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Reporting

PBGC Proposes to Eliminate ‘Most’ Automatic Waivers and Filing Extensions

The Pension Benefit Guaranty Corporation released Nov. 20 a proposed rule (74 Fed. Reg. 61,248, 11/23/09) to eliminate “most” of its automatic waivers and filing extensions now permitted under existing reportable events regulations and guidance.

Section 4043 of the Employee Retirement Income Security Act requires a plan administrator to report to PBGC specific events that may jeopardize the funded status of a defined benefit plan or the financial status of the termination insurance program. Upon notification (reportable event), the agency will decide whether to investigate further, take action, or simply close its file on the matter.

According to the proposed rule, “PBGC believes that many of the automatic waivers and extensions in the existing reporting events regulation are depriving it of early warnings that would enable it to mitigate distress situations.”

PBGC requested comments on “whether it has struck the correct balance between ensuring relevant information is received timely and increased reporting burden on the reporting community,” given its elimination of most waivers and extensions.

The complete waivers necessary for certain statutory events would be retained, according to the proposed rule. These include plan disqualification or noncompliance; amendments decreasing benefits; plan termination; and merger, consolidation, or transfer.

The proposed rule is intended to harmonize PBGC’s reportable events regulation and other regulations with statutory modifications made by the Pension Protection Act of 2006, according to the agency. Certain PBGC technical updates would be superseded by the proposed rule upon the effective date of a final rule.

The proposed rule provides a post-events notice table listing which ones are proposed to be withdrawn.

Comments on the proposed rule are due by Jan. 22.

New Reportable Events. The proposed rule would also create two new reportable events that address “funding-based limits” and “asset transfers to retiree health benefits.”

The new reportable event for a “low adjusted funding target attainment percentage” (AFTAP) would be required when an enrolled actuary certifies that a plan’s AFTAP is less than 60 percent or when the AFTAP is “presumed to be less than 60 percent.”

The new reportable event for the transfer of “excessive pension assets” to a health benefits account occurs if “a transfer of \$10 million or more is made or if, following such a transfer, the funded ratio falls below 120 percent” during the transfer. This would be a “post-event notice event only,” according to the proposed rule.

Advance Reporting Test. The proposed rule would address an existing ambiguity by requiring that the advance reporting threshold test be applied as of the valuation date for “the preceding plan year.”

This is the identical date as of which plan unfunded vested benefits, assets, and vested benefits must be calculated for premium purposes for the preceding plan year under the PBGC’s premium rates regulation, according to the proposed rule.

“Measuring these quantities as of that date for purposes of the advanced reporting threshold test will be less burdensome than requiring that separate computations be made as of the close of that year,” the proposed rule said. “It will also enable a plan to determine before a reportable event occurs (and before an advance report is due) whether it is subject to the advance reporting requirement,” it said.

Written Comments. Comments may be sent through the federal eRulemaking portal at <http://www.regulations.gov>; e-mail to reg.comments@

pbgc.gov; fax to (202) 326-4224; or mail or hand delivery to Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K St., N.W., Washington, D.C. 20005.

Comments on the paperwork provisions of the proposed rule are requested on or before Dec. 21 to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, by electronic mail at OIRA_DOCKET@omb.eop.gov, or by fax to (202) 395-6974.

Practitioner Comments. “The proposed changes would expose many more sponsors to reporting requirements and, perhaps more important, to penalties for any re-

porting delinquencies,” Jim Keightley, partner in the Washington, D.C. law office of Keightley & Ashner LLP and former PBGC general counsel, told BNA Nov. 20.

“The existing reportable events regulation was the result of a negotiated rulemaking process involving a committee consisting of representatives of employers, participants, pension practitioners, and PBGC, with a great deal of give-and-take among the various stakeholders,” Harold Ashner, also a partner in Keightley & Ashner LLP and former PBGC assistant general counsel, told BNA Nov. 20. “Following a similar process in connection with the major changes now being proposed would help ensure that the new rules strike an appropriate balance,” he said.

BY MICHAEL W. WYAND