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Small Plans with End-of-Year Valuation Dates: PBGC Premium Deadline Looms

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As part of its final rule implementing the PPA changes to the PBGC variable-rate premium ("VRP"), PBGC made significant changes to its premium due date structure, with the new rules varying depending on whether the plan is small, mid-size, or large (based on the required flat-rate participant count for the plan year preceding the premium payment year). These changes go into effect starting with the 2008 premium payment year. For small plans (fewer than 100 participants), the due date for both the VRP and the flat-rate premium will be the last day of the sixteenth month that begins on or after the first day of the premium payment year (*e.g.*, April 30, 2009, for the 2008 calendar premium payment year). (The new due date rules, as well as other aspects of the PBGC's final rule implementing the PPA changes to the VRP, are discussed in detail in ASPPA asap 08-10.)

As compared to the due date that applied to small plans under the pre-PPA structure (October 15 of the premium payment year for calendar-year plans), this represents in one sense a significant extension of time, generally from eight and one-half months after the *beginning* of the plan year for which the premium is paid to four months after the *end* of that plan year. However, for small plans with end-of-year valuation dates, this new due date structure, in another sense, represents a significant shortening of the time period—from a pre-PPA deadline that was (generally) a full eight and one-half months after the date as of which unfunded vested benefits ("UVBs") were determined (the last day of the *prior* plan year under pre-PPA rules) to a PPA deadline that may be only four months after the date as of which UVBs are determined (which for certain small plans may be as late as the last day of the premium payment year).

Thus, a small plan with an end-of-year valuation date will generally have a period of only four months from its post-PPA UVB Valuation Date to determine UVBs and to submit a VRP (and flat-rate premium) filing to PBGC. This may present difficulties in some cases, even though the fair market value of plan assets should generally be available well before the VRP due date and both accruals and contributions for the premium payment year are disregarded in determining UVBs. The time for coordination between the actuary and the employer will be compressed, and any decisions that need to be made that could affect the UVB calculation may need to be made sooner than would otherwise be required for funding purposes. Nonetheless, it is important to meet the VRP deadline to eliminate exposure for late payment charges (penalties and interest) under ERISA Section 4007 and for any penalties for failure to provide information in a timely manner under ERISA Section 4071.

If time is running out as the VRP deadline draws near, one possible approach for a plan that qualifies for the VRP cap applicable to certain plans of small employers (those with 25 or fewer employees) is to file and pay based on that VRP cap ($5 times the square of the participant count). That payment may exceed the VRP amount that is ultimately determined to be due. If so, an amended filing can later be made However, any election to use the Alternative Premium Funding Target (which, once made, is irrevocable for five years) must be made by the VRP deadline.