



PENSION ANALYST COMPLIANCE BULLETIN



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PBGC revises enforcement policy regarding facility shutdowns

The Pension Benefit Guaranty Corporation (PBGC) recently announced changes to its enforcement policy regarding facility shutdowns that result in substantial terminations of employment under ERISA section 4062(e). The PBGC has made these changes in response to an executive order from President Obama asking agencies like the PBGC to review existing and proposed regulations for possible modification or elimination.

Background

ERISA requires that companies that sponsor single-employer defined benefit pension plans report to the PBGC when they cease operations at a facility and more than 20 percent of employees lose their jobs. In this situation, ERISA requires the company to provide financial security to protect the pension plan. Typically, companies must make additional contributions to the plan or provide a financial guarantee such as payment of the amount of the plan's unfunded termination liability to be held in escrow, or furnishing a bond in an amount not exceeding 150% of the liability. In addition, each employer and the plan administrator must keep for five years all records that indicate whether an ERISA section 4062(e) event occurred and the calculation of liability with respect to the event.

Historically, the PBGC has enforced this ERISA provision in all cases without considering the size of the plan or the financial strength of the company. However, companies have noted this provision was applied when there was little or no risk either to the pension plan or the PBGC because the pension plan was small or the company was financially capable of funding the plan.

New enforcement policy

In response to comments made by the business community and the executive order, the PBGC is modifying its enforcement program. The PBGC is implementing a pilot program under which it will target its enforcement efforts to those companies where there is a substantial risk to the plan and will generally take no action to enforce this ERISA section 4062(e) against:

- Creditworthy companies; or
- Small plans with 100 or fewer participants.

The decision to take no action will be based on the PBGC's analysis of the:

- Company's financial strength; and
- Circumstances of the case.

Periodically, the PBGC may request additional information from the company to confirm its continued qualification as creditworthy. If the company is no longer creditworthy during the five-year enforcement period, the PBGC will enforce the liability.

In determining the creditworthiness and financial strength of a company, the PBGC intends to use financial standards that are commonly used by companies and plans such as:

- Credit ratings;
- Credit scores;
- Indebtedness;
- Liquidity; and
- Profitability.

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Although the PBGC will take no action against a company if there are no indicators of financial weakness or other risks, creditworthy companies must continue to report facility shutdowns to the PBGC.

Finally, in 2010, the PBGC issued proposed regulations regarding facility shutdowns, which have not yet been finalized. The PBGC intends to use the pilot program to determine what revisions to make to the proposed regulations.

Next steps

If you have questions about the PBGC's pilot program and enforcement policy or facility shutdowns, you should contact your plan's enrolled actuary. Prudential Retirement's enrolled actuaries are also well prepared to respond to your inquiries regarding the new PBGC enforcement policy.

Compliance Bulletin by Prudential Retirement

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