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Pension ANALYST

Important Information Plan Administration and Operation May 2008

PBGC Issues Final Premium Payment Guidance

WHO'S AFFECTED These developments affect sponsors of qualified defined benefit plans that are subject to PBGC premium requirements, including cash balance plans and multiemployer plans. Governmental plans and plans sponsored by churches that do not elect to be covered by ERISA ("non-electing church plans") are not subject to these rules.

BACKGROUND AND SUMMARY 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 the variable rate premium.

The Pension Protection Act of 2006 (PPA) amended the variable rate premium rules to reflect the changes in the funding rules. PPA also eliminated the full funding limit exemption from the variable rate premium.

Recently, the PBGC published final regulations that reflect the changes made by PPA. The final regulations also:

- Revise the premium due dates and penalties to give some plans more time to file;
- Explain when certain benefits are vested for purposes of the variable rate premium; and
- Clarify the premium recordkeeping and audit provisions.

ACTION AND NEXT STEPS The final regulations are effective April 21, 2008. Plan sponsors and their advisors should familiarize themselves with the information contained in this publication and discuss any questions or concerns they may have with their plan's enrolled actuary.

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Variable Rate Premium

Single-employer and multiple employer plans must pay a PBGC variable rate premium (VRP) if they are underfunded. Under prior law, the VRP was waived if contributions for the prior year were at least equal to the full funding requirement for that year. Effective for plan years beginning on or after January 1, 2008, the VRP requirement applies to all underfunded single-employer and multiple employer plans, regardless of prior years' funding status.

In general, the VRP is $9 for each $1,000 of unfunded vested benefits. However, PPA limits the amount of the total VRP paid by single-employer plans sponsored by certain small employers. The variable rate premium limit for employers with plans which cover fewer than 25 lives is no more than $5 times the square of the number of participants in the plan on the last day of the plan year preceding the premium payment year.

Definition of "Vested Benefits"

PPA revised the calculation of "unfunded vested benefits" (UVB) to reflect changes in the funding rules. UVBs are now calculated as the excess of the plan's funding target for the plan year, taking only vested benefits into account, over the fair market value of plan assets on the valuation date. The final regulations clarify that, for this purpose, "vested benefits" include the following death benefits:

- A qualified pre-retirement survivor annuity;
- A post-retirement survivor annuity such as the annuity paid after a participant's death under a joint and survivor or certain and continuous option; and
- A benefit that returns a participant's accumulated mandatory employee contributions.

However, vested benefits do not include:

- A pre-retirement lump sum death benefit if the participant is living; and
- A disability benefit if the participant is not disabled.

Determination Date

The final regulations require that unfunded vested benefits be determined as of the plan's valuation date for the premium payment year based on the plan's provisions and population as of that date, rather than a date in the prior plan year.

Generally, a plan's valuation date is the first day of the plan year. However, small plans with fewer than 100 participants may choose any day in the plan year as the valuation date.

Calculation of Unfunded Vested Benefits

Unfunded vested benefits are based on a plan's standard premium funding target and the market value of its assets. The "standard premium funding target" for a plan is determined by:

- Taking into account only vested benefits;
- Using special segment interest rates based on a single month's bond yields, rather than the average of such yields for a 24-month period; and

- Using the market value of plan assets (without averaging).

The standard premium funding target and the market value of assets are determined as of the beginning of the plan year. If a valuation date is not the first day of the plan year, UVBs cannot reflect benefit accruals or contributions for the plan year.

Alternative Premium Funding Target

The final rules permit plans to use an "alternative premium funding target" that may be less burdensome to use than the standard premium funding target. The alternative premium funding target allows some adjustments to reflect benefit accruals, contributions and plan assets that may be taken into account on the UVB valuation date. This alternative may be helpful to small plans, which may have a valuation date that may not be the beginning of the plan year. The alternative premium funding target is based on interest rates that are averaged over a 24-month period, similar to the segment rates employed for the plan's funding determination.

The alternative premium funding target may be used where the plan makes an election to do so that is irrevocable for five years. The election must specify the first plan year to which it applies and must be filed by the plan's variable rate premium due date for the plan year. The election will be effective:

- For the plan year for which it is made and for all plan years that begin fewer than five years thereafter; and
- For succeeding plan years until the election is revoked. A revocation of an election must specify the first plan year to which it applies and must be filed by the plan's VRP due date for that plan year.

Premium Due Dates and Penalties

Effective for plan years beginning on or after January 1, 2008, the PBGC has revised the premium due date schedule for all plans by introducing a new due date schedule that reflects three categories, based on the number of participants. The new categories are:

- A "large" plan category (500 or more participants);
- A new "mid-size" category (100 or more, but fewer than 500 participants); and
- A "small" plan category includes all other plans.

The final regulations clarify that the number of participants used for determining plan size is the participant count used for purposes of the flat-rate premium. The participant count is generally determined as of the last day of the prior plan year.

Estimated Variable Rate Premium

The PBGC recognizes there are situations that make the timely determination of the variable rate premium difficult, such as difficulty in collecting data or the use of a valuation date after the beginning of the plan year for smaller plans. As a result, the PBGC has revised the premium due date and penalty structure to give smaller plans more time to file and larger plans the ability to make VRP filings based on estimated liabilities and then correct them without penalty.

Under the final regulations, the VRP penalty is waived for a period of time after the VRP due date if, by that due date, the plan administrator submits an estimate of the VRP that meets certain requirements and pays the estimated amount. The penalty waiver covers the period from the VRP due date to the small plan due date, or if earlier, the filing of the VRP. However, interest is not suspended. If the VRP estimate is less than the correct amount, interest will accrue on the amount of the underpayment from the date when the payment was due to the date the shortfall is paid. In addition, the estimated VRP must be:

- Certified by the plan's enrolled actuary and
- Filed with the PBGC.

However, penalty relief is lost if there is a mistake in the assets figure, whether the mistaken figure is lower or higher than the true figure. The PBGC will consider a request for an appropriate penalty waiver in such a situation and will consider facts and circumstances such as:

- The reason for the mistake;
- Whether assets were overstated or understated; and
- The extent of the overstatement or understatement.

Recordkeeping and Audit Requirements

Plan sponsors must retain, for a period of six years after the premium due date, all plan records necessary to support the amount of premium paid and any information required to be reported. Plan sponsors must retain records that establish the number of participants and that support the calculation of unfunded vested benefits.

The final regulations clarify the recordkeeping and audit requirements for premium payment records. The current premium payment regulations refer to premium records prepared by enrolled actuaries and insurance carriers. However, the final regulations broaden the requirement to include records prepared by plan sponsors and employers required to contribute to a plan for their employees.

The regulations also provide examples of relevant premium payment records. These include:

- Plan documents;
- Participant data records, personnel and payroll records;
- Actuarial tables, worksheets and reports;
- Records of computations, projections and estimates; and
- Any other records

whether in written, electronic or other format, that are relevant to determine the amount of any premium required to be paid or premium information required to be reported.

To confirm the accuracy of a premium filing, the PBGC may:

- Audit any premium filing;
- Inspect and copy any records that are relevant to the determination of the premium paid and information reported; and
- Require disclosure of any manual or automated system or process used in the premium filing to determine the effectiveness of the system or process and the reliability of information produced by the system or process.

If the PBGC determines that a plan's records are insufficient to establish the participant count or the plan's unfunded vested benefits for any premium payment year, it may rely on data from other sources, such as the IRS or DOL. In addition, if the PBGC requests in writing that records be submitted for review, the plan administrator must submit the requested materials within 45 days of the date of the PBGC request, or by a different date specified in the request.

Miscellaneous

New Plans

The final regulations clarify that the first day of a new plan's first plan year for premium payment purposes is the plan effective date. The regulations also provide that the due date for the flat-rate premium and any variable rate premium for the first plan year of coverage is the latest of:

- The last day of the sixteenth full calendar month that began on or after the plan effective date; or
- 90 days after the date of the plan's adoption.

Electronic Filing

Effective July 1, 2006, plan sponsors must electronically file annual premium filings. The final regulations explicitly provide that, in the absence of an exemption, premium filing on paper or in any other manner other than the required electronic filing method does not satisfy the premium filing requirements. A penalty may be assessed for the period from the due date of the premium filing until it is made electronically, even if a timely paper filing is made.

Next Steps

Plan sponsors should become familiar with the guidance described in this publication so that their premium filings and payments reflect the correct amounts and are filed by the appropriate premium filing due date. The plan's enrolled actuary is in the best position to provide assistance regarding the PBGC's premium filing requirements. You should contact the plan's enrolled actuary to discuss these filing requirements. If Prudential Retirement provides the actuarial services for your plan, you may want to discuss any questions with your Prudential enrolled actuary.

Summary of Premium Due Dates
For 2008 Premium Payment Year
(Calendar Year Plans)

	Small Plans (fewer than 100 participants) *Last day of the 16th full calendar month that begins on or after the first day of the premium payment year.*	**Mid-Size Plans (100 but fewer than 500 participants)** *The 15th day of the tenth full calendar month that begins on or after the first day of the premium payment year.*	**Large Plans (500 or more participants)** *Last day of the second full calendar month following the close of the plan year preceding the premium payment year*
Flat-rate premium due	April 30, 2009	October 15, 2008	*February 29, 2008*
Flat-rate premium reconciliation due	N/A	N/A	October 15, 2008
VRP due	April 30, 2009	October 15, 2008. Estimate may be filed and paid on this date	October 15, 2008 *The 15th day of the tenth full calendar month following the end of the plan year preceding the payment year.* Estimate may be filed and paid on this date
Latest VRP penalty starting date. If certain conditions are met, penalty is waived until this date or, if earlier, the date the final VRP is filed.	N/A	April 30, 2009	April 30, 2009

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