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PBGC Issues Final Regulations on Variable Rate Premiums Under PPA

The Pension Benefit Guaranty Corporation (PBGC) has issued final regulations that implement changes made by the Pension Protection Act of 2006 (PPA) on the determination of variable rate premiums for plan years beginning on or after January 1, 2008. These regulations closely follow the proposed regulations issued in mid-2007. Among other things, the final regulations designate premium due dates by three plan sizes and clarify the meaning of vested benefits for premium purposes.

Background

Employers that sponsor PBGC-covered pension plans must pay annual premiums to the PBGC. In addition to an annual flat rate per participant premium, certain underfunded pension plans must also pay an annual variable rate premium (VRP) based on the amount of their unfunded vested benefits (UVB). PPA amended the definition of UVB so that it would conform to PPA's new funding rules and eliminated the full funding limit VRP exemption.

The PBGC has now issued final regulations that conform to the changes made by PPA.

PBGC Final Regulations

The final regulations provide guidance on determining the UVB, calculating the VRP, the elimination of the full funding limit VRP exemption, the premium filing due dates, the electronic filing requirement, and recordkeeping. The regulations are effective for plan years beginning on or after January 1, 2008.

Determination Date. The regulations require UVB to be measured using the funding valuation date in the plan year for which the VRP is being paid (instead of using a date in the prior plan year). PPA requires the funding valuation date to be the first day of the plan year, except for small plans (those with less than 100 participants). If a small plan's valuation date is later than the first day of the plan year, accruals and contributions made for the plan year are ignored.

Calculation of VRP. The VRP for 2008 and later plan years is equal to $9 per $1,000 of UVB, which is the excess of the plan's "premium funding target" over the market value of the plan's assets (without adjustment for prefunding or carryover balances). The premium funding target is calculated in the same manner as the PPA funding target, except only vested benefits are taken into account and the PPA segment interest rates as of the month before the month in which the premium payment year begins are used, with no averaging. For these purposes, the transition rules applicable to the PPA segment rates permitted for minimum funding purposes are ignored.

The regulations provide a less burdensome calculation method for filers who irrevocably elect to use an "alternative premium funding target" for a five-year period. The alternative premium funding target is calculated in the same manner as the PPA funding target, except that only vested benefits are taken into account. Because it is expected that the vested portion of the plan's funding target will have to be disclosed on Form 5500, election of this alternative method would eliminate the need for a separate calculation for premium purposes. The election to use the alternative premium funding target must be filed by the plan's VRP due date for the first plan year to which the election would apply.

Definition of Vested Benefits. For premium purposes, the PBGC's definition of vested benefits includes benefits that would not be protected under Section 411(d)(6) and survivor benefits (even if the participant is still alive), even though these benefits may be excluded from coverage under certain statutory vesting requirements.

Full Funding Limit Exemption. Prior to the enactment of PPA, employers with plans that made contributions for the prior plan year that were at least equal to the full funding limit were not required to pay the VRP. The regulations reflect the elimination of this exemption by PPA.

Special VRP Rules. The following rules are eliminated under the regulations –

- a plan with fewer than 500 participants is exempt from reporting its VRP information if the plan has no UVB
- a plan with 500 or more participants may report and compute its VRP on the basis of accrued rather than vested benefits
- a plan may value benefits using the funding interest rate instead of the VRP interest rate if the funding rate is less than the premium rate.

Under PPA, small plans (those of employers with 25 or fewer employees) have a per-participant VRP cap of $5 times the number of participants up to 25. (For example, a plan with 10 participants would have a per-participant VRP cap of $5x10=$50, for a total plan VRP cap of $50x10=$500) The regulations provide reporting relief for small plans that pay the VRP cap – they do not need to determine or report UVB.

Premium Due Date. The regulations provide a new premium due date schedule which divides plans into three categories (instead of two), based on the number of participants. The number of participants for this purpose is generally counted as of the last day of the prior plan year for both single- and multiemployer plans. The schedule grants smaller plans more time to file and larger plans the ability to make estimated VRP filings and later correct them without incurring a late filing penalty.

The table below summarizes the due dates for filing flat rate and variable rate premiums for both single- and multiemployer calendar year plans for the 2008 premium payment year.

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	Small Plans (<100 participants)	Mid-size Plans (100-499 participants)	Large Plans (>499 participants)
Flat Rate Premium Due Date	4/30/09	10/15/08	2/29/08
Flat Rate Reconciliation Due Date	n/a	n/a	10/15/08
Variable Rate Premium Due Date	4/30/09	10/15/08 Estimate may be paid and filed on this date*	10/15/08 Estimate may be paid and filed on this date*

* Under the final regulations, the VRP estimate is based on a final determination of the market value of the plan's assets and a reasonable estimate of the plan's premium funding target for the premium payment year that takes into account the most current data available and is determined in accordance with generally accepted actuarial principles and practices. Penalties will not apply if the final VRP is filed by April 30, 2009. VRP estimates will be subject to audit.

Electronic Filing. The PBGC requires annual premiums to be filed electronically (see our June 26, 2006 *For Your Information*). The regulations state that premium filings on paper or in another manner other than the prescribed electronic method would not satisfy the PBGC filing requirement unless an exemption is granted. Late filing penalties may be assessed for failure to comply with this requirement.

Recordkeeping. In general, PBGC regulations require plan administrators to retain all plan records related to premiums (including those prepared by enrolled actuaries and insurance carriers) for at least six years. These final regulations require that all premium-related records prepared by plan sponsors and employers required to contribute to a plan also be retained. Examples in the regulations indicate that the PBGC takes a broad view of what would be considered plan records. The regulations also clarify how the time periods for producing premium-related records to the PBGC upon audit will be applied.

Plans Not Immediately Subject to PPA. Certain plans, such as plans of cooperatives, plans affected by settlement agreements with the PBGC, and plans of certain government defense contractors, are not immediately subject to the PPA funding provisions. In addition, special PPA funding rules apply to plans of airline carriers and airline caterers. The preamble to the final regulations clearly states that these plans are not exempt from the regulations and are required to calculate their UVB in the same manner as all other plans.

Conclusion

The final regulations provide useful guidance for determining variable rate PBGC premiums under PPA. Now that the full funding limit exemption no longer exists, more employers will be subject to the variable rate premium. The introduction of the alternative premium funding target will make the filing process easier for many employers.

Buck's consultants would be pleased to help you determine and file variable rate premiums with the PBGC.

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.