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PENSION ANALYST
COMPLIANCE BULLETIN

PBGC issues final rules on reportable events, information reporting, and more

On Tuesday, February 4, the Pension Benefit Guaranty Corporation (PBGC) issued final rules making miscellaneous technical corrections, clarifications, and improvements to various rules affecting primarily single-employer defined benefit plans. These rules are generally effective on March 5, 2020, with various applicability dates described below.

Background and overview

These final rules are substantially similar to the proposed rules issued by the PBGC in June 2019, but contain certain differences regarding reportable events and annual financial and actuarial information reporting. In general, this guidance includes changes to existing rules on reportable events, annual financial and actuarial information reporting, termination of single-employer plans, and PBGC premium rates.

Reportable events

The reportable event rules describe standards for a low-default-risk safe harbor that is available for five events. Among other criteria, this safe harbor uses a commercial measure criterion which requires the company's probability of default of its financial obligations be no more than 4 percent over the next 5 years or 0.4 percent over the next year, as "determined on the basis of widely available financial information on the company's credit quality." The final rules clarify that a plan must use a third-party financial information in determining whether it meets this criterion for the safe harbor, not information that is generated by the company itself.

An active participant reduction reportable event may occur as a result of a single-cause event or an attrition event. The final rules change how active participants are counted when determining whether an attrition event has occurred. An attrition event is based on the sum of the total number of active participants at the end of the year plus the number of individuals who ceased to be active participants during the same plan year that were reported to the PGBC in connection with a single-cause event. This new method of counting would prevent duplicative reporting by disregarding the earlier single-cause event if already reported to the PBGC.

In addition, the final rules clarify that each single-cause event that occurs during the plan year must be reported separately. Each time a new single-cause event results in an active participant reduction greater than 20 percent over the number of active participants at the beginning of the plan year, a new Form 10 would be required to be filed.

Regarding active participant reduction, the reportable event rules have also been revised to:

- Waive the two-year lookback rule and corresponding notice requirement;
- Clarify that an "active participant" includes a participant who is receiving compensation from any member of the plan's controlled group for work performed for any member of the plan's controlled group;
- Provide that a plan need not report a reduction in the number of active participants if the reduction has already been reported under the reporting required in the event of a cessation of operations at a facility.

A reportable event generally occurs when a plan fails to make a benefit payment timely or when a plan's liquid assets fall below the level needed for paying benefits for six months. The prior rules inadvertently imposed a time limit for verification of a person's eligibility for benefits. The final rules clarify that an inability to pay benefits when due caused by the need to verify eligibility is not subject to the time limit imposed for other administrative delays.

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Under the final rules, a reportable event does not occur when there is a change in a contributing sponsor, but the former contributing sponsor remains part of the controlled group. Where there is a transaction that causes the controlled group to change, including by a change in contributing sponsor, and one or more members ceases to be a member of the controlled group, the event must be reported to the PBGC.

The final rules also clarify the definition of a liquidation event for reportable event purposes, by connecting the reporting obligation to the time the entity decides to cease operations. The PBGC believes requiring reporting close to the time a decision to liquidate is made will be the most protective of participants and the pension insurance system. Under the final rules, companies that liquidate as a result of insolvency will not need to report both the liquidation and insolvency. Additionally, the PBGC provides an extension of time for public companies to file the post-event reportable events notice to ensure the public has been appropriately notified.

Annual Financial and Actuarial Information Reporting

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.

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.

The final rules make the following changes to information reporting regulations, applicable to filings due on or after April 15, 2020:

- Include the terms “foreign entity,” “ultimate parent,” and “U.S. entity,” and clarify that filers must submit financial information of a controlled group’s members that are US entities if the ultimate parent is a foreign entity;
- Remove expired PPA provisions;
- Provide a simple method for filers in controlled groups with more than 10 non-exempt entities to provide information about the current members of the controlled group by submitting with their filing an organizational chart or other diagram showing the relationship of the members. Exempt entities may, but need not be, included in the organizational chart;
- Provide guidance on the actuarial assumptions for cash balances plans. Changes to valuing benefit liabilities are applicable for plan years beginning on or after January 2020 (or earlier, if elected by the plan sponsor); and
- Make clarifications and revisions to reporting waivers and simplify the plan’s calculations for determining whether the $15 million aggregate funding shortfall waiver applies.

Termination of single-employer plans

Under the final rules, an alternative filling option is available for plan administrators who need more time to file Form 501-Post-Distribution Certification for Statement Termination. Under the alternative method, a plan administrator would submit a completed Form 501 within 60 days after the last distribution date for any affected party if the plan administrator certifies to the PBGC that all assets have been distributed as required by ERISA within 30 days of the last distribution date for any affected party.

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PBGC premium rates

Sponsors of qualified defined benefit plans that are subject to the ERISA plan termination insurance rules must file and pay annual plan termination insurance premiums to the Pension Benefit Guaranty Corporation (PBGC). Although single-employer, multiple employer and multiemployer plans must pay flat-rate per participant premiums, only single-employer and multiple employer plans must pay variable-rate premiums (VRP) if they are underfunded.

The final rules make the following changes to the PBGC premium rates:

- Expressly state that a plan does not qualify for the VRP exemption for the year in which a standard termination is completed if the plan engages in a non-de minimis spinoff during the premium payment year;
- Clarifies how to determine flat-rate premiums following transfers of participants from one plan to another or in the case of a beginning-of-year merger where a large plan is merged into a small plan; and
- Provides that premiums are not prorated for a short plan year due to a standard termination if the plan engages in a spinoff in the same year, unless the spinoff is de minimis, (i.e., generally fewer than three percent of the assets are spun off). This change is applicable to plan years beginning in or after 2020.

Next steps

If you have any questions regarding the information contained in this publication, you should contact your plan's enrolled actuary. Prudential Retirement's enrolled actuaries are prepared to respond to your inquiries regarding the effect of this new guidance on your plan.

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