



for your information®

Volume 33 | Issue 79 | December 14, 2010

PBGC Extends Interim Guidance on Reportable Event Compliance

The PBGC has issued Technical Update 10-4 which explains how PBGC will apply the waiver and extended reporting rules of the existing reportable event regulations under Section 4043 of ERISA. The existing regulations refer to the pre-PPA funding rules and thus are out-dated. The PBGC has proposed new regulations but they are not yet final. In Technical Update 10-4, the PBGC extends the rules it applied for 2010 plan year reportable events to 2011 plan years or, if earlier, until final regulations are effective.

Background

The plan administrator or plan sponsor of a defined benefit pension plan subject to Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) must notify the Pension Benefit Guaranty Corporation (PBGC) of “reportable events” specified in ERISA Section 4043 and the related regulations unless a waiver applies. In most cases, the plan administrator or sponsor must file the notice within 30 days after the event. However, in the case of a non-publicly traded company that on a controlled-group-of-companies basis has plans that in the aggregate have more than \$50 million in underfunding, the sponsors of the plans must notify the PBGC in advance of the event.

The existing regulations have special rules for calculating the \$50 million gateway for advanced reporting and also include waivers from having to provide notice or extensions of due dates for well-funded plans. The existing regulations pre-date the changes that the Pension Protection Act of 2006 (PPA) made to the funding rules and the PBGC variable rate premium (VRP) rules. For events occurring in 2008, 2009, and 2010 plan years, PBGC issued each year a technical update explaining how administrators and sponsors should apply the advanced reporting threshold, the waivers, and the exceptions in light of the PPA changes. [Technical Update 10-4](#) extends the approach that applied for 2010 plan year events to 2011 plan year events until such time as the new final reportable event regulations are issued and effective.

On November 23, 2009, PBGC published proposed revised reportable event regulations (see our December 2, 2009 [For Your Information](#)). Besides updating the calculations to satisfy the changes in terminology and rules made by PPA, the proposed regulations would eliminate most of the well-funded plan waivers along with other waivers. However, these regulations have not yet been promulgated in final form.

BUCK COMMENT. *Comments on the proposed regulations were heavily critical of the approach taken by the proposed regulations. The comments questioned why the PBGC was eliminating all of the waivers and*

extensions for well-funded plans, as well as other waivers and extensions. Comments pointed out that the waivers and extensions in the current regulation were developed as the result of negotiated rulemaking among the PBGC, participant representatives, and employer representatives. The comments also raised the lack of an explanation by the PBGC as to why the existing waivers and extensions were not appropriate.

Technical Update 10-4

[Technical Update 10-4](#) addresses two topics: (a) funding-related determinations under the reportable event regulations for purposes of waivers, extensions, and the advance reporting threshold test, and (b) missed quarterly contributions for small plans (i.e., plans with 100 or fewer participants). This *For Your Information* only addresses the funding-related determinations for purposes of waivers, extensions, and advance reporting.

For purposes of the reportable events, a plan's unfunded vested benefits and the value of its assets and vested benefits for plan years beginning in 2011 should be determined in the same manner as the VRP was determined for 2010 plan years. For example, in the case of a calendar year plan with a January 1 valuation date, the VRP values determined as of January 1, 2010, for purposes of the 2010 VRP are also used for applying the \$50 million advance-reporting threshold test for events becoming effective in 2011.

BUCK COMMENT. *The rules for determining advanced reporting, waivers, and extensions have not changed between 2010 and 2011.*

The existing rules and Technical Update 10-4 apply until the proposed regulations have been promulgated in final form and made effective.

Conclusion

This Technical Update is essentially "housekeeping" by PBGC to extend the temporary rules it has in place. Much more significant is what they intend to do in the revised regulations when they make them final.

Buck's consultants are prepared to help you determine whether your plan meets the current filing exceptions and help you prepare and file a reportable event notice if necessary.

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.