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Senators 'Express Concern' to PBGC About Rejecting Certain Premium Filings

Defined benefit plan sponsors that intended to pay their 2009 plan premiums to the Pension Benefit Guaranty Corporation using an alternative method, but failed to check the correct box, are being unfairly penalized, four senators said in a letter sent to the agency.

According to the letter, dated May 20, these plans are now being told they cannot use the alternative method. ''As a result, plans are facing millions of dollars in additional premiums, as well as interest and penalties,'' the letter said.

The four senators who signed the letter are: Sen. Tom Harkin (D-Iowa), chairman of the Committee on Health Education, Labor and Pensions; Sen. Max Baucus (D-Mont.), chairman of the Senate Finance Committee; HELP committee ranking member Sen. Mike Enzi (R-Wyo.); and Finance Committee ranking member Sen. Charles Grassley (R-Iowa).

A PBGC spokesman declined to comment on the letter.

The letter said many plans that made their premium filing in 2009 did not check Box 5 indicating that they were electing to use the alternative method, but did indicate their election by checking the alternative method box on Line 7 and timely paying their premium as calculated under the alternative method.

Harold Ashner, of Keightley and Ashner, Washington, D.C., said ''there was no error check in the software flagging the fact that Box 7 was checked but Box 5 was not.''

Ken Porter, senior vice president, international benefits & chief actuary of the American Benefit Council, told BNA May 24 that six days before the filing due date (Oct. 15, 2009), the Treasury Department issued guidance on funding that changed the perspective on how employers would file their PBGC premiums. Thus, many companies that had planned to use the standard method suddenly found that they could save substantially on their premiums by using the alternative method.

These companies went into the electronic forms and modified them, Porter said. However, when many companies made the last minute change, they made all the changes on Line 7, but did not go back to Line 5 and the election box for the alternative method, Porter said. Due to the form, this was an easy mistake to make, as evidenced by the fact that hundreds of companies did it, he said.

PBGC is holding ''rigid to its view'' that since the alternative method was not properly selected, plans are now prohibited from using it, although PBGC said it would be lenient on penalties, Porter said. However, the difference in premiums in using the standard or alternative method could be millions of dollars, he said.

Interest in this issue by plan sponsors has continued to be very strong, and this letter shows the interest of plan sponsors has continued to be high, Porter said. ''The clear evidence is that plan sponsors intended to properly elect the alternative method and purely because of a technicality PBGC is denying those elections,'' Porter said.

Regarding the letter, Judy Miller, the American Society of Pension Professionals and Actuaries' chief of actuarial issues and director of retirement policy, told BNA May 24, ''I was happy to see that [the Senators] had been paying attention and were weighing in on this. I hope that it influences PBGC to take a more flexible approach.''

Ashner said ''I would hope that PBGC would be very flexible here and recognize the substance rather than the form. It is very clear in the typical case that the intent was to elect the alternative method.''

The letter also urged PBGC to consider using its authority ''in a fair and reasonable manner'' when deciding how to treat plans who elected the alternative method late due to inadvertently failing to click ''submit'' to file a completed form or the late issuance in October of guidance ''critical to making'' an alternative method election.

By Andrea L. Ben-Yosef

The letter is at http://op.bna.com/pen.nsf/r?Open=ddoe-85rt64.

