



PBGC Final Regulations on Reporting for Underfunded Plans

The PBGC has issued final 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 regulations 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.

Section 4010 filings are required to be submitted within 105 days after the end of the information year (generally the fiscal year). For 2008 calendar year information years, the filing is due April 15, 2009.

Background

ERISA Section 4010 requires controlled groups with defined benefit plans that have significant amounts of underfunding to report actuarial and financial information to the PBGC. 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.

In February 2008, the PBGC issued proposed regulations under Section 4010 to implement the PPA changes and provide other guidance. Now the PBGC has finalized the regulations.

PBGC Final Regulations

The final PBGC regulations implement the PPA changes, waive reporting in certain cases, revise certain information reporting requirements, and provide other clarifications. They are substantially the same as the proposed regulations, but do make certain changes and add further clarifications.

Funding Target Attainment Percentage (FTAP)

PPA replaced the \$50 Million Gateway Test with an 80% Funded Gateway Test, which requires 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%. Under this test, the FTAP for Section 4010 purposes is 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.*

The final regulations clarify that the gateway tests only apply to plans maintained as of the end of the information year.

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 final PBGC regulations, assets used to determine the FTAP for Section 4010 purposes 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 final PBGC 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 final PBGC regulations detail how to determine these amounts, and provide that filers must report information on the application of any funding-based limitations on benefits. In addition, the regulations require the reporting of a lien that was triggered during the information year for late minimum required contributions, and whether any

funding waivers totaling \$1 million or more were granted for which there is still an outstanding balance as of the end of the plan year.

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

To ensure that all relevant actuarial information is submitted, and since IRS guidance on the PPA funding rules is not yet final, these regulations provide that the online instructions to PBGC's e-4010 web-based application may require additional items to be included or attached to the report.

Special Controlled Group Waiver

The final PBGC regulations 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 is 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 final PBGC regulations revise this exemption 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). In addition, the regulations clarify that the 500 participant count is determined as of the end of the plan year ending within the information year, or as of the valuation date for that plan year.

Multiple Employer Plans

The final regulations provide a different alternative method of compliance for certain sponsors of multiple employer plans than was in the proposed regulations. Eligible contributing sponsors (defined as contributing sponsors that would not be subject to 4010 reporting if the plan were disregarded in applying the gateway tests) satisfy the Section 4010 reporting requirements if any contributing sponsor provides a timely filing.

In addition, the 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 final PBGC regulations provide for substitute amounts in cases where these determinations are required for 2007 plan years. These substitute amounts are to be determined in a

manner similar to that described in IRS proposed regulations on benefit restrictions. (See our October 4, 2007 [For Your Information](#).)

Effective Date

The final regulations apply to information years beginning after 2007. However, the changes relating to the reporting of actuarial information 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 final 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.