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PBGC Finalizes Changes to 4010 Annual Financial Reporting

PBGC's final regulation on ERISA 4010 filings of financial information on plan sponsors and their pension plans revises the waiver for plans with less than $15 million of unfunded liabilities, adds a smaller plan waiver, and cuts back reporting due to missed contributions and funding waivers. The revisions apply to information years beginning after December 31, 2015 (generally filings due on or after April 17, 2017).

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 not timely made (including required quarterly installments) for any plan maintained within the controlled group with an FTAP of less than 100% exceeds $1 million.
3. IRS has granted a minimum funding waiver of at least $1 million to any plan maintained within the controlled group with any portion outstanding.

The information required to be filed includes identification and financial statements of the members of the plan's controlled group, except for nonparticipating, relatively small members, 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 plans.

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. This reduced, often significantly, plans' liabilities for minimum funding. But, under MAP-21, such “stabilized” interest rates could not be applied to determine the FTAP used in the 80% Gateway Test noted above (now defined in the new rules as “4010 FTAP”) 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. The Bipartisan Budget Act of 2015 (BBA 2015) further extended the phase-out.

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 waiver due to the effects of the stabilized interest rates on the funding target for minimum funding.

In light of the changes from MAP-21 and subsequent legislation, PBGC concluded 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. As described in our July 27, 2015 *For Your Information*, PBGC proposed changes to their ERISA 4010 regulations.

Final Regulations Adopted with Changes

The final ERISA 4010 regulations adopted by PBGC reflect helpful changes in response to suggestions made in comments on their proposals. Key provisions in the final rules include retention of a modified version of the $15 million underfunding exception for all employers, a smaller plan exclusion, relief from reporting some missed contributions and adjustments to the technical calculations behind the reporting requirements.

$15 Million Underfunding Waiver

PBGC had proposed to limit the availability of this waiver to plans covering fewer than 500 lives. In response to comments, instead, it will be available more broadly, but will be calculated without using the stabilized rates that had significantly reduced the number of plans that needed to report. The availability of this waiver may spur additional contributions to plans in an effort to avoid reporting.

Under this waiver, reporting is not required if the aggregate 4010 funding shortfall for all plans maintained by the controlled group does not exceed $15 million. This calculation includes any exempt plans that are individually excused from submitting actuarial information (relatively small and well-funded ones) and disregards any overfunding in those plans with no 4010 funding shortfall. In the case of a multiple employer plan, the entire funding shortfall of the plan is included rather than just the shortfall attributable to the controlled group’s employees.

Smaller Plans Exception

Agreeing that small plans pose little risk to the system and need not be monitored, PBGC’s final rule provides a waiver when the total number of participants in all the plans maintained within a controlled group is fewer than 500. As with the underfunding, in the case of participation in a multiple employer plan, all plan participants are included rather than just those attributable to the controlled group’s participation.

Missed Contribution Liens and Funding Waivers

Few employers had submitted 4010 filings on account of missing contributions that resulted in liens or applications for minimum funding waivers. In addition, reporting for these is required under the PBGC's reportable events regulations. Thus PBGC included a waiver from the 4010 reporting requirements for any such amounts that have been timely reported to PBGC under the reportable events requirements by the due date of the 4010 filing.

The reportable events regulations were revised in 2015, as reported in our September 16, 2015 *For Your Information*. Under those regulations, there are no reporting waivers for the Application for Funding Waiver reportable event or the Form 200 Notice of Failure to Make Required Contributions. So it is unlikely that 4010 reporting will be required in those situations.

Technical Changes

The final regulations made other technical 4010 reporting changes. The ability to use the assets for minimum funding, rather than values determined using non-stabilized rates, for the 4010 FTAP was codified. In addition, a technical correction was made to the form of payment assumption required to be used for calculating benefit liabilities. The final regulation requires using the payment form assumption prescribed in PBGC regulations on allocation of assets in single employer plans (ERISA 4044). The old regulation incorrectly stated that the minimum funding assumption should be used, which was contrary to the statutory requirement.

Applicability Date

The revisions are applicable to information years beginning after December 31, 2015 (generally filings due on or after April 17, 2017). The information year is the fiscal year of the controlled group members. But if they have different fiscal years, the information year is the calendar year. When a plan year and information year do not coincide, the plan year ending in the information year is used. Therefore, if the plan year-end of a controlled group member's plan falls early in the 2016 information year, the plan may have already missed the deadline for making contributions for 2014 to increase their 2015 4010 FTAP to at least 80%, or decrease their 2015 4010 funding shortfall (now using non-stabilized rates) below $15 million. For a group with a calendar year 2016 information year, for example, the deadline for this has passed for plan years beginning July 1, 2015 and earlier plan years, because the latest date to make a contribution (for a July 1, 2014 year contribution that would affect the determination for the 2015 plan year) was March 15, 2016.

In Closing

With this final guidance in hand, sponsors should confer with the plan actuaries for controlled group plans to assess their filing obligations going forward and to determine any reasonable steps that may be taken to avert the need to file.

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