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Small Plans with Missed Quarterlies: PBGC Drops Reporting Waiver

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PBGC's reportable events regulation requires a reportable event filing for missed contributions, including missed quarterly contributions. Since 1997, PBGC has issued a series of Technical Updates waiving reporting of missed quarterly contributions (assuming the total of missed contributions, including interest, did not exceed the \$1 million threshold that triggers a statutory lien) for an employer with 100 or fewer participants in its defined benefit plans. For employers with 101 to 500 participants in its defined benefit plans, the waiver applied only if a specified funding-based test was met. These reporting waivers are described in detail in PBGC Technical Updates 97-4, 97-6, 06-4, 07-1, and 08-2.

These reporting waivers will no longer apply, starting with quarterly contributions for the 2009 plan year. On February 20, 2009, PBGC added the following explanation to its "What's New for Practitioners" page on its website (<http://pbgc.gov/practitioners/whatsnew.html>):

No Missed-Quarterly Waiver for 2009: PBGC is not granting an automatic waiver for 2009 of the requirement to notify PBGC of missed quarterly contributions under section 4043 of ERISA and PBGC's reportable events regulation (29 CFR Part 4043). Automatic waivers have been granted by Technical Update for 2008 and prior years where the employer had 100 or fewer participants covered by its plans, or had between 100 and 500 participants covered by its plans and had missed contributions to a plan that was well-funded. PBGC's experience is that many plans that did not report missed quarterlies because of the automatic waiver later terminated with unfunded liabilities, and that if missed-quarterly reports had been made, PBGC might have been able to work with plan sponsors to avoid the underfunded terminations.

PBGC will still grant case-by-case waivers where appropriate.

ASPPA's Government Affairs Committee is urging PBGC to reconsider its position and to continue to provide reporting relief for small employer plans with missed quarterly contributions. In the meantime, it is important to comply with the reportable event requirement, under which a filing is due within 30 days after the plan administrator or contributing sponsor "knows or has reason to know that the reportable event has occurred." The only remaining waiver for this reportable event applies where the required minimum funding payment is made by the 30th day after its due date (29 CFR § 4043.25(c)). Failure to comply with this reportable event filing requirement could lead to a penalty under ERISA Section 4071 that could be as high as \$1,100 per day.