



PBGC Proposed Regulations on Reporting for Underfunded Plans

The PBGC has issued proposed regulations on its reporting requirements for underfunded defined benefit plans under ERISA Section 4010. In addition to implementing changes made by the Pension Protection Act of 2006 (PPA), these proposed regulations would waive reporting for controlled groups with less than \$15 million in underfunding, modify some of the information required to be reported, and make other clarifying changes.

Background

ERISA Section 4010 requires the reporting to the PBGC of actuarial and financial information by controlled groups with defined benefit plans that have significant amounts of underfunding. Prior to PPA, Section 4010 required reporting if (i) aggregate unfunded vested benefits of all plans in a controlled group exceeded \$50 million (the \$50 Million Gateway Test), (ii) liens were imposed for missed contributions in excess of \$1 million, or (iii) minimum funding waivers in excess of \$1 million were granted. PPA made several changes affecting Section 4010, including replacing the \$50 Million Gateway Test with a test based on the funded ratio of each plan in the controlled group.

The PBGC has now issued [proposed regulations](#) that would implement the PPA changes to Section 4010, waive reporting in certain cases, revise certain information reporting requirements, and provide other clarifications.

PBGC Proposed Regulations

Funding Target Attainment Percentage (FTAP)

PPA replaced the \$50 Million Gateway Test with a test requiring reporting if the funding target attainment percentage (FTAP) at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80% (the 80% Funded Gateway Test). Under this test, the FTAP for Section 4010 purposes would be determined as of the valuation date for the plan year ending within the "information year." PBGC defines information year as the fiscal year. However, the information year is the calendar year for any controlled group whose members have different fiscal years.

BUCK COMMENT. *The FTAP, as defined under PPA, is determined as of a plan's valuation date, which for nearly all plans subject to Section 4010 reporting, is the first day of the plan year. Thus, under this new test, filers would not be required to determine the FTAP on a different date than for minimum funding purposes.*

Carryover and Prefunding Balances

For minimum funding purposes, a plan's FTAP is determined using assets reduced by the amount of carryover and prefunding balances. Plan sponsors are permitted to elect to increase or reduce these balances effective as of the beginning of a plan year. Proposed IRS regulations would require these elections to be made well before a Section 4010 filing is due. Therefore, under the PBGC proposed regulations, assets used to determine the FTAP for Section 4010 purposes would also reflect the reduction of carryover and prefunding balances.

Funding Waivers

Section 4010 reporting is required if the IRS has granted funding waivers in excess of \$1 million to any plan in the controlled group. Reporting is required during the 5-year amortization period or until the funding waivers are deemed fully amortized (e.g., when a plan's funding shortfall is zero). There is some uncertainty regarding how funding waivers granted before 2008 plan years will be carried over to succeeding years under PPA regulations. The PBGC proposed regulations clarify that the waiver amortization period will not be deemed to have ended for Section 4010 reporting purposes merely because pre-2008 plan year waivers are not carried over to post-2007 plan years.

Reporting Requirements

PPA amended Section 4010 to require that information provided include –

- the amount of the plan's benefit liabilities determined under PBGC termination assumptions
- the funding target of the plan determined as if the plan has been in at risk status for at least 5 years
- the plan's FTAP.

The PBGC proposed regulations detail how to determine these amounts, and provide that filers would have to report information on the application of any funding-based limitations on benefits.

Section 4010 requires the submission of the actuarial valuation report for the plan. To reflect the new funding structure under PPA, the proposed regulations would specify what information must be included in or attached to the report.

Special Controlled Group Waiver

The PBGC proposed regulations would waive Section 4010 reporting based on the 80% Funded Gateway Test for a controlled group if the aggregate plan underfunding, disregarding plans with no underfunding, does not exceed \$15 million. Underfunding would be defined as the funding shortfall used for minimum funding purposes, but determined without reducing assets by carryover and prefunding balances.

Small Plan Exemption

Currently, plans with fewer than 500 participants are exempt from reporting actuarial information under Section 4010. The PBGC proposed regulations would revise this provision by adding the condition that these plans have less than \$15 million in plan underfunding (as defined for purposes of the special controlled group waiver above).

Multiple Employer Plans

The proposed regulations would provide for reduced reporting for certain multiple employer plans. In general, only information on employers that are among the 10 largest employers would need to be provided. In addition, the proposed regulations clarify that the entire underfunding of a multiple employer plan is counted when determining whether the \$15 million controlled group exemption applies to an employer that is a sponsor of a multiple employer plan.

Transition Rules

A number of required determinations under Section 4010 (e.g., FTAP) are based on amounts defined under PPA for plan years beginning after 2007. The PBGC proposed regulations provide for substitute amounts in cases where these determinations are required for 2007 plan years. These substitute amounts would be determined in a manner similar to those determined under IRS proposed regulations on benefit restrictions. (See our October 4, 2007 [For Your Information](#).)

Effective Date

The proposed regulations would apply to information years beginning after 2007. However, the changes relating to the reporting of actuarial information would apply for plan years beginning after December 31, 2007.

Conclusion

The PBGC has provided necessary guidance to implement the PPA changes to the Section 4010 filing requirements. The proposed regulations also provide some useful waivers and exemptions.

Buck's consultants are ready to discuss this guidance with you, determine if Section 4010 filings are required, and assist with the preparation of any necessary filings.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.