



## PBGC issues guidance on the effect of HATFA on underfunded plan reporting

On October 17, 2014, the Pension Benefit Guaranty Corporation (PBGC) issued [Technical Update 14-2](#) which provides guidance on the effect of the [Highway and Transportation Funding Act of 2014 \(HATFA\)](#) on 4010 reporting. President Obama signed HATFA into law on August 8, 2014, which extends the pension funding relief provided by the [Moving Ahead for Progress in the 21<sup>st</sup> Century Act \(MAP-21\)](#) through 2017.

### Background

ERISA requires sponsors of certain underfunded pension plans and their controlled group members to report annual financial and actuarial information (“4010 filings”) to the PBGC, if:

- Any plan maintained on the last day of the plan year by a contributing sponsor or any member of the controlled group has a funding target attainment percentage (FTAP) that is less than 80% (“Gateway Test”) and the total underfunding across all plans within the controlled group is more than \$15 million;
- The controlled group has missed contributions in excess of \$1 million; or
- The controlled group maintains a plan with a funding waiver that exceeds \$1 million.

In [Technical Update 12-2](#), the PBGC provided that the MAP-21 interest 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 confirms that for other 4010 reporting amounts involving minimum funding-related determinations affected by MAP-21, MAP-21 interest rates apply. For example, to the extent the MAP-21 interest rates are used for minimum funding purposes, they should also be used in determining whether the total underfunding across all plans in the controlled group is more than \$15 million, which would then require 4010 reporting.

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

### Technical Update 14-2

#### 2013 plan year reporting

HATFA interest rates are generally effective for plan years beginning after December 31, 2012. However, plan sponsors may elect to defer the use of HATFA interest rates to plan years beginning on or after January 1, 2014.

ERISA section 4010 requires that filers must provide, among other things, the following actuarial information:

- The FTAP (Funding Target Attainment Percentage), AFTAP (Adjusted Funding Target Attainment Percentage) and funding target determined as if the plan has been in at-risk status for funding purposes for five years, which are reported directly on Schedule P; and
- The actuarial valuation report submitted as an attachment to the 4010 filing.

4010 filings are due 105 days after the end of the “information year.” The information year is generally the fiscal year of the employer. However, if the controlled group members have different fiscal years, the information year is the calendar year. The required actuarial information relates to the plan year ending within the information year.

HATFA may cause potential timing issues for 4010 filers due to the:

- Retroactive application of HATFA for the 2013 plan year; and
- Late enactment of HATFA on August 8, 2014, long after the end of most 2013 plan years.

For example, an employer may have submitted its 4010 filing for the 2013 plan year based on MAP-21 interest rates before the enactment of HATFA. Alternatively, an employer's 4010 filing may be due before the filer has decided whether to apply the HATFA rates retroactively for the 2013 plan year.

Because of the potential timing issues, PBGC has decided that filers do not need to amend their 4010 filings solely to revise actuarial information that changed because of a decision to use HATFA rates for the 2013 plan year. This relief applies regardless of when the 4010 filing is submitted i.e., before or after HATFA was enacted.

## Actuarial valuation report

Under PBGC regulations, if the actuarial valuation report is not available when the 4010 filing is due, the filer may submit the 4010 filing without the actuarial valuation report and then submit the report by an alternative due date which is 15 days after the plan's Form 5500 is due.

If a filer has already submitted the 4010 filing containing actuarial information on Schedule P for 2013 based on MAP-21 rate, the filer may submit an actuarial valuation report by the [alternative due date](#) based on MAP-21 or HATFA rates (whichever is available).

If a filer has not submitted a 4010 filing and submits a filing in the future based on MAP-21 rates, the filer may submit the actuarial valuation report by the [alternative due date](#) based on either MAP-21 or HATFA rates.

However, if PBGC decides it needs more information, it reserves the right to request that a filer submit revised actuarial information for 2013 reflecting the rates ultimately used for 2013. The PBGC will provide sufficient time for the filer to comply with the request.

## 4010 filings no longer required

Because of the retroactive application of HATFA rates, it is possible that a 4010 filing that has already been submitted is no longer required. For example, based on HATFA rates, a company's funding shortfall may no longer exceed \$15 million.

If a filer stated in the 4010 filing that an actuarial report would be submitted by the alternative due date, but the report is no longer required, the filer need not submit the report. In addition, if a 4010 filing is not required for the next information year, the filer need not report to the PBGC the reason why the filing is not necessary. However, PBGC may contact the filer asking why the report or filing was not submitted. Filers wishing to avoid such correspondence may send an email to the PBGC explaining the situation to [ERISA.4010@pbgc.gov](mailto:ERISA.4010@pbgc.gov)

Plan sponsors should review the information contained in this publication. We encourage plan sponsors to discuss the contents of this publication with their legal counsel and their plan's enrolled actuary if they have any questions.

### Compliance Bulletin by Prudential Retirement

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