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COMPLIANCE ADVISORY

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PBGC issues final rules on reporting by underfunded plans

ERISA requires sponsors of certain underfunded defined benefit pension plans and their controlled group members to report financial and actuarial information (“4010 filings”) to the Pension Benefit Guaranty Corporation (PBGC). PBGC uses the information from 4010 filings to value its liabilities and to assess which plans may be at risk.

On March 23, 2016, the PBGC issued a final rule to reflect provisions of recent legislation that affect 4010 filings. The final rule also adds new reporting waivers for smaller plans and makes several technical changes.

Background

PBGC rules require the reporting of actuarial and financial information by controlled groups with single-employer pension plans that have significant funding problems. Under ERISA section 4010, reporting is required if any of the following conditions exist:

- The funding target attainment percentage (“FTAP”) of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent (80-percent Gateway Test). The FTAP is a measure of how well the plan is funded and is the ratio (expressed as a percentage) of the value of plan assets to the plan’s funding target.
- The conditions for imposing a lien for missed contributions exceeding $1 million have been met with respect to any plan maintained by any member of the controlled group.
- The IRS has granted one or more minimum funding waivers totaling in excess of $1 million to any plan maintained by any member of the controlled group, and any portion of the waiver is still outstanding.

Reporting is waived if the aggregate underfunding of all plans maintained by the filer’s controlled group does not exceed $15 million.

Reporting must be based on the information year. In general, the “information year” is the plan sponsor’s fiscal year. However, if two or more members of a controlled group have different fiscal years, the information year is the calendar year. 4010 filings are due no later than 105 days after the close of the filer’s information year.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) revised the interest rates for determining a plan’s normal cost and funding target. MAP-21 provided funding relief for plan sponsors by providing interest rate stabilization, which limits the volatility of interest rates used for funding purposes and allows plan sponsors to use higher interest rates when calculating plan liabilities. However, these stabilized interest rates do not apply for purposes of financial reporting to the PBGC for 4010 filings. MAP-21 provided that the stabilized rates would begin phasing out in 2013. The Highway and Transportation Funding Act of 2014 (HATFA) extended the pension funding relief provided by MAP-21 through 2017. The Bipartisan Budget Act (BBA) of 2015 further delayed the start of the phase-out of stabilized rates until 2020.

In Technical Update 12-2, the PBGC provided that MAP-21 stabilized rates do not apply for purposes of determining the FTAP required to be reported in the 4010 filing, nor do they apply for determining whether a plan fails to meet the Gateway Test. The guidance also confirmed that for other 4010 reporting amounts involving minimum funding-related determinations affected by MAP-21, MAP-21 stabilized rates apply. For example, to the extent the MAP-21 rates are used for minimum funding purposes, they are also used in determining whether the total underfunding across all plans in the controlled group is more than $15 million, which would require 4010 reporting.

PBGC Technical Update 14-2 confirmed that the rules and concepts discussed in Technical Update 12-2 continue to apply.

Final PBGC 4010 rule

Interest rate stabilization

The final rule incorporates the relief provided in MAP-21, HATFA and BBA and confirms that interest rate stabilization does not apply for purposes of calculating the FTAP used for the 80-percent Gateway Test.

The final rule also clarifies that the plan's funding target is determined without regard to the interest rate stabilization rules.

Changes to $15 million aggregate underfunding waiver

The Pension Protection Act (PPA) waived the 4010 reporting in certain cases for controlled groups with aggregate underfunding of $15 million or less.

The final rule changes the liability used to measure the funding shortfall for the underfunding waiver from stabilized to non-stabilized interest rates. Due to this change, more plan sponsors may be subject to 4010 reporting.

Waiver for smaller plans

The final rule waives 4010 reporting for controlled groups where the aggregate number of participants in all plans (including any exempt plans) is fewer than 500. The aggregate number of participants in all plans maintained by a person's controlled group includes any participants covered by a multiple employer plan who are not or were not employed by the person. That is, the person is treated as "maintaining" the entire multiple employer plan. For example, in the case of a multiple employer plan where each contributing sponsor has fewer than 500 participants in all of its plans, but the multiple employer plan as a whole covers 500 or more participants, the smaller plan waiver would not apply.

New waivers

The final rule adds new waivers from reporting for persons that must file a 4010 report solely based on either:

- A missed statutory lien resulting from a missed required contribution of over $1 million; or
- An outstanding minimum funding waiver exceeding $1 million

provided the missed contribution or application for funding waiver were previously reported to PBGC by the due date for the 4010 filing.

In appropriate cases, the PBGC may exercise its authority to waive the requirement to submit information or may extend the deadline for 4010 filings. PBGC will exercise this discretion where it finds convincing evidence supporting a waiver or extension. A request for a waiver or extension must be filed in writing with PBGC no later than 15 days before the due date. The waiver request must state the facts and circumstances on which the request is based.

Alternative methods of compliance for reporting certain actuarial information

Currently, certain actuarial information must be reported to PBGC under section 4010 including the funding target of the plan, determined as if the plan has been in at-risk status for at least five plan years. An underfunded plan is considered to be "at-risk" if, for the preceding year its:

- FTAP determined using standard assumptions was less than 80%; and
- FTAP determined using at-risk assumptions was less than 70%.

To relieve the burden of this additional reporting, the final rules provide that a filer does not have to provide the at-risk funding target information (determined without regard to the interest rate stabilization rules) unless the PBGC makes a written request for the information. A plan will have 30 days after the PBGC's written request to provide the information.

If the requested information is not available, a filer may provide the information by:

- Including a statement with the information that is submitted to PBGC that the filer will file the unavailable information by the plan's alternative due date which is within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year; and
- Filing such information along with a certification by the plan's enrolled actuary by that alternative due date.

Effective date

The changes reflected in the final rule are applicable to information years beginning after December 31, 2015. The first filings under the new regulation are due April 17, 2017.

Next steps

Plan sponsors should carefully read the information contained in this newsletter. Some plan sponsors may be able to take advantage of the new reporting waivers, if applicable. However, more plan sponsors may be subject to 4010 reporting due to the change in measuring the funding shortfall. Sponsors should discuss the impact of this guidance on their plans with their enrolled actuary and their plan counsel.

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