

EFFECTIVE JANUARY 24, 2022

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Plan Termination

PBGC Attorney Says Agency Examining 4062(e), Guidance Expected

The Pension Benefit Guaranty Corporation is planning to release guidance on its enforcement practices regarding Section 4062(e) of the Employee Retirement Income Security Act, a PBGC official said May 11 at a tax conference.

The agency recently “advised . . . [that it was taking] a hard look at financial strength” of companies that trigger the Section 4062(e) liability and will “use our enforcement resources to focus on those that are riskier,” Israel Goldowitz, chief counsel at PBGC, said during a session of the 2012 May Meeting of the American Bar Association’s Section of Taxation.

“We plan to issue some guidance. I can’t tell you in what form, or exactly when, or what detail it will be, but we are attempting to distinguish between the financially strong and the others,” Goldowitz said.

Harold Ashner, a partner with Keightley & Ashner, Washington, recently said PBGC had changed its stance

on Section 4062(e) liability, but PBGC would not confirm the change, saying its review of the issue was ongoing (82 PBD, 4/30/12; 39 BPR 825, 5/1/12).

Section 4062(e) requires that if a company ceases operations at a facility that results in 20 percent of employees who are plan participants losing their jobs, the company is treated as though it is subject to withdrawal liability on the termination of single-employer plans under multiple controlled groups (ERISA Sections 4063 and 4064). Also, under Section 4065, the plan administrator must report this liability to PBGC.

The issue of Section 4062(e) has sparked some controversy, with several employer groups writing a letter to PBGC in December 2011 asking that it cease all enforcement actions that are based on the Section 4062(e) proposed regulations (246 PBD, 12/23/11; 39 BPR 6, 1/3/12).

A proposed rule on Section 4062(e) was unveiled by PBGC in August 2010 (152 PBD, 8/10/10; 37 BPR 1809, 8/17/10) and was met with strong criticism and calls for the agency to withdraw the rule (198 PBD, 10/15/10; 37 BPR 2263, 10/19/10).

By KRISTEN RICAURTE KNEBEL