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## PBGC Extends Interim Reporting Relief to 2012 Plan Years

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On December 7, 2011, PBGC issued [Technical Update 11-1](#), “Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2012 Plan Years,” to provide guidance for plan years beginning in 2012 on compliance with PBGC reportable events requirements.

This Technical Update, which extends to 2012 plan years the interim reporting relief PBGC had announced for 2011 plan years in [Technical Update 10-4](#), “Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2011 Plan Years,” addresses two topics:

- funding-related determinations for purposes of waivers, extensions, and the advance reporting threshold test; and
- missed quarterly contributions.

### Funding-Related Determinations

PBGC’s reportable events regulation provides for reporting waivers and extensions that apply to post-event reporting requirements and a “threshold” test for determining whether advance reporting is required. (Advance reporting applies only in very limited circumstances involving privately-held controlled groups maintaining plans that, in the aggregate, have over \$50 million in underfunding and are under 90% funded.) Some of these waivers and extensions (“funding-based” waivers and extensions) and the advance reporting threshold test are based on quantities used in calculating variable-rate premiums (“VRPs”)—assets, vested benefits, and/or unfunded vested benefits (“UVBs”) (“VRP

values”) for the plan year in which the event occurs or becomes effective, or (in the case of extensions) for the immediately preceding plan year, calculated as of the “testing date” for that plan year.

The Pension Protection Act of 2006 (“PPA 2006”) modified the way the VRP is determined, and PBGC has implemented those modifications in its premium regulations. PBGC has not yet, however, implemented these VRP changes in its reportable events regulation. As a result, PBGC has issued a number of Technical Updates—most recently (before the current Technical Update) Technical Update 10-4, which dealt with reportable events that (in the case of post-event reporting) occur or (in the case of advance reporting) become effective in the 2011 plan year—to provide temporary guidance about how to apply the funding-based waivers and extensions and the advance reporting threshold test under the reportable events regulation. Technical Update 11-1 extends the guidance that applied to event years beginning in 2011 to event years beginning in 2012.

Technical Update 11-1 states that “[t]he VRP values (the amount of UVBs and the value of assets and vested benefits) as of the testing date to be used for an event year beginning in 2012 for purposes of subparts A through C of the reportable events regulation are those determined for premium purposes for the plan year preceding the event year under the premium regulations as amended to conform with PPA 2006,” and notes that “[t]he

waiver based on ‘no variable-rate premium’ is unaffected by this Technical Update.”

A helpful example was discussed by PBGC staff at the May 4, 2011, meeting between PBGC and representatives of the American Bar Association’s Joint Committee on Employee Benefits (see Q&A 20 of the [meeting summary](#)). Although this example related to the guidance in Technical Update 10-4 for 2011 event years, it is relevant to the guidance in Technical Update 11-1, which simply extended the 2011 guidance to 2012 event years. The example makes clear that the relief PBGC is providing translates, in effect, to a one-year look-back for post-event waivers (e.g., VRP values to determine whether the waiver applies in the case of a calendar year plan with a reportable event occurring in 2012 and a January 1 valuation date are determined as of January 1, 2011) and a two-year look-back for post-event extensions (e.g., VRP values to determine whether the extension applies in the case of a calendar year plan with a reportable event occurring in 2012 and a January 1 valuation date are determined as of January 1, 2010). (For purposes of the advance reporting threshold test, the relief translates, in effect, to a one-year look-back (e.g., VRP values in the case of a calendar year plan with a reportable event that becomes effective in 2012 and a January 1 valuation date are determined as of January 1, 2011).)

### Missed Quarterly Contributions

A reportable event occurs when there is a failure to make a required funding contribution in a timely manner, including a required quarterly contribution (29 CFR § 4043.25(a)). In a series of Technical Updates (Technical Updates [09-3](#), [09-4](#) and [10-4](#)), PBGC had provided a waiver of this reporting requirement for certain small plans and an alternative method of compliance with the reporting requirement for certain other small plans, with respect to quarterly contributions for plan years beginning in 2009, 2010, and 2011 respectively. Technical Update 11-1 extends the guidance that applied to quarterly contributions for plan years

beginning in 2011 to quarterly contributions for plan years beginning in 2012.

The reporting relief varies based on the number of participants for whom flat-rate premiums were payable for the plan year preceding the 2012 plan year (i.e., generally, the 2011 plan year). It is important to keep in mind that the relief applies only to quarterly contributions, not to other required contributions, such as the annual “catch-up” contribution that must be made by the final payment date for the plan year (e.g., by September 15, 2013, for the 2012 plan year). It is also important to keep in mind that the relief applies only to reporting obligations under the reportable events rules and, thus, would not apply to the requirement to file a Form 200 with PBGC in the rare case where the total of missed contributions (including interest) for a small plan crosses over the \$1 million threshold for a statutory lien under Section 430(k) of the Internal Revenue Code.

For plans with fewer than 25 participants, the requirement to file a reportable event notice for one or more missed quarterly contributions for the 2012 plan year is waived, provided that “financial inability to make the contribution(s) is not the reason for not making the contribution(s).” For plans with 25 or more but fewer than 100 participants, the requirement to file a reportable event notice is considered satisfied with respect to a failure to make one or more missed quarterly contributions for the 2012 plan year if “financial inability to make the contribution(s) is not the reason for not making the contribution(s)” and if, by the due date for the first report of a missed-quarterly reportable event for the 2012 plan year that is not timely made, the person(s) that would be required to report (or a duly authorized representative) files a single simplified notice with PBGC.

The Technical Update provides that this simplified notice must state: “(1) the name of the plan and the Employer Identification Number and Plan Number most recently reported for the plan in a PBGC

premium filing; (2) the date the 2012 plan year began; (3) that a quarterly contribution to the plan for the 2012 plan year has not been (or will not be) timely made; (4) that financial inability to make the contribution is not the reason for not making the contribution; (5) the last day for satisfying the minimum funding requirement for the plan for the 2012 plan year (the ‘final payment date’); (6) that the filer understands that if the minimum funding requirement for the plan is not satisfied by the final payment date, a reportable event notice must be filed under the reportable events regulation; and (7) the name, telephone number, and e-mail address of a person (who may be the filer) whom PBGC may contact for additional information.”

alternative approach (which you are not required to do), you may contact the PBGC.

Reports must be made either in the manner required for reportable events reports generally or by e-mail to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov). [Technical Update 09-3](#) provides sample notice language.

#### **Effect of Future Rulemaking Actions**

PBGC noted in Technical Update 11-1 that it “plans to issue a new proposed rule to amend the reportable events regulation,” and that, “[i]f PBGC publishes a final rule amending the reportable events regulation in 2012, this Technical Update would be superseded with respect to reportable events to which the final rule applies, except to the extent that the final rule provides otherwise.”

#### **Non-Binding Nature of Guidance**

The guidance in Technical Update 11-1 is not binding on the public. In this connection, the Technical Update states as follows:

This guidance represents PBGC’s current thinking on this topic. It does not create or confer any rights for or on any person or operate to bind the public. If an alternative approach satisfies the requirements of the applicable statutes and regulations, you can use that approach. If you want to discuss an