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PBGC Provides Guidance on PPA Multiemployer Plan Reporting Requirements for “Orphaned” Participants

The PBGC has issued Technical Update 10-1 to help multiemployer pension plans report information on Form 5500 under disclosure rules expanded by the Pension Protection Act of 2006 (PPA) with respect to participants for whom employers are no longer making contributions.

Background

Section 103(f)(2)(C) of ERISA, as amended by PPA, requires multiemployer defined benefit pension plans to include in their annual Form 5500 report, as of the end of the plan year to which the report relates, the number of participants on whose behalf no contributions were made by an employer for the applicable plan year and separately for each of the two preceding plan years. Beginning with the 2009 plan year, this information must be reported on Form 5500 Lines 14a through 14c of the Schedule R. The PBGC has now issued Technical Update 10-1 clarifying the instructions for Line 14, and providing partial reporting relief for the 2009 plan year.

Technical Update 10-1

The instructions for Line 14 of Schedule R require a multiemployer plan to count only those participants whose last contributing employer had withdrawn from the plan by the beginning of the relevant plan year. In [Technical Update 10-1: Multiemployer Plans - Clarification of Schedule R \(Form 5500\) Instructions and Partial Reporting Relief for 2009](#), the PBGC clarifies the instructions for Line 14 and provides an alternative approach, and also offers two alternatives for 2009 only. The PBGC notes that funds may use any alternative approach that satisfies the requirements of the applicable statutes and regulations, and invites discussion of an alternative approach.

Basically, the information required for Line 14 relates to the number of retired or deferred vested participants whose last contributing employer had withdrawn from the plan. The technical update clarifies that if the participant's last contributing employer had withdrawn from the plan by the beginning of the relevant plan year, the participant is counted on Line 14a through 14c, as appropriate.

Technical Update 10-1 further clarifies that as an alternative, a plan may count as participants on Lines 14a through 14c only those participants whose last contributing employer and all prior contributing employers had withdrawn from the plan by the beginning of the relevant plan year. A plan using this approach must so indicate on an attachment to the Schedule R.

Partial Relief for the 2009 Plan Year

Although a plan must make a reasonable, good faith effort to provide all available data the instructions require, the PBGC offers partial relief for the 2009 plan year to plans that cannot obtain the data.

Reasonable Approximation of Number of Participants. If a plan cannot reasonably obtain the data because of the need to modify its records systems to capture such information, the plan may provide a reasonable approximation of the number of participants required to be reported. The PBGC provides as an example of a reasonable approximation, a random sampling of the lesser of 25% of all retired or deferred vested participants or 300 retired or deferred vested participants.

Under this approach, the plan would determine the percentage of the sampled participants whose last contributing employer had withdrawn from the plan by the beginning of the 2009 plan year, and would apply this percentage to the plan's total inactive participant population for the 2009 plan year. The same approach would apply for the preceding two plan years. A plan taking advantage of this relief must identify the data on Line 14 as a reasonable approximation of the participant count and describe the basis for the approximation on an attachment to the Schedule R.

Alternative Method of Compliance. As an alternative to the reasonable approximation method discussed above, a plan may make a partial report of the information required on Line 14 of the 2009 Schedule R by reporting the number of employers that withdrew from the plan beginning in the 1998 plan year through the end of the plan year preceding the relevant plan year (2009, 2008, or 2007), and the number of participants on whose behalf these employers made contributions to the plan. For this purpose, the number of participants would be based on the largest number of participants on whose behalf each employer had an obligation to contribute during the five plan years preceding the employer's withdrawal. A plan may estimate the number of participants of each withdrawn employer by translating the highest number of contribution base units during the five plan years into the number of participants. On Line 14, the plan would enter the aggregate number of participants of all employers determined as described above. On an attachment to the Schedule R for the 2009 plan year, the plan would identify the data on Line 14 as reflecting the alternative method of compliance and report the aggregate number of employers that withdrew from the plan for each relevant period under Lines 14a through 14c. The plan could take additional earlier years into account in its review.

Conclusion

The PBGC notes that its Technical Update reflects its current thinking on this topic and that this advice is non-binding. As mentioned above, the PBGC welcomes funds to use an alternative approach that satisfies the requirements of the applicable statutes and regulations or to contact the PBGC to discuss other alternatives.

BUCK COMMENT. *It is unclear whether the alternative approaches offered by the PBGC as relief for the 2009 plan year will be extended for subsequent plan years.*

Buck's consultants will be happy to discuss the implications of this guidance for your organization.

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.