ERISA and the Internal Revenue Code impose funding standards on defined benefit plans. They also require that plan assets, including account balances of participants and beneficiaries in defined contribution plans, be kept separate from an employer's business assets, and generally held in trust or in an insurance contract. Thus, according to DOL officials, if an employer declares bankruptcy, the retirement plan assets should be separate from the company's assets and not be subject to claims by the company's creditors. In contrast, in the case of church plans, which are not subject to Title I of ERISA, those funding requirements generally are not applicable. However, church plans are still required to comply with certain provisions of Internal Revenue Code section 401(a) related to placing assets into a trust for the exclusive benefit of employees in order for the plan to be tax-qualified, according to IRS guidance. IRS officials said that the exclusive benefit rule under section 401(a) would protect church plan assets from creditors during a bankruptcy case.

Limited Data are Available on Church Plans, and Plan Officials Reported Flexibilities in Plan Administration

Available Data Provide Incomplete Information, but Indicates Sizable Scope of Church Plans Across Different Industries

We found that limited and disparate data are available on the number of church plans, participants, and amount of assets in these plans. Federal data on these plans are limited because church plans are generally not required to report under Title I of ERISA. Thus, Form 5500 data do not capture these plans. Nonetheless, data from different sources show a significant presence of church plans. These plans hold billions of dollars in assets and cover at least hundreds of thousands of participants across tens of thousands of organizations in different industries—including healthcare, childcare, day care for the elderly and people with disabilities, substance abuse treatment, residential care, as well as postsecondary and K-12 education.

Denominational data on church plans. The sample of denominational representatives we spoke to and documents we obtained from denominational websites reported a combined 72 church plans covering about 82,000 employers. These plans were holding $89.3 billion in assets and covered a total of 489,922 participants, including retirees and beneficiaries. (See table 1.) To further understand the prevalence of church plans, we sought to identify plan information directly from plan officials. Our goal was to find plan information that reflected the distribution of religious denominations in the United States. According to plan officials, some of these plans are sponsored by higher-level religious organizations—such as a General Assembly—that then allow lower-level organizations—such as an individual house of worship or school—to participate in the plan.[22] For example, the Michigan Catholic Conference Lay Employees Retirement Plan is a church plan that covers multiple Catholic dioceses and is available to Catholic Church organizations in the

[22]In some instances, a church established its own corporation to sponsor and administer church plans for their organizations, according to plan officials.

state of Michigan, according to information found on the Michigan Catholic Conference website.

Table 1: Plan Information Provided by 28 Denominational Organizations 2018–2022

Measure	Amount	Number of denominational organizations reporting
Plans	72	Two of the 28 organizations did not provide a total count of plans, but offer at least one.
Employers	82,361	Eight of the 28 organizations reported the number of employers their plans serve.
Participants	476,538	Eleven of the 28 organizations included a participant count for one or more of their plans.
Assets	$89.3 billion	All 28 organizations reported assets for one or more of their plans.

Source: GAO analysis of denominational plan data. | GAO-23-105080

Notes: GAO obtained data on 28 denominational organizations that were provided to GAO by denominational officials or were found on denominational websites. One organization reported data for 2018/2019, three for 2019, 17 for 2020, six for 2021, and one for 2022. Officials from the Episcopal and United Methodist denominations said the data available reflect all of the church plans for their entire denominations. Officials from the Southern Baptist and Presbyterian denominations said the data provided do not represent all church plans for their denominations.

The most commonly reported plan types among this sample of denominational data were 403(b) plans and plans reported generally as defined benefit plans.[23] The denominations for which we were able to obtain some plan information are: Catholic, Other Christian, Jewish, Southern Baptist, Episcopal, Lutheran, Presbyterian, and United Methodist. These are among the most common denominational affiliations in the United States.[24] Plan officials from the Episcopal and United Methodist denominations said the data available reflect all of the church plans for their entire denominations.[25] Plan officials from the

[23]Seventeen of the 28 organizations reported 403(b) plans, nine reported a defined contribution plan, and 22 reported a defined benefit plan. There is overlap in these numbers because some organizations offered more than one plan. We recently reported on 403(b) plans used by tax-exempt entities, see GAO, *Defined Contribution Plans: 403(b) Investment Options, Fees, and Other Characteristics Varied*, GAO-22-104439 (Washington D.C.: March, 4, 2022.)

[24]Pew Research Center. “2014 Religious Landscape Study.” Accessed January 31, 2022. https://www.pewresearch.org/religion/religious-landscape-study/.

[25]Plan officials from the Episcopal denomination said that while many of the denomination’s organizations participate in these retirement plans, some could choose to participate in a different retirement plan or not offer a plan to their employees. Plan officials from the United Methodist denomination said it is possible organizations associated with the denomination (such as day care centers, camps or other social service organizations) have chosen to sponsor a retirement plan offered by a non-denominational entity; however, such instances are uncommon.

Southern Baptist and Presbyterian denominations said the data provided do not represent all church plans for their denominations.

Church employees plan contributions. At our request, IRS identified nearly 33,000 church employers who reported contributions to a defined contribution plan. These employers reported that nearly 589,000 church employees contributed $1.8 billion to these plans in 2019.[26]

- IRS obtained these counts by reviewing Employer Identification Numbers (EIN) on W-2 forms submitted by tax filers identified as churches in 2019. According to case law, “church” is used as a general term for a house of worship such as mosques and synagogues and does not include church-affiliated organizations such as hospitals.[27]
- Because the W-2 form does not require employers to identify the name and number of the retirement plans receiving employee contributions, we cannot determine how many plans are being utilized by the church employers filing W-2 forms.[28]
- W-2 filings provide an incomplete measure of participants and contributions as they do not identify retired employees and beneficiaries, or contributions made to church defined benefit plans, or employer matching contributions to church defined contribution plans. Making comparisons between the IRS data results and the denominational data results above are not possible, because the

[26]IRS provided aggregated summary information on contributions reported by houses of worship in 2019 on W-2 forms. No individual taxpayer-identifying information was conveyed by IRS for these counts. As part of its analysis, IRS first identified 301,716 houses of worship found in the IRS Business Master File. The IRS Business Master File contains the most recent information the IRS has for these organizations, according to IRS documentation. From these organizations’ W-2 filings, IRS identified how many church employees reported contributions to a church defined contribution plan in 2019.

[27]See app. I for how IRS categorizes EINs as houses of worship. IRS also searched Form 1099-R filings, which report distributions made to individuals from retirement plans. IRS identified 50 church employers reporting such distributions. According to IRS, this search yielded fewer results than the W-2 search because employers may use third-party companies to handle distributions. Thus, the third-party company’s tax ID number is reported on the 1099-R rather than the church employer’s EIN.

[28]Form W-2 is issued by employers to employees and government agencies and reports different information related to employee wages, including contributions that employees make to defined contribution plans, and taxes withheld by employers on behalf of employees, among other things. Generally, there are no employer contributions to a defined contribution plan reported on form W-2, as described on the form’s instructions.

denominational data we report are limited to what we could find, and include some data not found in the IRS W-2 analysis.

Organizations that could potentially offer a church plan. By searching industry-specific federal databases that report church association and ownership, we identified the minimum number of organizations in the United States that could potentially offer a church plan to their employees.[29] Because we do not know how many of these churches or church-associated organizations actually offered a church plan, we cannot compare this potential universe of church plans with the denominational plan data or IRS' W-2 data that we report above.

Based on available federal datasets and the data IRS provided, we estimate a minimum of roughly 335,000 houses of worship and church-associated organizations in the United States (see table 2).

- IRS officials first identified the EINs of over 301,000 houses of worship in 2019. IRS identified these houses of worship by searching EINs in the IRS Business Master File that were identified as churches.[30] This number serves as our minimum count of U.S. churches.
- We then count an additional 34,005 church-associated organizations across three industries—healthcare, K-12 education, and postsecondary education—who could potentially offer church plans.[31] The additional data on these church-associated organizations come from four different federal databases, as noted in table 2.

[29]This is a minimum count because we are aware that there are church plans sponsored by employers in other industries (e.g., nursing homes, universities) for which we do not have information.

[30]Records in the IRS Business Master File consist of unique information identifying the organization as having been granted or claimed tax-exempt status. This information includes foundation status, which includes being a church. IRS uses the term "church" for any house of worship, regardless of denomination, including mosques and synagogues, according to IRS officials.

[31]The data from each of these federal sources are for the most recent year available at the time of this analysis. Our count of potential religious organizations that could offer a church plan does not include every industry that could be affiliated with a religious organization, such as religiously-affiliated childcare or retirement communities. We did not identify any federal databases that provide these data.

Table 2: Number of Identified Houses of Worship and Church-Associated Organizations by Industry in Federal Data Sources That Could Potentially Offer a Church Plan

Industry	Number of Organizations[a]	Data Source
Houses of Worship (2019)	301,716	Internal Revenue Service (IRS) Business Master File[b]
Healthcare (2022)	20,792	Centers for Medicare and Medicaid Services: Provider of Services database[c]
K-12 Education (2019/2020)	12,309	U.S. Department of Education Private School Survey[d]
Postsecondary Education (2020)	904	U.S. Department of Education Integrated Postsecondary Education Data System[e]
Total	**335,724**	

Source: IRS data and GAO analysis of federal databases. | GAO-23-105080

[a]It is unknown how many of the organizations reported in this table sponsor church plans. They represent organizations that could potentially offer church plans.

[b]Records in the IRS Business Master File consist of unique information identifying the organization as having been granted or claimed tax-exempt status. This information includes the foundation status of an exempt organization, which includes being a church. IRS officials identified churches with this information as well as annual information return filing exemptions due to church status. The IRS Business Master File contains the most recent information the IRS has for these organizations, according to IRS documentation. However, IRS officials were unable to identify organizations associated with churches, such as hospitals and schools that would be able to offer church plans, as there is no information identifying organizations as such in the file.

[c]These data are gathered quarterly by the Centers for Medicare and Medicaid Services from Medicare-approved providers during the certification and recertification processes. This represents the most recent data from 2022. There is a variable in the data identifying whether an organization is owned by church.

[d]A school is included in the survey, conducted by the Department of Education and the U.S. Census Bureau, if they are not supported primarily by public funds, provide classroom instruction for one or more grades from Kindergarten through 12th grade and have one or more teachers. This represents the most recent data from 2019 or 2020. There is a variable in the data identifying whether an organization is affiliated with a church.

[e]The Integrated Postsecondary Education Data System is a system of interrelated surveys conducted annually by the Department of Education's National Center for Education Statistics. Inclusion in the system is mandatory for all postsecondary institutions that participate in the federal student financial aid programs. This represents the most recent data from 2020. There is a variable in the data identifying whether an organization is affiliated with a church.

Church Plan Officials Reported They Administer Plans Similarly to ERISA-Covered Plans and View Flexibility from ERISA Exemption as Important

Officials we spoke with from four denominations—Episcopal, United Methodist, Presbyterian, and Southern Baptist—and one national organization representing multiple denominations said the church plan exemption in ERISA ("church plan exemption") conveyed certain advantages and flexibilities in administering their plans. Officials from each of the denominations and the national organization described administering large plans for their denominations that offer retirement benefits to employees from multiple churches and various organizations associated with the denomination.

Sponsors of church plans generally administer their plans in ways that are similar to ERISA-covered plans, according to denominational officials. For example, officials from the national organization said that its denominational members use professional expertise and service providers to administer their church plans. They said this includes enrolling participants, calculating benefits, directing investment strategy, managing contributions and distributions, mitigating cyber risk to plan asset data, setting performance benchmarks for the plan, conducting plan audits, arranging for plan funding, monitoring service providers and vendors, and issuing disclosures and plan documents.

These officials also said that many church plans use record keepers, third party administrators, investment advisors, and outside auditors to assist in managing their plans, similar to how large ERISA-covered plans are administered. For example, officials from one denomination said that they select and monitor investment managers who manage their defined benefit plan investment portfolio. These officials also said they have an in-house fiduciary oversight committee for its plans with assistance from outside consultants, and that they monitor the legal landscape for any changes to pension law or the Internal Revenue Code and update plans as laws and regulations change.

Officials from two of the four denominations and the national organization said the church plan exemption allows them to design their defined benefit plan to offer higher benefit amounts to lower paid employees in the same position, such as clergy who worked for lower pay in economically-depressed regions of the country for their entire careers.[32]

[32]Officials that oversee pension funds for one large denomination told us that they use retirement benefits formulas based exclusively on salary level, not years of service or position title. According to officials, the formulas they use allow them to subsidize benefits for lower salaried pastors. ERISA does not allow plan benefit formulas to discriminate in favor of highly-compensated employees. According to IRS officials, a defined benefit plan covered by ERISA can offer employees in the same position different benefit formulas as long as the formulas are non-discriminatory. A plan does not qualify under section 401(a) if the contributions to the plan are made at such times or in such amounts that the plan in operation discriminates in favor of officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees. 26 C.F.R. § 1.401-1(b).

Officials from another denomination said that the most appealing advantage of the church plan exemption for administering their plans is that there is no federal reporting or disclosure requirement other than tax forms; no funding requirement for defined benefit plans; and no requirement to make PBGC premium payments, among other things. These officials also said that paying the additional costs of complying with ERISA could reduce the generosity of the plan benefits the sponsor can offer.[33]

Officials from the four denominations and the national organization also said the church plan exemption allows sponsors and plan administrators to use religious doctrines to help guide the administration of their plans and their investment decisions. For example, officials from the United Methodist denomination said they use the *Book of Discipline of the United Methodist Church* to guide plan administration. Officials said that according to this document, plan administrators are required to act as a prudent fiduciary with participants' best interests in mind.[34] According to these officials, the doctrine also provides general guidance on setting up service providers to manage plans and pension committees with experts, including actuaries, attorneys, and investment advisors. These officials said that the denomination's pension committees oversee service providers' work and guide the formation of a plan's fiduciary investment committee and its investment assumptions.

In another example, according to officials, the Presbyterian Church uses a denominational doctrine, *Mission Responsibility Through Investment*, to guide the design of its retirement plans and the activities of its plan administrator, the Board of Pensions. Officials from the United Methodist denomination said their plan does not invest in entities associated with tobacco or alcohol because their religious doctrines exclude such

[33]For defined benefit church plans that make an election under ERISA section 410(d) to be covered by ERISA and provide the required notice to PBGC, paying PBGC premiums ensures that benefits will be paid to participants and beneficiaries up to statutorily guaranteed amounts if plans become insolvent.

[34]ERISA requires that a fiduciary shall discharge his duties with respect to a plan solely in the interest of participants and beneficiaries, as well as for the exclusive purpose of providing benefits to participants and their beneficiaries and of defraying reasonable expenses of administering the plan. 29 U.S.C. § 1104.

investments.[35] Officials from the Southern Baptist denomination told us that their church uses faith-based principles of human dignity and avoidance of societal harm for their plans' investment strategies. In a press release, Southern Baptist officials reported that through its retirement investment funds, the church seeks to actively promote the growth of God's kingdom and the church's morals and gospel. The denomination's retirement plans do not invest in any company publicly recognized as being in the alcohol, tobacco, or gambling industries, or any company whose products, services, or activities are publicly recognized as being incompatible with the moral and ethical posture of the church.

Federal Involvement with Church Plans Is Limited, and States can Also Provide Oversight

IRS Makes Determinations on Church Plan Status, Upon Request from Plan Sponsors

IRS is the primary federal agency responsible for determining—upon request—whether a plan is a church plan.[36] If a church plan meets statutory requirements, it is a church plan and does not need confirmation from the IRS or any other agency. However, a plan sponsor may request a private letter ruling from IRS to confirm the plan's status under the Internal Revenue Code for tax purposes.[37]

A 2011 IRS revenue procedure requires the sponsor who applies for a private letter ruling on church plan status to notify participants,

[35]According to officials from the Board of Pensions, which serves the Presbyterian denomination, service providers and sponsors use a denominational doctrine to set up socially responsible investment strategies within their plans that are consistent with church tenets. Based on this guidance, officials told us that sponsors of church plans are directed to avoid investments in fossil fuels, guns, and tobacco companies.

[36]IRS officials noted that DOL can issue determinations on church plan status under ERISA. Both DOL and PBGC officials told us that they generally defer to IRS determinations on church plans before issuing their own determinations.

[37]IRS issues a private letter ruling in response to a written request by a taxpayer who wishes to verify that a prospective transaction will not likely result in a tax violation.

beneficiaries, and other interested parties of such a request.[38] However, because the revenue procedure did not apply retroactively, plans that requested private letter rulings prior to 2011 were not obligated to inform participants, beneficiaries, and other interested parties of their request.

IRS also has oversight of certain tax-exempt hospitals—some of whom may sponsor a church plan— that are required to report on certain activities in order to maintain their tax exemption. The paperwork tax-exempt hospitals are required to file each year with the IRS also provide the public with information on their policies, activities, and community benefits. According to multiple academics we spoke to with expertise in tax law, IRS may face challenges determining whether a non-electing church plan is sponsored by a tax-exempt hospital, particularly if the hospital has been acquired by a for-profit organization. (See textbox.)

Hospital Center at Orange Defined Benefit Plan. We found one example of a defined benefit plan having received a private letter ruling from Internal Revenue Service (IRS) declaring it a church plan. The decision was later reversed when retirees and former employees learned the plan was terminating with insufficient funds to pay benefits. After the Hospital Center at Orange in New Jersey merged in 2003 with Cathedral Health Systems, the plan sponsor acquired a private letter ruling from IRS determining its defined benefit plan to be a church plan not bound by the Employee Retirement Income Security Act of 1974, as amended. In 2004, the hospital closed due to financial problems leaving an estimated $30 million shortfall. Following a lawsuit brought by plan participants, IRS revoked the plan's private letter ruling and its designation as a church plan. The Pension Benefit Guaranty Corporation (PBGC) was then able to take over the failing defined benefit plan and pay statutorily guaranteed benefits to its participants.

Source: GAO review of PBGC and Pension Rights Center documentation. | GAO-23-105080

Some Church Plans Sponsors May Be Unaware That Their Plans Are Ineligible for PBGC Insurance

Church plans generally are not eligible for PBGC insurance, but they may erroneously pay PBGC premiums without being aware that their benefits remain uninsured. PBGC is the federal agency that determines eligibility

[38]IRS Revenue Procedure 2011-44 requires plan sponsors seeking a private letter ruling from IRS on the plan's status as a non-electing church plan to notify participants and other interested parties of such a request. The issued notice must include information on the federal protections that are not available to participants in non-electing church plans, including lack of PBGC insurance coverage. Revenue Procedure 2011-44 applies to ruling requests pending with IRS on or received by IRS after September 26, 2011.

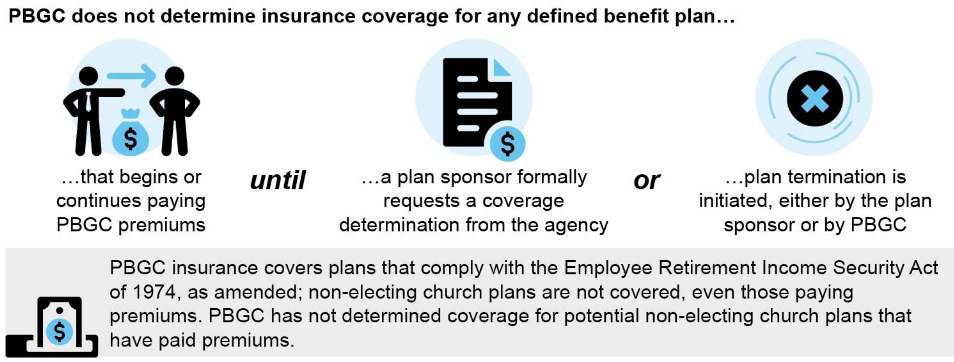
of a defined benefit plan for federal benefit insurance.[39] However, PBGC officials told us it is the agency's policy to initiate a coverage determination only if a plan requests such a determination or when a plan terminates without enough money to pay promised benefits (see fig. 2).[40] Part of PBGC's process to determine eligibility for coverage includes asking if the plan believes it is a church plan, among other things.[41] A church plan that does not elect to be covered by ERISA (a "non-electing" plan) would not be eligible for PBGC insurance, according to PBGC officials.

[39]29 U.S.C. § 1321.

[40]PBGC determines a plan's eligibility for insurance before making benefit payments to participants in a terminated plan. There is no federal statutory or regulatory requirement indicating when PBGC should conduct eligibility determinations. There are three types of terminations available to defined benefit plan sponsors: standard termination, distress termination, and PBGC-initiated termination. A standard termination is a termination initiated by a plan that has enough money to pay all benefits owed to participants and beneficiaries. For a distress termination, PBGC works with the employer and takes over the plan as trustee and uses its own assets and any remaining assets in the plan to make sure that retirees receive their benefits, within legal limits. A PBGC-initiated termination occurs when PBGC decides to terminate an underfunded defined benefit plan, even though a company has not filed to terminate a plan on its own initiative.

[41]PBGC provides sponsors of defined benefit plans with a Request for Coverage Determination form to initiate coverage determinations under Title IV of ERISA. This form collects information on the plan and plan sponsor and inquires if the plan is requesting the coverage determination in relation to being a church plan. The form also collects information on whether the church plan sponsor has made an election under Internal Revenue Code section 410(d), if the plan wishes to have Title IV of ERISA apply to it in order to receive benefit insurance coverage, and requires the attachment of any determinations from IRS that the plan is a church plan. For plans insured by PBGC, PBGC guarantees benefits up to statutory limits.

Figure 2: Pension Benefit Guaranty Corporation (PBGC) Policy for Determining Defined Benefit Plan Insurance Coverage



Source: PBGC documentation and interviews with PBGC officials. GAO (icons). | GAO-23-105080

Church plans generally are not required to file a Form 5500. However, we found Form 5500s from 2018 for 134 defined benefit plans, with nearly 156,000 participants that, based on the name of the plan, could potentially be church plans.[42] Of these plans, 120 paid premiums to PBGC that year. PBGC guidance says that paying PBGC premiums would not trigger insurance coverage for a plan.

At our request, PBGC officials reviewed the 134 plans we identified but knew the coverage status of only 11 of these. According to officials, 12 of the 134 plans had asked PBGC to determine whether the plans were eligible for PBGC coverage. For these 12 plans—nine of which paid PBGC premiums—PBGC found that seven were covered by PBGC insurance, four were not covered; the eligibility of one plan was undetermined because the plan had not submitted necessary documents. In addition to these 12 plans, PBGC initiated a coverage determination on another three plans that were terminating with insufficient assets to pay

[42]We used text analysis on Form 5500 data from 2018 based on plan name, to identify potential church plans. We conducted the text analysis by using a series of inclusion and exclusion words and by creating a list of words commonly associated with religious organizations. This included words such as church, temple, bible, Hebrew, etc. See app. I for a complete description of the analysis we conducted to identify potential church plans filing the Form 5500.

promised benefits.[43] PBGC had not yet made that determination if those three plans were eligible for coverage, and therefore did not know yet whether participants would receive payments from PBGC. PBGC officials said they had not determined the insurance coverage for the remaining 119 plans—including 108 that had paid premiums—because these plans had not requested a determination. Thus, PBGC did not know whether they were non-electing church plans or the plans' eligibility for PBGC insurance. (See table 3).

Table 3: Pension Benefit Guaranty Corporation (PBGC) Coverage Determination Status of Selected Potential Church Plans Identified Based on Form 5500 Data in 2018

Coverage Review Reason	Total Number of Plans	Plans Paying Premiums	Plans PBGC Determined were Covered[a]
Initiated Request for Coverage Determination[a]	**12[b]**	9	7
Distress Termination Initiated[c]	**3**	3	Unknown[e]
No Coverage Review	**119**	108[d]	n/a
Total	**134**	**120**	**7**

Source: GAO analysis of Form 5500 data and data from PBGC. | GAO-23-105080

Note: In its technical comments, PBGC informed us that it performed additional analyses of the 134 plans and had identified the coverage status of all but 46 plans. According to PBGC, this further analysis identified some plans that have terminated, are defined contribution plans, are likely not church-affiliated, or had some other characteristic relevant to their PBGC coverage status. GAO will assess PBGC's analysis as part of the agency's response to this report's recommendation.

[a]PBGC provides sponsors of defined benefit plans with a Request for Coverage Determination form to initiate coverage determinations for PBGC benefit insurance. This form collects information on the plan and plan sponsor and inquires if the plan is requesting the coverage determination in relation to being a church plan, among other things. PBGC requires sponsors to obtain coverage determination before benefit insurance is paid out to participants in a distress terminated plan, according to PBGC officials.

[b]Of these 12 coverage cases, three were requested by the sponsor on a basis other than potential church plan status. PBGC found that seven were covered by PBGC insurance, four were not covered; the eligibility of one plan was undetermined because the plan had not submitted necessary documents.

[c]Three types of terminations are available to defined benefit plan sponsors: standard termination, distress termination, and involuntary PBGC-initiated termination. When an underfunded defined benefit plan terminates and the sponsor is unable to fund all promised benefits (either as a distress termination or an involuntary PBGC-initiated termination) PBGC takes over the plan's assets, administration, and payment of plan benefits. Defined benefit plans can also end in a standard termination, which occurs when the sponsoring employer decides that it no longer wishes to operate

[43]According to PBGC officials, they would determine the plan's coverage status in order to determine if PBGC would need to pay benefit guarantees to participants. However, at the time of this analysis, they had not yet made a determination for the distress terminations as they had not yet been completed. According to PBGC officials, 31 of the plans we identified had undergone a "standard termination," in which the plan was terminating and expected to have sufficient assets to pay benefits. PBGC officials told us that they do not do a coverage determination as a routine part of a standard termination.

the plan, provided the plan has enough money to pay all benefits owed to participants, among other things.

[d]According to PBGC officials, because a distress termination includes a determination of insurance payments, inherent to the process is a coverage determination. According to PBGC officials, any distress termination that has been closed can be interpreted as a covered plan. However, at the time of this analysis, no distress termination case in our data was closed. Thus, their coverage status was unknown.

PBGC's mission is to protect the retirement benefits of American workers in private sector defined benefit pension plans. PBGC's information quality guidelines require information it disseminates to be objectively communicated in an accurate, clear, complete, and unbiased manner and in the proper context. In addition, federal internal control standards require agencies to communicate quality information externally through reporting lines, so that external parties can help the entity achieve its objectives and address related risks.[44] Because PBGC does not determine coverage for plans until the plans request it or until a plan terminates with insufficient funds to pay benefits, church plan sponsors and participants may not learn that their benefits are uninsured unless the plan were to terminate with insufficient funds to pay promised benefits. Non-electing church plan sponsors can apply to PBGC for a premium refund, but the agency limits refunds to 6 years of premium payments. PBGC officials confirmed the agency issued 96 refunds to sponsors of non-electing church plans from 1991 to 2007 totaling about $17.2 million.[45] In the absence of clear communication from PBGC to church plans regarding eligibility rules for PBGC insurance; the potential church plans we identified may continue to pay premiums erroneously and remain unaware of their ineligibility for PBGC insurance coverage. PBGC could undertake a similar analysis each year to identify new potential non-electing church plans that begin paying premiums.

PBGC officials said they do not automatically determine coverage because of the large volume of new plans paying premiums every year and the agency's limited resources. PBGC officials said that each year from 2019 to 2021 an average of 2,100 new plans began paying premiums, making automatic coverage determinations for these plans a

[44]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: Sept. 2014).

[45]PBGC will consider a refund claim to be received when it receives a written communication that clearly identifies the plan in question and that (1) requests a refund, (2) requests a coverage determination, or (3) notifies the PBGC that a request has been submitted to the IRS for a ruling or determination that would be a basis for a request to PBGC for coverage determination. The procedure for requesting refunds from PBGC is detailed in the Federal Register, 58 Fed. Reg. 63,407 (Dec. 1, 1993).

burden.[46] PBGC officials said that its website states that if the sponsor is not certain that their plan is covered, they should seek a coverage determination by PBGC. The officials added that many church plan sponsors may work with pension consultants and other experts to administer their plans and determine whether their plans are therefore eligible for PBGC insurance. However, those that do not work with consultants may not be aware that PBGC does not insure their plans.

While PBGC says that automatic coverage determinations for all new premium-paying plans would burden the agency, it could consider options to communicate with sponsors of potentially ineligible plans that would be much less burdensome to the agency. PBGC could preemptively communicate with sponsors of plans whose names suggest that they may be church plans to inform them of federal requirements applicable to church plans. PBGC could refer these sponsors to the PBGC website's guidance on benefit insurance coverage and suggest to these sponsors that they share this information with plan participants. PBGC could also remind these sponsors that if their plan qualifies as a church plan it will not be eligible for PBGC coverage unless they elect to have the plan covered by ERISA and submit a coverage determination form. PBGC could also suggest that these plans seek professional advice about the legal status of their plan.[47]

PBGC Recently Corrected Potentially Misleading Information about Church Plan Insurance Eligibility on its Website

Despite not knowing the coverage status of these plans, PBGC's website included, until September 2022, an "Insured Plans List" that included

[46]PBGC officials added that IRS would also face additional work with responding to private letter ruling requests from these sponsors, which PBGC generally requires for coverage determination for church plans, as well as burden employers who would have to provide documents and information about the plan in order for PBGC to make a determination.

[47]Very few church plans have made a section 410(d) election to be covered by ERISA. If a church plan makes such an election, the election is irrevocable and the plan will be treated as though it were not an exempt church plan. In addition, while IRS requires sponsors seeking a private letter ruling about church plan status to inform plan participants of the request, plan participants whose sponsors do not seek such a private letter ruling, or who sought one prior to the 2011 IRS requirement, may never have received notification of their plan's status as a church plan and the implications of not being insured by PBGC.

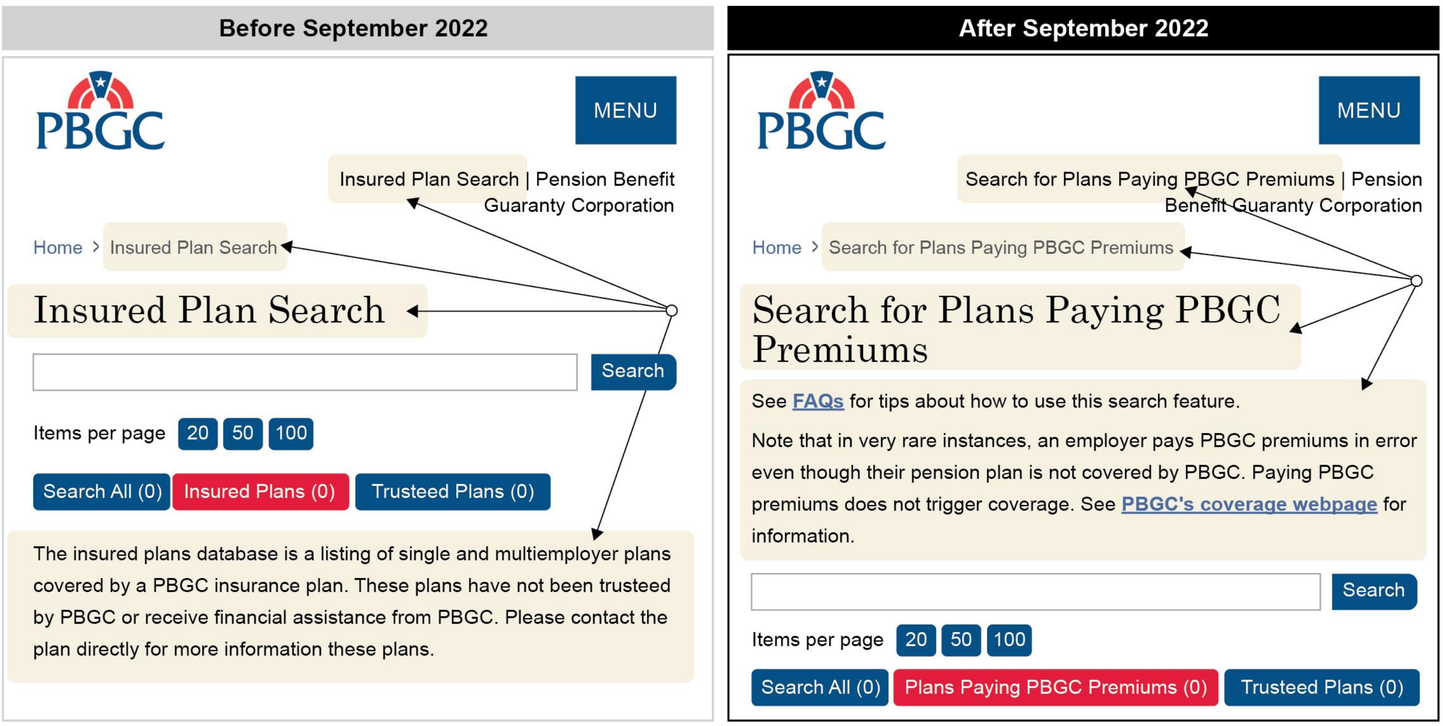
some of the 134 plans we identified. The web page's search results help page read: "*This tab lists all the insured single-employer and multiemployer plans insured by PBGC*."[48] PBGC officials said plans are automatically placed on the Insured Plans List after their first premium payment is received, and not because the agency has confirmed eligibility for coverage.[49] The Insured Plans List, which PBGC has said contains just over 25,000 plans, included 91 of the 134 plans we identified as potential church plans and for which PBGC had not made a coverage determination.

PBGC officials acknowledged that participants and sponsors who accessed the Insured Plans List might not be receiving accurate information about PBGC coverage for their plan. In response to our observations, PBGC officials reported that they made substantial changes to language on the agency's website. The website's Insured Plans List is now titled, "Search for Plans Paying PBGC Premiums," which includes the statement, "*Note that in very rare instances, an employer pays PBGC premiums in error even though their pension plan is not covered by PBGC. Paying PBGC premiums does not trigger coverage*." (See fig. 3.)

[48]If a search for a plan on the PBGC website yields no information, participants and sponsors are told *"The insured plans database is a listing of single and multiemployer plans covered by a PBGC insurance plan. These plans have not been trusteed by PBGC or receive financial assistance from PBGC. Please contact the plan directly for more information these plans."*

[49]According to PBGC officials, the Insured Plans List requires plans to be considered "active" from a premium filing perspective. The premium filing status can be in one of four states: "active," "terminated" (standard or distress termination), "inactive" (merged or consolidated into another entity), or "not covered." Any status besides, "active" will cause the plan to be removed from the insured plans list.

Figure 3: Search Page Revisions for Insured Plans on the Pension Benefit Guaranty Corporation (PBGC) Website



Source: GAO review of PBGC web pages. | GAO-23-105080

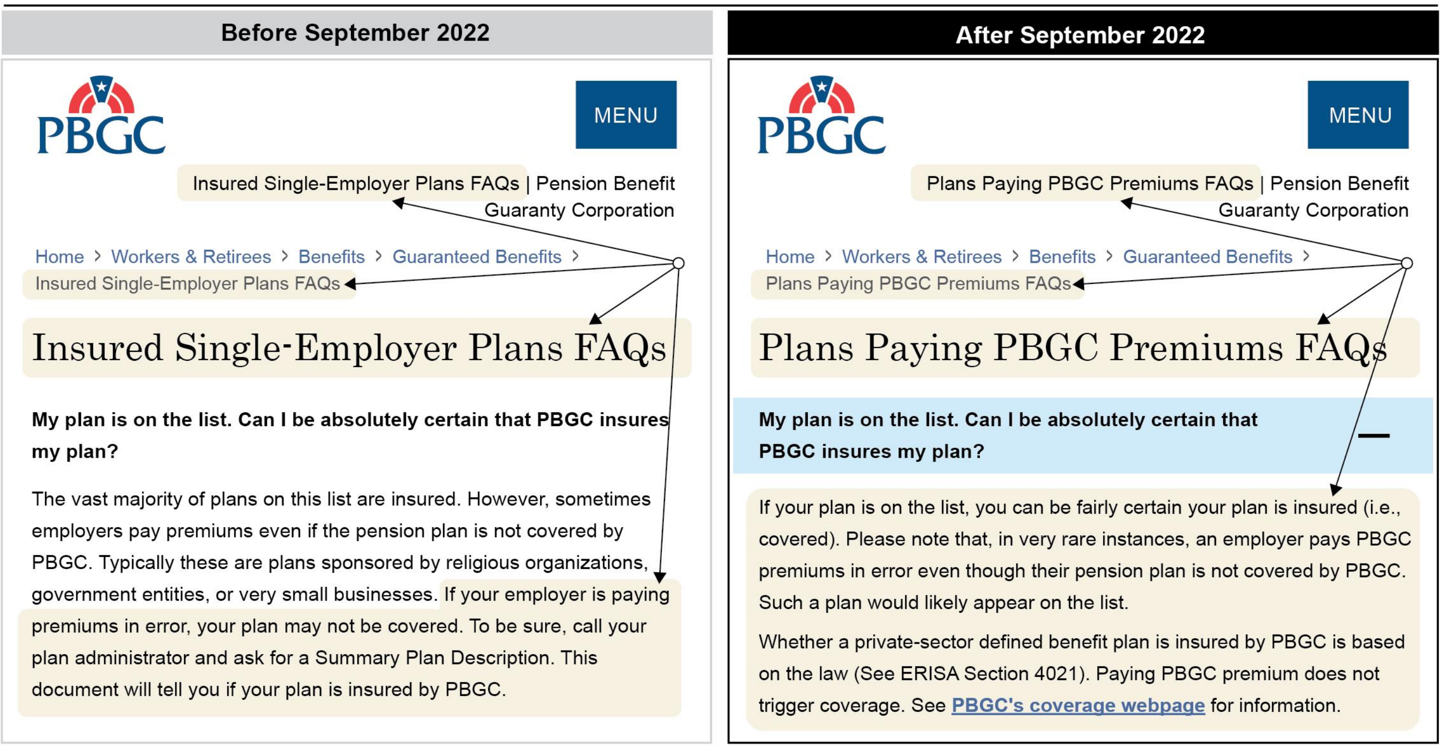
In addition, the new Search Results web page changed "*Insured Plans*" to "*Plans paying PBGC Premiums*." and includes the same note that some plans pay premiums in error and that such payments do not trigger coverage. (See fig. 4.)

Figure 4: Search Results Revisions on the Pension Benefit Guaranty Corporation (PBGC) Website

Source: GAO review of PBGC web pages. | GAO-23-105080

PBGC has made other changes to its website to more accurately describe plans and their insurance coverage. For example, what was previously identified on PBGC’s website as the “Insured Single Employer FAQs” page is now “Plans Paying PBGC Premiums FAQs”. (See fig. 5.)

Figure 5: FAQ Revisions on the Pension Benefit Guaranty Corporation (PBGC) Website



Source: GAO review of PBGC web pages. | GAO-23-105080

Although PBGC answers a question with a reference to the church plan exemption on this newly-revised web page, it no longer directs participants to contact their plan sponsor to request a Summary Plan Description or describe the information this document will convey. Still, these changes should help clarify to both participants and sponsors of non-electing church plans that paying premiums does not in itself ensure insurance coverage.

Some Selected States Reported Enacting Legislation in Response to Church Plan Funding and Benefit Disputes or State Charters

Since church plans are generally exempt from ERISA, states play a potential role in their oversight.[50] Some states we interviewed reported taking actions to address disputes ranging from alleged underfunding of church defined benefit plans to cuts in participant benefits, while other states reported taking no specific action. Based on a literature review and interviews with state officials and church plan experts, we found little information describing state oversight of these plans unless their activities intersect with state laws, such as those governing contracts and wages. Two of our selected states—Rhode Island and New York—have enacted laws that apply to church plans. New York is also currently engaged in litigation involving a church defined benefit plan.[51]

Rhode Island enacted a law requiring non-electing church plans with 200 or more plan members to comply with certain provisions in ERISA that require plans to disclose plan information to their participants.[52] According

[50]ERISA preempts state laws insofar as they “relate to” any ERISA-covered employee benefit plan. 29 U.S.C. § 1144(a). If a church plan makes a section 410(d) election, ERISA would preempt such state laws as they relate to the plan.

[51]In our reporting on 403(b) plans, we found that selected states reported taking action to improve participant outcomes in non-ERISA 403(b) plans—which would include 403(b) plans offered by churches in those states—by strengthening the oversight of plan investment options and use of service providers. In particular, these states reported strengthening oversight by: (1) centralizing the administration of 403(b) plans in their state using a closed system with a limited number of service providers, (2) adopting a request for proposal process for selecting vendors, or (3) enacting laws or regulations to help ensure the plan is operated in the best interest of participants. For example, we reported that several states reported enhancing transparency by adopting measures to collect and make publicly available information on 403(b) investment option fees. In California, the state developed a public website, 403bCompare, with free information about 403(b) vendors and the products offered, which includes information for each investment option’s annual administrative expenses, expense ratio, and—for mutual funds and variable annuities—a measure that compares the relative cost of different investment options. An expense ratio measures how much of a fund’s assets are used for management, administrative, and other operating expenses charged by the fund manager and incurred by the fund. GAO, *403(b) Retirement Plans: Department of Labor Should Update Educational Materials to Better Inform Plan Sponsors and Participants,* GAO-23-105620, (Washington D.C.: June 21, 2023)

[52]R.I. Gen. Laws § 28-7.1-4 (2023) (requiring covered defined benefit plans to comply with provisions in 29 U.S.C. § 1024(b)(3)). The law specifically does not apply to defined benefit plans covered by ERISA or to governmental plans as defined in 29 U.S.C. § 1002(32).

to state officials from the state's Office of the General Treasurer, the legislation was prompted by civil litigation alleging underfunding by a church defined benefit plan, as well as public pressure by participants and beneficiaries of the plan. State officials reported that the plan's sponsor allegedly had cut retirement benefits by 40 percent in April 2017 for the nearly 2,700 participants, due to plan underfunding. In 2021, the plan sponsor agreed to a $30 million settlement with plan participants. State officials said the state becomes involved in church plan oversight only if it receives a complaint of a law not being followed or during oversight of religiously-affiliated hospitals.

New York has also enacted a law for direct oversight of at least one church pension fund in the state. New York officials from the state's Office of Attorney General (OAG) said that following a charter granted by the New York state legislature in 1914, New York regularly conducts a financial examination of the Church Pension Fund, which administers the pension system of the Episcopal Church. The Church Pension Fund's charter states that it will submit annual reports to the Superintendent of the New York State Department of Financial Services and be examined by the Superintendent every 5 years. An official said that the department was not aware of any wrongdoing or concerns about the management of the fund in the early 1900s that may have prompted the examination. The Superintendent's last report in 2013 found nothing that materially affected the fund's financial condition as presented in its financial statements. Moreover, funding of the church defined benefit plan had consistently remained above 100 percent, including for fiscal year 2009 when investment markets were near historical lows.[53]

OAG officials said the state is also participating in civil litigation involving a church plan sponsored by St. Clare's Hospital.[54] The litigation involves a corporate dissolution petition filed by the plan sponsor with the Supreme Court of New York and allegations by plan participants that the sponsor had underfunded their church defined benefit plan. In 2022, the OAG subsequently filed its own lawsuit against the Roman Catholic Diocese of Albany and its leadership related to the St. Clare's defined benefit church plan.

[53]New York State Department of Financial Services, *Report on the Examination of the Church Pension Fund*, (New York, N.Y.; Nov. 15, 2013).

[54]*Hartshorne, et al., v. Roman Catholic Diocese of Albany, New York,* 68 Misc. 3d 849 (2020).

OAG officials in New York also described a number of state law requirements for church plans that are applicable because of their exemption from ERISA. For example, they said the state's labor code considers pension benefits as wages, and that the OAG will pursue litigation if a business denies employees these earned wages. OAG officials also described a statute that requires plan sponsors to hold investment funds independently from the employer's funds and holds employers to promised benefit levels prescribed in plan documents.[55] The officials said the general fiduciary duty under state law includes making appropriate provisions for pension obligations and complying with wage payment laws. In addition, the OAG's Charities Bureau in New York ensures that all fiduciaries of charities and nonprofits, including fiduciaries of pension and retirement savings plans offered by charities, know about and are meeting their fiduciary responsibilities under state law and common law, and are working for the benefit of plan participants and beneficiaries, according to OAG officials.

Officials from the three other selected states described some oversight of church plans. For example, officials from the Office of California State Treasurer said the state does not directly oversee church plans, but that state rules on the duties of fiduciaries provide some protections for plan assets. Specifically, these officials said that a pension board or committee of a church plan would be considered a fiduciary and would be required by state law to act solely and exclusively in the best interest of plan participants and their beneficiaries. Officials also said that religious organizations are exempt from CalSavers, a program that is required for most private-sector employers in the state who do not offer their employees a retirement plan.[56]

State officials in Illinois and New Jersey reported no specific efforts to oversee church plans in their state. In Illinois, an official from the state's Attorney General's office said the state's charitable trust laws exempt religious organizations from any reporting with the Illinois Department of

[55]N.Y. Ins. Law § 4602 (McKinney 2023).

[56]According to the California State Treasurer's website, CalSavers is California's retirement savings program designed for employees in California who lack a way to save for retirement at their job. CalSavers was created by legislation enacted in 2016 requiring California employers that do not sponsor a retirement plan to participate in CalSavers – an automatic enrollment individual retirement account with no employer contributions or fees or fiduciary liability. Operating at no taxpayer expense, CalSavers is professionally managed by private sector financial firms with oversight from a public board chaired by the State Treasurer.

Revenue. This official also said that the Attorney General's office would investigate any constituent complaint regarding a church plan, but that the office's oversight is limited. In New Jersey, officials from the Treasurer's office said that state regulations likely do not differentiate between secular and religious retirement plans particularly concerning how contributions to retirement plans are treated under New Jersey state tax law. These officials also said that agencies overseeing banking and insurance have no oversight role of church plans in the state.

Expected Outcomes for Church Plan Participant Benefits Varied in Legal Cases and Settlements Reviewed

In the four bankruptcy cases and three settlement agreements we reviewed involving church plan sponsors, the expected outcomes for participant benefits varied. In the bankruptcy cases, church plan participants were expected to retain promised benefits. We found that participant benefits were expected to be protected and kept whole at pre-bankruptcy levels to the extent they were funded and vested in at the time their employer filed for bankruptcy.[57] A sponsor in one of the cases was expected to provide additional funding to the plan over 20 years.[58] In the settlement agreements, settlement terms provided that plans help reinstate lost or threatened benefits, and that plan participants receive financial disclosures similar to those required by ERISA.[59]

In the three civil cases where we reviewed settlement agreements, participants challenged their plan's church plan status and its ERISA exemption. In each of these cases, participants alleged that their employer had incorrectly established and managed their defined benefit plans as a church plan exempt from ERISA's requirements, including the

[57]In reviewing the effects of bankruptcy on participants' benefits in church defined benefit plans, we found hundreds of bankruptcies of employers that potentially have a religious association, but only found a limited number of bankruptcies for church plan sponsors who had an existing defined benefit plan at the time of the bankruptcy.

[58]In this case, defined benefit plan claims were deemed impaired, meaning that the plan's legal, equitable, or contractual rights may be altered under the bankruptcy reorganization plan, if agreed to after a vote by creditors of the bankruptcy estate.

[59]The settlement agreements are specific to the facts and circumstances of each case.

requirement to fund the plan sufficiently.[60] Among other things, participants in each of the three cases we reviewed also alleged that their employer cut or would be unable to pay benefits when funds began to run low in these plans, and that these cuts contradicted provisions provided in plan documents.

Settlement agreements in these three cases included monetary amounts of millions of dollars—ranging from $25 million to nearly $750 million (projected)—to help fund and protect participants' defined benefit plan benefits. The settlements and their specific provisions were reached by all parties during case negotiations and are not generalizable to all church plans. None of the settlement agreements we reviewed contained admissions of liability or wrongdoing by the parties. In two cases, in addition to the monetary awards, employers agreed to provide participants disclosures that are similar to disclosures required by ERISA. For example, in one case the plan sponsor agreed to provide participants an annual summary report on the plan, a summary plan description, and periodic benefit statements.[61] Following each settlement, two of the defined benefit plans involved in these cases remained church plans exempted from ERISA.[62]

Conclusions

Little is known about the prevalence of church plans in the United States, including the number of participants and the amount assets in these plans. Based on available data, nearly 335,000 organizations in the United States spanning across multiple industries—including healthcare, K-12 education, and postsecondary education—are potentially able to

[60]These claims include allegations that employers had failed to comply with ERISA requirements on notifying participants about plan funding, providing other required disclosures, and on fiduciary duties required of plan administrators, among others.

[61]In another case, the plan sponsor agreed to allow participants to request a plan benefit statement twice a year. The statement will be based upon the latest available information regarding the participant's accrued benefits and information regarding which benefits are non-forfeitable benefits, if any, or stating the earliest date on which the benefits become non-forfeitable.

[62]In one of the cases we reviewed, the court found in September 2022 that the plaintiff's hospital defined benefit plan had failed to meet statutory requirements as a church plan and was therefore subject the ERISA's requirements.

offer church plans. Church plans are generally exempt from ERISA and, as a result, are generally not covered by PBGC's insurance programs.

We identified 134 potential church defined benefit plans with nearly 156,000 participants providing reports to the federal government, with 120 of these plans paying premiums to PBGC for benefit insurance, and PBGC only determining the coverage status of 11 of these plans. It is essential for both plan sponsors and plan participants to know if these plans are eligible for federal benefit insurance that guarantees their benefits up to statutory limits. Without such knowledge, the plan sponsors could continue to make unnecessary payments to PBGC. Moreover, participants in these plans could be surprised to find their plans, and their benefits, have no federal insurance should their plan fail. Sponsors could also find that they are only entitled to 6 years of premium refunds even if they had paid premiums for years. PBGC's mission is to protect the retirement benefits of American workers. Until PBGC takes steps to preemptively contact potential church plans that pay premiums to the agency—contacting these plan sponsors before they request a coverage determination or before termination is initiated—both plan sponsors and their participants remain at risk for erroneously assuming that their plan's retirement benefits are protected.

Recommendation for Executive Action

We are making one recommendation to the Pension Benefit Guaranty Corporation:

The Director of the Pension Benefit Guaranty Corporation should direct the agency to preemptively communicate with any defined benefit plan that appears to be sponsored by a church or controlled by or associated with a church organization and that is reporting on the Form 5500 and paying benefit insurance premiums, to provide the plan sponsor information describing requirements applicable to governing church plans. This could include actions such as informing these sponsors that their plan may be a church plan as described in the Employee Retirement Income and Security Act of 1974, as amended, and that if found to be a church plan, that refunds are only available for 6 years of premium payments. PBGC also could refer these sponsors to the PBGC website's guidance on benefit insurance coverage, and could suggest these sponsors share this information with participants and seek professional advice about the legal status of their plan. (Recommendation 1)

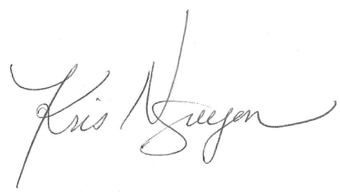
Agency Comments

We provided a draft of this report to the Department of Labor, the Department of the Treasury, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation for comment. We received technical comments from all four agencies and have incorporated their comments, as appropriate. In its written response, PBGC concurred with our recommendation. In their technical comments, PBGC described that it had reviewed the 134 plans GAO identified as potential church plans and removed those plans (1) that are not paying PBGC premiums; (2) that PBGC has determined are not covered under Title IV; (3) that are defined contribution plans, as indicated by the plan names and Forms 5500; (4) that have already terminated; (5) whose websites and Forms 990 make no reference to religion or any religious affiliations; and (6) that, for other reasons, should be removed from the list (e.g., plan no longer exists because it merged with another plan, PBGC is already in contact with sponsor, or sponsor is not tax-exempt). In addition, PBGC said it would provide letters by January 31, 2024 to the approximately 45 plans that remain on the list, and the letters will (1) note that this is sent pursuant to GAO's recommendation, (2) advise that, because the plan name contains a key word used by GAO – e.g., "church,", temple", etc., there are concerns the plan may be a church plan, and (3) refer the sponsors to the IRS website providing guidance on church plans and instructions for requesting a church plan ruling. PBGC also said it will annually review new premium filers and provide letters to those who have one of the key words and cannot be eliminated based on one of the six criteria. GAO will assess PBGC's analysis as part of the agency's response to this report's recommendation. PBGC's response is reproduced in appendix II.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretaries of the Departments of Labor and the Treasury, the Commissioner of the Internal Revenue Service, and the Director of the Pension Benefit Guaranty Corporation. In addition, the report will be available at no charge on the GAO website at https://www.gao.gov.

If you or your staff have any questions about this report, please contact us at (202) 512-7215 or nguyentt@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,



Tranchau (Kris) Nguyen
Director
Education, Workforce, and Income Security Issues

Appendix I: Methodology for Analyzing Church Plan Data and Legal Cases

This appendix provides information on our methodology for examining the extent to which data are available on church plans, identifying potential church plans paying premiums to the Pension Benefit Guaranty Corporation (PBGC), and how we selected legal cases involving church plans that affected participant's benefits.

Universe of Church-Affiliated Organizations

Church-Affiliated Organization Analysis

Because there is no centralized data source of church plans, we examined Internal Revenue Service (IRS) private letter rulings to identify industries where church-affiliated organizations operate. A private letter ruling is issued in response to a written request by a taxpayer who wishes to verify with the IRS that a prospective transaction will not likely result in a tax violation. According to IRS guidance, a sponsor of a church plan may request a private letter ruling from IRS to confirm the plan's status as church plan under the Internal Revenue Code for tax purposes.[1] All private letter rulings are publicly available with identifying information redacted, according to the IRS. We found that the organizations whose plans were determined to be church plans in these private letter rulings came from a diverse list of industries that include, but are not limited to, day care for the elderly and people with disabilities care, substance abuse treatment, residential care, healthcare, mental healthcare, K-12 education, and universities. We then identified nationally representative datasets that include ownership information as a way to count church-affiliated organizations in these industries. We were able to identify

[1]According to IRS officials, church plans are not required to have a private letter ruling from the IRS to have the legal status of a church plan. However, private letter rulings can be used by church plan sponsors to confirm their church plan status for tax and other legal purposes.

datasets with the appropriate ownership information for the healthcare, K-12, and postsecondary industries.

Healthcare Organizations

To count a minimum number of church-affiliated healthcare organizations, we used the Centers for Medicare and Medicaid Services Provider of Services data. These data are released quarterly and contain information on each Medicare-approved provider. The data used in this analysis are from the second quarter of 2022, the most recent available at the time of this analysis. Each organization is identified by specific type, such as hospital, skilled nursing facility, hospice, as well as its ownership. Examples of ownership include, but are not limited to, private not-for-profit, private for-profit, federal, state, local, and church.[2] We used this information to identify church-owned healthcare organizations. To assess data reliability, we reviewed official data documentation for data coverage and analyzed data for missing observations. We found these data to be reliable for purposes of identifying a minimum number of church-affiliated healthcare organizations in the United States that could potentially offer a church plan to employees.

Private Schools

To count a minimum number of church-affiliated private K-12 schools we used the Private School Survey, which is conducted biennially by the U.S. Census Bureau for the Department of Education and covers all 50 states and Washington D.C. We used the data from the 2019/2020 school year for this analysis, the latest available at the time of this analysis. A school is considered a private school—and is eligible for inclusion in the survey—if it 1) is not primarily supported by public funds, 2) provides classroom instruction for one or more grades from kindergarten through 12th, and 3) has one or more teachers. This excludes organizations that support home school efforts, but do not provide classroom instruction. Each school was asked to identify whether it was affiliated with a church and, if so, with which denomination they were affiliated. We used this information to identify church-affiliated private schools. To assess data reliability, we reviewed official data documentation for data coverage and analyzed data for missing observations. We found these data to be reliable for purposes of identifying a minimum number of church-affiliated

[2]Each organization type (e.g., hospital, nursing facility, etc.) had different options for reporting ownership type. Not all organization types had a church ownership option.

private K-12 schools in the United States that could potentially offer a church plan to employees.

Postsecondary Schools

To count a minimum number of church-affiliated postsecondary institutions, we used the Integrated Postsecondary Education Data System. These data are comprised of a series of surveys conducted annually by the U.S. Department of Education's National Center for Education Statistics. These surveys cover all postsecondary institutions that participate in the federal student financial aid programs and ask institutions to self-report any religious affiliation. We used this information to identify church-affiliated postsecondary institutions. Reporting to the Integrated Postsecondary Education Data System is mandatory for all participating institutions. The data used for this analysis are from 2020, which were the latest data available at the time of this analysis. To assess data reliability, we reviewed official data documentation for data coverage and analyzed data for missing observations. We found these data to be reliable for purposes of identifying a minimum number of church-affiliated postsecondary institutions in the United States that could potentially offer a church plan to employees.

Houses of Worship

To further analyze the number of church plans, including the number of houses of worship that could potentially offer a church plan, at our request IRS officials performed a search of 2019 data in the IRS Business Master File for Employee Identification Numbers (EIN) identified as churches.[3] This list of EINs was not provided directly to GAO, but was provided as aggregate counts. IRS officials considered an employer a church if it had either a Form 990 filing requirement of 06, meaning it is exempt from filing due to its church status, or a Foundation Code of 10, identifying it as a church.[4] This search yielded a list of over 300,000 EINs.

[3]According to IRS officials, the term "church" in this instance is a general term for houses of worship and is not denomination specific; therefore the term includes mosques, synagogues, temples, and other houses of worship.

[4]Form 990 is an IRS annual information return filing for tax-exempt organizations. Foundation status is a further classification of Section 501(c)(3) organizations. A Foundation Code identifies the foundation status of a 501(c)(3) organization according to information listed on IRS Form 1023, the application for 501(c)(3) status.

Next, officials searched 2019 W-2 filings for any church EIN with at least one filing that reported contributions or deferrals to a defined contribution plan.[5] This search was used to count the number of employers offering defined contribution plans and the number of employees making contributions or deferrals to a plan. IRS officials then totaled the elective deferrals that were contributed on behalf of these employees as reported in Box 12 on their W-2's. To assess data reliability, we discussed with IRS officials steps they take to ensure the accuracy of the data. We found these data to be reliable for purposes of identifying the number of houses of worship in the United States that could potentially offer a church plan to employees. See table 4 for a list of contribution and deferral types and the amounts reported under each.

[5] A Form W-2 is an IRS tax form given to employees by their employers to enable them to report their income and tax information. These forms include an Employer Identification Number (EIN) that is unique to the employer as well as a section reporting contributions/deferrals made to a defined contribution plan offered by the employer.

Table 4: Retirement Deferrals Reported by Church Employers by Deferral Type

Deferral Type[a]	Total Amount Reported
Elective deferrals under a section 401(k) cash or deferred arrangement plan (including a SIMPLE 401(k) arrangement)[b]	**$211,657,213**
Elective deferrals under a section 403(b) salary reduction agreement	**$1,358,427,898**
Elective deferrals under a section 408(k)(6) salary reduction Simplified Employee Pension Plan (SEP)[c]	**$691,549**
Elective deferrals and employer contributions (including nonelective deferrals) to a section 457(b) deferred compensation plan	**$42,244,630**
Elective deferrals to a section 501(c)(18)(D) tax-exempt organization plan	**$355,623**
Employee salary reduction contributions under a section 408(p) SIMPLE plan	**$14,853,860**
Deferrals under a section 409A nonqualified deferred compensation plan	**$1,523,859**
Income under a nonqualified deferred compensation plan that fails to satisfy section 409A	**$70,485**
Designated Roth contributions under a section 401(k) plan	**$47,474,138**
Designated Roth contributions under a section 403(b) plan	**$136,927,274**
Designated Roth contributions under a governmental section 457(b) plan	**$176,845**
Total	**$1,814,403,374**

Source: Internal Revenue Service (IRS) analysis of 2019 Form W-2 filings. | GAO-23-105080

[a]For additional information on the deferral types listed here please see the Instructions for Forms W-2 and W-3 linked on the IRS website at https://www.irs.gov/retirement-plans/common-errors-on-form-w-2-codes-for-retirement-plans.

[b]IRS guidance describes these plans as a subset of a 401(k) plan designed for small businesses with 100 or fewer employees. According to the IRS, under a SIMPLE 401(k) plan, an employee can elect to defer some compensation. But unlike a regular 401(k) plan, the employer must make either: a matching contribution up to 3 percent of each employee's pay, or a non-elective contribution of 2 percent of each eligible employee's pay.

[c]According to IRS guidance, a Simplified Employee Pension Plan (SEP) plan allows employers to contribute to traditional Individual Retirement Accounts set up for employees. A SEP plan does not have the start-up and operating costs of a conventional retirement plan and allows for a contribution of up to 25 percent of each employee's pay, according to the IRS.

Plan Documentation Analysis

Prevalence of Denominational Affiliations in the United States

To further understand the prevalence of church plans, we sought to identify plan information directly from plan officials. Our goal was to find plan information that reflected the distribution of religious denominations in the United States. We used the Pew Research Center's 2014 Religious Landscape Study to analyze denominational affiliations of the U.S.

population.[6] The Religious Landscape Study is a phone survey conducted on more than 35,000 individuals in all 50 states that asks a series of questions about religious affiliation. This study is the most complete accounting of how the U.S. population identifies with various religious denominations we were able to identify and 2014 is the most recent version of this survey.[7] As seen in table 5, the most common denominational affiliation for individuals is Catholicism, with more than 20 percent of the U.S. adult population self-identifying as Catholic. The next largest denominational affiliation is Baptist, with about 15 percent of the U.S. adult population self-identifying as some sub-denomination of Baptist, such as Southern Baptist Convention or Independent Baptists.[8]

We attempted to contact a representative from every denomination with roughly 1 percent or more of the population identifying affiliation, for a total of 11 denominations.[9] We were able to conduct interviews with representatives from the Southern Baptist Convention, United Methodist, Presbyterian, and Episcopal denominations. These organizations shared plan data directly with us and represent the largest single sponsors of retirement plans—which include both defined contribution plans and defined benefit plans—in terms of both assets and participants, in the final dataset. To assess data reliability, we discussed with denominational officials steps they take to ensure the accuracy of the data. We found

[6]Pew Research Center. “Religious Landscape Study.” Accessed January 31, 2022. [https://www.pewresearch.org/religion/religious-landscape-study/.]

[7]For more information on survey methodology please visit https://www.pewresearch.org/religion/religious-landscape-study/

[8]The Religious Landscape Study divides denominations into three main categories: Christian, Non-Christian, and Other Faiths. The Christian category is further broken down into the sub-categories: Evangelical Protestant, Mainline Protestant, Historically Black Protestant, Catholic, Mormon, Orthodox Christian, Jehovah’s Witness, and Other Christian. Within these sub-categories are included multiple sub-denominations. Likely due to their lower representation in the data, non-Christian faiths are not broken down into sub-denominations and only include Jewish, Muslim, Buddhist, Hindu, and Other World Religions. The Other Faiths category includes Unitarians and other “liberal” faiths, New Age (such as Wiccan), and Native American Religions. For this analysis denominational categories and sub-denominations were aggregated into what we believe to be easily recognizable denominational titles. For instance, the Baptist denomination mentioned here is comprised of the Southern Baptist Convention and Independent Baptists from the Evangelical Protestant category, as well as the Baptist Family sub-category from the Historically Black Protestant category, among others.

[9]The percentages used to determine inclusion on the contact list were those calculated with the aggregation process previously described.

these data to be reliable for purposes of identifying the prevalence of church plans.

Table 5: Denominational Representatives Contacted for Interview

Denomination[a]	Percentage of U.S. Adult Population Affiliated[b]	Contacted	Result
Unaffiliated[c]	22.8	NA	NA
Catholic	20.8	Yes	Multiple contacts declined interview or did not respond to request
Baptist	15.1	Yes	Interviewed
Pentecostal	4.4	No	No contact identified
Methodist	4.6	Yes	Interviewed
Lutheran	3.6	No	No contact identified
Jewish	1.9	Yes	No response
Mormon	1.6	No	No contact identified
Restorationist	1.9	No	No contact identified
Presbyterian	2.2	Yes	Interviewed
Episcopalian/Anglican	1.4	Yes	Interviewed
Muslim	0.9	No	No contact identified

Source: GAO analysis of 2014 Pew Research Center Religious Landscape Study data and GAO records. | GAO-23-105080

[a]Focus was given to denominations with more than one percent of individuals identifying, but smaller denominations were contacted when contacts were identified. Denominations labeled "non-denominational" were excluded from consideration for contact.

[b]The percentages listed here are estimates. Denominations in table represent aggregates of some denominations in Pew data. The margin of error for the percentages prior to aggregation is +/- 0.6 percentage points.

[c]Unaffiliated refers to individuals who reported having no religious affiliation.

Church Plan Financial Documents

Next, we conducted a broad internet search to identify any publicly-available financial statements from religious organizations regarding their defined contribution plans and defined benefit plans.[10] The internet search utilized a series of key search terms including: "church retirement," "church pension," "[denomination] retirement," "[denomination] pension,"

[10]The focus of this search was on houses of worship rather than schools, hospitals, and other church-affiliated organizations. However, due to the structure of certain denominations some of these other institution types are represented in the data. For instance, in the final dataset there are plans offered by a specific Catholic diocese that are available to the entire diocese, which includes both houses of worship and schools.

and "church plan" were utilized. This identified a set of websites for pension and retirement boards and companies that sponsor plans for various denominations. Due to their administrative structure, plans offered by the Catholic Church were identified by searching through specific dioceses' websites.[11] We selected a sample of 26 diocese that made contributions to the 2020 Retirement Fund for Religious in excess of $200,000 as listed in the most recent collection report at the time of our analysis.

The Retirement Fund for Religious is a fund managed by the National Religious Retirement Office that helps redistribute funds between eligible Catholic religious communities to support retirement for religious officials such as priests, bishops, and nuns.[12] We used this selection method for three primary reasons: 1) the fund collection report includes diocese in all 50 states and Washington D.C. and offers a readily accessible list of dioceses; 2) these dioceses' participation in the fund may indicate they are likely to believe retirement support is important and may be more likely to offer retirement plans; and 3) the size of their contributions may indicate they, amongst all contributing diocese, possibly have the greatest financial means to sponsor their own plans.

Once we identified the various denominational institutions, we searched their websites for financial statements.[13] Typically these came in the form of annual financial reports prepared by independent auditors. We looked for seven pieces of information in the financial statements: year, total plan assets, total plan participants, total plan employers, number of plans offered, types of plans offered, and funding levels for any defined benefit plans. We collected these data into one database where the unit of observation is the plan sponsor or plan administrator.

There are three caveats to this database.

1. Most financial statements reported financial information from 2020 or 2021. Because 2020 was the more common available year, when an institution included information from both 2020 and 2021 we used information from 2020. We also included data from three sponsors

[11]In this report we use diocese to refer to both dioceses and archdioceses.

[12]National Religious Retirement Office, *National Religious Retirement Office 2020 Annual Report* (Washington, D.C.: United States Conference of Catholic Bishops, 2021).

[13]Of the 26 sample diocese, 16 had financial information publicly available.

who provided financial statements from 2019, one from 2018–2019, and one from 2022.

2. Not all financial statements included all pieces of information. Roughly 60 percent of sponsors did not provide a count of participants and roughly 70 percent did not provide the number of employers covered by the plan(s).
3. The way total assets were reported varied across financial statements. Specifically, some documents reported multiple measures of assets while others only included one. We included gross assets in our data when this measure was available. Where they were not available, fair market value was included.

Form 5500 Analysis

With guidance from Department of Labor (DOL) officials, we built upon a search performed at our request by DOL of potential church defined benefit plans from the online database of Form 5500 filings from filing year 2018. This required the use of datasets from years 2017–2020 as early, late, and amended filings are possible. The Form 5500 captures information on plan assets, funding levels, PBGC coverage, and premium payments. To assess data reliability, we discussed how to appropriately capture all filings with DOL, examined duplicate filings for inconsistent values reported for assets, participants, and funding levels. Those with different values across duplicate filings were set to their largest value (i.e., highest funding level and largest asset amount).[14] We also analyzed the data for missing observations. We found these data to be reliable for purposes of identifying the potential church defined benefit plans that are reporting on the Form 5500.

Text analysis was then used on this sample to identify plans, based on their name, that are potentially church plans. This was done using a series of words commonly associated with religious organizations—such as “church,” “temple,” “bible,” and “Hebrew”. We then identified variations of those words that would clearly exclude the plan from our search—such as “churchill” and “christianson”. A list of plan names that included one or more church identifiers that were not one of the identified variants was created. We then checked this list manually for any remaining plan names not caught by the text analysis. We excluded plans if the key word identified was clearly part of an individual’s name or was clearly the name

[14]Duplicates were identified based on the plan name.

of a town. For any plan names that did not obviously fall into one of these categories, we used an internet search to determine whether the sponsoring organization had ties to a religious denomination. This resulted in a list of nearly 2,500 potential church plans.

From the resulting list of filings, we identified 134 defined benefit plans and whether they were paying PBGC premiums. Each filing includes plan characteristic codes, some of which identify a plan as a defined benefit plan (see table 6). We then identified whether the form reported a premium filing confirmation number, which is provided on the premium filing receipt.

Table 6: Defined Benefit Plan Feature Characteristic Code Descriptions

Code	Description
1A	Benefits are primarily pay related.
1B	Benefits are primarily flat dollar (includes dollars per year of service).
1C	Cash balance or similar plan – Plan has a “cash balance” formula. For this purpose, a “cash balance” formula is a benefit formula in a defined benefit plan by whatever name (for example, personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (for example, 10 percent of final average pay times years of service, or the amount of the employee’s hypothetical account balance).
1D	Floor-offset plan – to offset for retirement benefits provided by an employer-sponsored defined contribution plan.
1E	Code section 401(h) arrangement – Plan contains separate accounts under Code section 401(h) to provide employee health benefits.
1F	Code section 414(k) arrangement – Benefits are based partly on the balance of the separate account of the participant (also include appropriate defined contribution pension feature codes).
1H	Plan covered by the Pension Benefit Guaranty Corporation (PBGC) that was terminated and closed out for PBGC purposes – Before the end of the plan year (or a prior plan year), (1) the plan terminated in a standard (or distress) termination and completed the distribution of plan assets in satisfaction of all benefit liabilities (or all Employee Retirement Income Security Act of 1974, as amended (ERISA)) Title IV benefits for distress termination); or (2) a trustee was appointed for a terminated plan pursuant to ERISA section 4042.
1I	Frozen plan – As of the last day of the plan year, the plan provides that no participant will get any new benefit accrual (whether because of service or compensation).
3D	Pre-approved pension plan - A pre-approved plan under sections 401, 403(a), and 4975(e)(7) of the Code that is subject to a favorable opinion letter from the Internal Revenue Service.

Source: Form 5500 Filing Instructions. | GAO-23-105080

Church Defined Benefit Plan Bankruptcy Analysis

To understand how potential outcomes in legal cases involving church plans affect participants' benefits, we reviewed selected bankruptcies filed by sponsors of church defined benefit plans. We analyzed data collected from a non-generalizable sample of churches or organizations controlled by or associated with a church that offered a church defined benefit plan and filed for bankruptcy during the period from October 17, 2005—the effective date for most of the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005—through August 2, 2021—the most recent at the time of our analysis. The 2005 law made significant changes to federal bankruptcy law. It included provisions related to Chapter 11 business bankruptcies and sought to address the treatment of employee benefits during the bankruptcy process.

We first generated a list of church and religious organization Chapter 11 bankruptcy cases by conducting a word search on the PACER Case Locator. PACER—Public Access to Court Electronic Records—is an electronic public access service provided by the federal judiciary that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts. Case documents are available on PACER as they are filed or entered into the court's case system. We used search terms to identify Chapter 11 bankruptcy cases filed by churches, or organizations controlled by or associated with a church or convention or association of churches. The search terms included identifying all cases with "archdiocese," "Baptist," "church of," "Catholic," "diocese," "Episcopal," "Evangelical," "hospital," "Lutheran," "Methodist," "mosque," "ministry," "Mormon," "Presbyterian," "Roman Catholic," "saint," "St.," and "temple," for the "casetitle" in PACER. This search generated an initial list of 422 potential cases. After deleting cases based on duplicate "caseid" numbers, the final list contained 347 potential Chapter 11 cases from churches, and organizations associated with a church or convention or association of churches for review.

To reduce our case count to a more manageable size, we selected and reviewed 102 of the 347 cases with the goal of having our sample include a range of different denominations and different types of religious organizations filing for bankruptcy. To do this, we judgmentally selected which of the 347 cases to review based on the organization name, picking cases to review that appeared to cover a range of denominations and that appeared to cover churches, synagogues, publishing companies, hospitals, schools, nursing homes.[15],

From this review, we excluded cases if: (1) court documents showed that the employer filing for bankruptcy was not a tax-exempt church, tax-exempt religious organization, or affiliated with a tax-exempt church or religious organization; (2) we were unable to confirm the presence of an church defined benefit plan through a review of court documents; (3) the case did not have a court-approved disclosure statement, reorganization plan, or other court documentation describing the treatment of the defined benefit plan during the bankruptcy; (4) the initial review of court documents showed that PBGC was a creditor in the bankruptcy estate, indicating that the plan was an electing church plan and covered by PBGC insurance; and 5) the bankruptcy case was filed before October 17, 2005 or had not terminated by August 2, 2021, the date the team downloaded data from PACER. Many of these 102 bankruptcy cases did not include a church defined benefit plan in the bankruptcy estate.[16] Applying these exclusion criteria left us with four bankruptcy cases.

Three of these cases were closed (i.e., terminated) at the time of our review. We included one bankruptcy case that was still open (i.e., not terminated) by August 2, 2021, because the case had proceeded sufficiently for us to describe an expected outcome for defined benefit plan benefits.

To analyze the four bankruptcy court cases, we used a standardized protocol for each selected case and used a data collection instrument to input data from court documentation to ensure the analysis would collect

[15]Although we tried to get a range of denominations and types of organizations into the final sample for analysis, all we found that met our criteria were Catholic dioceses or hospitals affiliated with the Catholic diocese in the area. We did not attempt to construct a random sample of bankruptcies from the 347 cases as none of our findings would be generalizable; however, we were also not successful in constructing a diverse sample of bankruptcy cases from the list of 347 cases generated by PACER.

[16]The bankruptcy estate refers to all legal or equitable interest of the company at the time it files for bankruptcy. The estate includes all property in which the company has an interest. In most Chapter 11 cases, the company remains in control of the bankruptcy estate during the bankruptcy proceeding, referred to as a debtor-in-possession.

reliable and accurate bankruptcy data.[17] The protocol included step-by-step instructions for reviewers to follow, including prescribed court documents to review and data to be collected.

For the four bankruptcy cases we reviewed, the expected outcome for church defined benefit plan benefits were based on statements provided in the court-approved disclosure statement or reorganization plan, which may differ from actual recoveries. To determine the expected resolution of church defined benefit plan benefits, we reviewed case filings for evidence of specific treatment provided to employees who were participating in or receiving benefits from the plan. Because the nature of bankruptcy proceedings depends on the facts and circumstances of each individual case, the results of our analysis are not generalizable but provide illustrative examples of the potential outcomes for participant benefits in such cases.

Analysis of Settlement Agreements Involving Church Plans

We conducted a non-generalizable review of three settlement agreements that resolved civil lawsuits brought by church plan participants that alleged underfunding and benefit cuts by their employer and plan sponsor. We were alerted to these cases based on reporting by the media and interviews with agency officials. For example, we initially learned about the three cases from Seyfarth's' *18th Annual Workplace Class Action Litigation Report, 2022 Edition*.[18] According to this report, it contains a circuit-by-circuit and state-by-state review of significant class action rulings rendered in 2021, and analyzes the most significant settlements over the past 12 months in class actions and collective

[17]The protocol and data collection instrument that we used were originally developed for a different GAO report and were reviewed by two outside bankruptcy experts at that time—an attorney with expertise in the tax aspects of corporate bankruptcies and a bankruptcy law professor and former attorney who previously served as a federal bankruptcy judge. We incorporated these experts' technical feedback into the protocol and data collection instrument. We used nearly the same protocol and data collection instrument for this report. GAO, *Private Pensions: IRS and DOL Should Strengthen Oversight of Executive Retirement Plans* GAO-20-70, (Washington, D.C.: Jan. 28, 2020).

[18]Seyfarth's' *18th Annual Workplace Class Action Litigation Report, 2022 Edition*, (Chicago, IL: Jan. 2022).

actions.[19] For each of the cases, we reviewed available court documentation describing the case, such as plaintiff complaints—including claims based on federal and state law—defendant motions to dismiss, settlement agreements, and final court orders approving settlements. We limited our selection to cases where church plan participants alleged plan underfunding and benefit cuts by their employer, were terminated (i.e., completed) before or during our review, and where we found settlement agreements that were approved by the court.[20]

[19]According to this report, it analyzes the leading class action and collective action decisions of 2021 involving claims against employers brought in federal courts under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, ERISA, and a host of other federal statutes applicable to workplace issues. The report also analyzes class action and collective action rulings involving claims brought against employers in all 50 state court systems, including decisions pertaining to employment laws, wage and hour laws, and breach of employment contract actions. The key class action and collective action settlements in 2021 are also analyzed, both in terms of gross settlement dollars in private plaintiff and government-initiated lawsuits as well as injunctive relief provisions in consent decrees. In total, there are 1,607 decisions analyzed in the report.

[20]In one of the cases we identified for analysis, the court found in September 2022 that the plaintiff's hospital defined benefit plan had failed to meet statutory requirements as a church plan and was therefore subject the ERISA's requirements. We chose to include this case in our analysis as this court's decision came after the settlement had been agreed to by all parties. We include this case as an illustration of potential outcomes for participant benefits resulting from litigation related to non-electing church plans.

Appendix II: Comments from the Pension Benefit Guaranty Corporation

PBGC
Protecting America's Pensions

Pension Benefit Guaranty Corporation
445 12th Street SW, Washington, DC 20024-2101

Office of the Director

September 13, 2023

Tranchau (Kris) Nguyen
Director, Education, Workforce, and Income Security Issues
United States Government Accountability Office
Washington, DC 20548

RE: Government Accountability Office (GAO) September 2023 Draft Report GAO-23-105080, "Retirement Plans: Improved Communication Needed on Church Plan Eligibility for Insurance Coverage"

Dear Ms. Nguyen:

Thank you for the opportunity to comment on the GAO's draft report, received July 28, 2023, related to GAO's engagement "Church Pension Plans" (Engagement code 105080). Your office's work on this is appreciated.

PBGC management met with representatives from GAO to discuss the findings and recommendation. In addition, PBGC also met with representatives from the Department of the Treasury and the Internal Revenue Service. The dialogue was both informative and insightful and PBGC is grateful for the opportunity to response to the recommendation suggested by GAO.

We agree with the draft report's findings and recommendation. In the attachment to this letter, you will find our specific response to the recommendation included in the report, as well as our planned corrective actions and scheduled completion date. Addressing this recommendation in a timely manner is an important priority for PBGC.

Sincerely,

Gordon Hartogensis
Digitally signed by Gordon Hartogensis
Date: 2023.09.13 11:31:29 -04'00'

Gordon Hartogensis
Director

Attachment

202-229-4000 www.pbgc.gov

Attachment

GAO Recommendation: The Director of the Pension Benefit Guaranty Corporation should direct the agency to preemptively communicate with any defined benefit plan that appears to be sponsored by a church or controlled by or associated with a church organization and that is reporting on the Form 5500 and paying benefit insurance premiums, to provide the plan sponsor information describing requirements applicable to governing church plans. This could include actions such as informing these sponsors that their plan may be a church plan as described in the Employee Retirement Income and Security Act of 1974, as amended, and that if found to be a church plan, that refunds are only available for 6 years of premium payments. PBGC also could refer these sponsors to the PBGC website's guidance on benefit insurance coverage, and could suggest these sponsors share this information with participants and seek professional advice about the legal status of their plan.

PBGC Response: PBGC agrees with this recommendation. PBGC has reviewed the 134 plans identified by GAO and removed those plans (1) that are not paying PBGC premiums; (2) that PBGC has determined are not covered under Title IV; (3) that are defined contribution plans, as indicated by the plan names and Forms 5500; (4) that have already terminated; (5) whose websites and Forms 990 make no reference to religion or any religious affiliations; and (6) that, for other reasons, should be removed from the list (e.g., plan no longer exists because it merged with another plan, PBGC is already in contact with sponsor, or sponsor is not tax-exempt).

PBGC will provide letters to the approximately 45 plans that remain on the list after the process described above. The letter will (1) note that this is sent pursuant to GAO's recommendation, (2) advise that, because the plan name contains a key word used by GAO – e.g., "church,", temple", etc., there are concerns the plan may be a church plan, and (3) refer the sponsors to the Internal Revenue Service website providing guidance on church plans and instructions for requesting a church plan ruling. Annually PBGC will review new premium filers and provide letters to those who have one of the key words used by GAO and cannot be eliminated based on one of the six criteria noted in the previous paragraph.

Target Completion Date: 1/31/2024

2

Accessible Text for Appendix II: Comments from the Pension Benefit Guaranty Corporation

Pension Benefit Guaranty Corporation (PBGC)

September 13, 2023

Tranchau (Kris) Nguyen
Director, Education, Workforce, and Income Security Issues
United States Government Accountability Office
Washington, DC 20548

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Sincerely,

Gordon Hartogensis
Director

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Target Completion Date: 1/31/2024

Appendix III: GAO Contact and Staff Acknowledgements

GAO Contact

Tranchau (Kris) Nguyen, (202) 512-7215, nguyentt@gao.gov

Staff Acknowledgements

In addition to the contact named above, Mark Glickman (Assistant Director), Ted Burik (Analyst-in-Charge), Joanna Carroll, and Brian Stephenson made key contributions to this report. Also contributing to this report were Andrew Bellis, Benjamin Bolitzer, Mackenzie Cooper, Caitlin Croake, Sherri Doughty, Margaret Hettinger, Abigail Loxton, Joseph Silvestri, Rachel Stoiko, Curtia Taylor, Frank Todisco, Shelia Thorpe, Kathleen Van Gelder, and Adam Wendel.

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