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Reporting

Groups, Practitioners Say PBGC's Rule On Reportable Events Is a Good Start

The Pension Benefit Guaranty Corporation's proposed rule that would reduce the reporting requirements for notifying the agency when a reportable event occurs is a step in the right direction, but questions remain, practitioners told BNA April 3.

"It looks like they've backtracked on their proposed regulations. We applaud the direction they're moving in," said Kathryn L. Ricard, senior vice president for retirement security at the ERISA Industry Committee in Washington. "Our message is always: Anything that folks can do to help sponsors that are still in the game of providing defined benefit plans, we applaud. We think it's an important goal to keep the folks that are already in the DB system in the system and to get new people to come in. So, this is headed in the right direction," Ricard said.

On April 2, PBGC proposed a rule on reportable events that the agency said would exempt most companies from reporting events that would not likely put their pension plans at risk, instead turning their focus to companies and plan sponsors on more shaky financial ground (64 PBD, 4/3/13).

The proposal contemplated several safe harbors, including one that would apply to reportable events "that have little chance of threatening pension plans" and be based on the financial soundness of a plan sponsor, PBGC said. The rule also would reverse the agency's 2009 proposal to remove most waivers from its reportable events regulation.

Ricard said ERIC is very pleased that PBGC appears to be "backtracking a bit on the removal of all of the automatic waivers, and it looks like they are going back to some automatic waivers and they're adding some tests and some litmus standards."

Other Groups Praise Rule. Randel K. Johnson, the senior vice president of labor, immigration, and employee benefits at the U.S. Chamber of Commerce in Washington, also had positive things to say about PBGC's proposal.

In an April 3 statement, Johnson said: "We appreciate the efforts of the PBGC in withdrawing the original proposal and working toward a rule that is less burdensome and more efficient."

"Although we are still reviewing the proposed regulation in detail, we believe that it is a significant step in the right direction and an important indication from the PBGC that they are listening to plan sponsors," he said.

Judy A. Miller, director of retirement policy at the American Society of Pension Professionals and Actuaries in Arlington, Va., was also pleased with the proposal and said in an April 3 statement that it "is clear that PBGC gave serious consideration to the comments that we and others submitted. The agency is to be commended for not just reproposing this rule, but consciously taking a different approach, and focusing on minimizing the burdens placed on sponsors of low-risk plans while still achieving the goal of the rule."

Not All Good News. While many groups praised the rule generally, Kent A. Mason, a partner at Davis & Harman in Washington, questioned PBGC's proposal to judge a company or plan sponsor's creditworthiness.

"It is somewhat frightening for the government to be issuing its own evaluation of the financial soundness of public companies, private companies, and tax-exempt organizations. It's a very concerning development that the government is in the business evaluation business," Mason said.

Mason said the rule's financial-soundness safe harbor does not specify a credit score cutoff, which leaves it open to PBGC's interpretation.

Mason said a company will be deemed financially sound if, "one, the entity is scored by a commercial credit reporting company and the score indicates a low likelihood that the entity will default on its obligations, and, two, the company meets four other economic criteria created for this purpose by the PBGC."

"The last four criteria are created by the PBGC, but even the first criterion involves PBGC discretion. Who's judging that low likelihood? Is there a specified cutoff used in the commercial world? Or are we saying PBGC will determine at what point there's a low likelihood? The way I read it is that PBGC determines when there's a low likelihood, which means that even the first criterion is not an objective test," he said.

Ricard agreed with Mason's concerns regarding PBGC evaluating a company's creditworthiness, saying the specifics of safe harbor are murky.

"That's an example of one of the issues where you say, wait a minute, the devil's in the details here. Is it their credit report test? Are they relying on outside credit reports? Some of our members would say some of the current credit rating agencies aren't always the best in terms of accuracy, and they would find issue with some of their own credit ratings. So I think we certainly would have concerns in that area," Ricard said.

During an April 3 phone call with reporters, PBGC Director Joshua Gotbaum said the agency does not plan on judging a company's or plan sponsor's creditworthiness.

“There was some issue about . . . [whether] the PBGC is going to sit there and judge somebody’s credit. The answer is no. We don’t have to. The business community has been judging other people’s credits for centuries,” Gotbaum said.

“If you can meet what is widely accepted set of standards for financial soundness as a company, then, for a lot of these reports, you don’t have to file,” he said.

First Hearing in History. PBGC will hold a hearing on its proposed rule on June 18, something that has not been done before in the agency’s history, Gotbaum said.

“It turns out that the PBGC has historically not had a practice of holding hearings on its regulations. So there was not an opportunity for a public hearing and, most important from my perspective, there was not an opportunity for interaction among commenters, or interaction between commenters and PBGC,” Gotbaum said.

Harold Ashner, a partner with Keightley & Ashner in Washington, praised the move and said “there are many stakeholders other than PBGC that have a keen interest in the reportable events rules, including employers, participants, and pension practitioners. It is particularly helpful that PBGC has decided to hold a hearing on the proposed changes, so that it can hear from—and, more important, question—these other stakeholders as to what would or would not work in connection with the proposed changes.”

Gotbaum said PBGC is hoping the comment process will allow PBGC and the business community to achieve a common goal: reducing red tape.

“Our goal in life is to encourage people to offer [defined benefit] plans, and we can’t do that if we hassle them with red tape. What we’re hoping is this public hearing will result in comments and suggestions that will make this [regulation] even better,” he said.

BY KRISTEN RICAURTE KNEBEL