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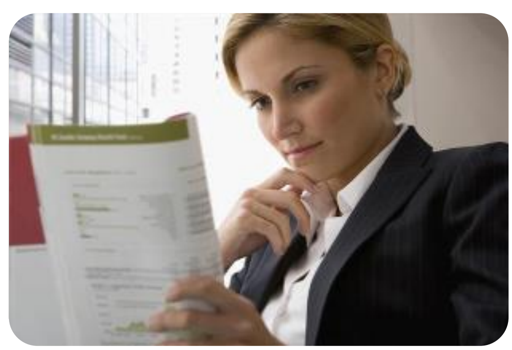
PBGC Proposes Changes to Annual Financial Reporting

PBGC issued proposed regulations that would change the requirements for filing financial information on plan sponsors and their pension plans under ERISA Section 4010. The proposal would (a) codify provisions included in MAP-21 as amended by HATFA, (b) limit the reporting waiver for employers with aggregate minimum funding shortfalls of $15 million or less to those with fewer than 500 participants, and (c) add waivers for those only required to file due to missed contributions or funding waivers if previously reported to PBGC under its rules for reportable events. The changes in regulations would become effective for information years beginning in 2016 (that is, for reports due in 2017 and later).

Background

Section 4010 of ERISA requires the reporting of actuarial and financial information by employers maintaining significantly underfunded single-employer pension plans. Filings are generally required by controlled groups if at least one of three conditions applies:

1. The funding target attainment percentage (FTAP) for any plan maintained within the controlled group is less than 80% (80% Gateway Test)
2. The unpaid balance of any required contributions (including required quarterly installments) exceeds $1 million for a plan with an FTAP of less than 100%
3. IRS has granted a minimum funding waiver of at least $1 million to any plan maintained in the controlled group with any portion outstanding



The information required to be filed includes identification of the members of the plan's controlled group, financial statements for each member and actuarial information, including minimum funding requirements and estimates of termination liabilities for all plans in the group except for relatively small and well-funded ones.

In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) revised the minimum funding rules by constraining the interest rate that would otherwise be used to determine the liabilities and costs to fall within a corridor around a 25-year average of those interest rates. But, under MAP-21, such "stabilized" interest rates could not be applied to determine the FTAP used in the 80% Gateway Test noted above but would apply to the other minimum funding determinations involved with 4010 reporting, including those created by regulations. The Highway Transportation and Funding Act of 2014 (HATFA) extended the period over which the phase-out of the initial narrow corridor established by MAP-21 would occur.

In 2009, PBGC created a waiver for 4010 reporting for employers with an aggregate funding shortfall that did not exceed $15 million. This calculation only considers plans within the controlled group that have the value of plan assets less than the funding target determined for minimum funding purposes. With the enactment of MAP-21 and HATFA, many plan sponsors were able to avoid 4010 reporting using this exception due to the effects of the stabilized interest rates on the funding target for minimum funding.

PBGC has been analyzing the effects of MAP-21 and HATFA on the reports filed under section 4010. The agency believes that it is not receiving the information it needs to evaluate risks to its benefit insurance program, to act timely to protect potentially troubled plans, and to measure its contingent liabilities for its financial statements.

Proposed Changes

To address their concerns and provide clarity about the effect of the interest rate changes in MAP-21 and HATFA, the PBGC has issued proposed changes to the 4010 regulations.

Restriction on $15 Million Underfunding Waiver

PBGC is concerned that the availability of the waiver based on having an aggregate funding shortfall of not more than $15 million merely due to using stabilized rates is inappropriate for organizations with plans that have large shortfalls using the non-stabilized PPA interest rates. Therefore, the PBGC proposes limiting use of this waiver to those controlled groups with fewer than 500 participants in all their PBGC-covered plans combined. The number of participants would be determined either as of the end of the plan year ending within the information year or the valuation date for that plan year. PBGC estimates that nearly 200 additional controlled groups would be required to make 4010 submissions under the proposed change.

New Waivers

To eliminate duplicative reporting, the PBGC proposes to end the 4010 filing requirement for entities that must file solely on the basis of having a missed contribution of over $1 million or having received a funding waiver of more than $1 million (with an outstanding balance), provided that such missed contribution or funding waiver had previously been reported under the reportable event rules.

> **Comment.** PBGC proposed new regulations on reportable events in 2013 (see our April 5, 2013 *For Your Information*). We understand that final regulations are undergoing a last review and could be released within the next few weeks.

Other Technical Changes

The FTAP used to trigger a 4010 filing obligation is the ratio of the actuarial value of plan assets to the plan's funding target as determined in accordance with IRS rules for minimum required contributions. In light of the MAP-21 rule that the stabilized interest rates do not apply for 4010 purposes, the rate used to discount contributions receivable to the valuation date, and, if a plan uses a smoothing method to value its assets, the limit on the assumed investment return for a year would be different for minimum funding and 4010 purposes. PBGC proposes to codify the position taken in its Technical Update 12-2 to waive the reporting requirement if the 4010 FTAP would be at least 80% if the same asset value used for minimum funding is used for the reporting trigger and reporting would not be required for any other reason.

The filing under 4010 must include the value of benefits generally determined using assumptions prescribed by PBGC to measure liabilities on a termination basis. The regulations issued in 2009 provided that, for this purpose, the form-of-payment assumption used in connection with the 4010 filing must be the same as that used for minimum funding contributions for the plan year ending in the information year. Later, the PBGC issued an update to permit 4010 filers to use the form-of-payment assumptions specified for PBGC's termination liabilities under Section 4044. PBGC now wants to require the use of the 4044 assumption and eliminate the option to use the minimum contribution assumptions.

Comments Deadline and Effective Date

The deadline for public comments on the proposed regulations is September 25, 2015. Comments are specifically requested on whether a different participant count should be used for the waiver, whether the funding target used for the $15 million shortfall should use non-stabilized rates, and whether the elimination of the option to use the form-of-payment option used for minimum funding is too burdensome.

PBGC proposes that the new regulations would become effective for information years beginning after December 31, 2015, thereby generally affecting submissions made in 2017.

In Closing

PBGC's proposal would increase the number of employers subject to the extensive and costly reporting requirements under 4010. Companies should review with their advisors the possible effects of the proposed changes on their filing obligations and consider potential modifications to future contribution levels to reach a funded status that would avoid the required filing.

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