



Compliance Advisory

January 2009

PBGC issues final plan termination disclosure rules

On November 18, 2008, the Pension Benefit Guaranty Corporation (PBGC) issued final rules on the new plan termination disclosure requirements for single-employer defined benefit pension plans in the case of distress terminations or terminations initiated by PBGC (“involuntary terminations”). These new disclosure requirements apply to plan terminations initiated on or after August 17, 2006, but only to requests for information made on or after December 18, 2008.

Background

The Pension Protection Act of 2006 (PPA) added disclosure provisions that permit an affected party to request information related to a plan termination from the plan administrator in the case of a [distress termination](#), and from the plan administrator, plan sponsor, and PBGC in the case of an [involuntary termination](#). An “affected party” is a plan participant, beneficiary, alternate payee, each employer organization representing plan participants, and the PBGC.

Written requests

The final rules require [affected parties](#) to make *written* requests for plan termination information to the plan sponsor, plan administrator or PBGC. A request must:

- State the name of the plan and that the request is for information submitted to the PBGC with respect to the application for a distress termination or in connection with an involuntary termination of the plan;
- State the name of the person making the request, the person’s relationship to the plan, and that the relationship meets the definition of “affected party;” and
- Be signed by the person making the request.

The information may be delivered to the requestor in hard copy, electronic or other appropriate form that is reasonably accessible to the individual making the request. A plan administrator may charge a reasonable fee for information provided in a form other than electronic. However, the final regulations do not provide guidance regarding what is a reasonable fee.

Timing

Upon receipt of a written request from an affected party, the plan sponsor, plan administrator or PBGC must provide the information no later than 15 business days after receipt of the request. The PBGC regulations define “business day” as a day other than a Saturday, Sunday or Federal holiday.

Distress termination disclosure rules

The plan administrator must provide a notice of intent to terminate to each affected party. In addition, the plan administrator must provide a separate notice with additional information filed with the PBGC on PBGC Form 600, Distress Termination Notice of Intent to Terminate. If the plan administrator receives a request for information and has not filed a PBGC Form 600, he must provide the requested information no later than 15 business days after a Form 600 has been filed with the PBGC. In addition, if the plan administrator submits additional plan termination information to the PBGC, he must provide the additional information to any affected party who has made a request for plan termination information no later than 15 business days after each additional submission.

Involuntary termination disclosure rules

A plan sponsor or plan administrator that has received a notice from the PBGC that the plan should be terminated must provide to an affected party any information given to the PBGC in connection with the plan termination. However, an affected party may not request information about an involuntary termination until after the plan administrator has received the PBGC Notice of Determination. The final regulations adopt an assumption that the plan administrator received the Notice of Determination three business days after it was issued by the PBGC.

The disclosure obligation is not limited to the information that has been filed with the PBGC at the time of the affected party's request. The final rules require the plan sponsor or plan administrator to provide any additional information later filed with the PBGC to any affected parties who had previously made requests for plan termination information. This information must be provided to the affected party within 15 business days after it has been filed with the PBGC.

Within 15 business days of receiving a request for disclosure information from an affected party, the PBGC must provide a copy of the administrative record, including the trusteeship decision record of a termination of a plan. These requests can be submitted to the PBGC after the plan administrator receives a PBGC Notice of Determination.

Confidential information

Plan administrators and plan sponsors cannot provide information that directly or indirectly, may identify an individual plan participant or beneficiary. A plan administrator may obtain a court order restricting disclosure of confidential information only to authorized representatives that agree to ensure the confidentiality of such information and will not be disclosed to other affected parties. In addition, the final rules require the PBGC to promptly notify the plan administrator and plan sponsor upon receipt of a request for the administrative record from an affected party. PBGC expects that this notification will be made not later than the second business day after receipt of the request. The plan administrator or plan sponsor may then seek a court order under which disclosure of those portions of the administrative record that contain confidential information will be made only to authorized representatives that agree to ensure the confidentiality of such information, and will not be disclosed to other affected parties. Typically, an "authorized representative" only exists when plan participants are covered under a collective bargaining agreement.

Penalties

The PBGC may impose penalties if a plan sponsor or plan administrator fails to disclose plan termination information when required to do so. The maximum penalty is \$1,100 per day.



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