AMERICAN ACADEMY *of* ACTUARIES

October 2, 2013

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Re: Regulation Identifier Number (RIN) 1212-AB26

To Whom It May Concern:

The American Academy of Actuaries[1] Pension Committee is pleased to present these comments to the Pension Benefit Guaranty Corporation (PBGC) regarding proposed regulations issued July 23, 2013 on premium rates, payment of premiums, and reducing regulatory burdens. The committee strongly supports the goal of reducing the regulatory burden on plan sponsors. While this is just one of several areas in which the burden could be reduced, we believe that the proposal represents progress towards that goal.

In particular, we agree that eliminating the estimated filing removes an unnecessary task from plan sponsors with no material detriment to PBGC. We also agree that providing uniform due dates will eliminate confusion and help mitigate the possibility of errors. The PBGC rightly points out the difficulties that timing changes might cause to certain plans. However, the proposal creates new look-back rules that, in the view of the committee, provide a practical and workable way to address the issue.

Similarly, the changes to premiums and due dates for certain first-year plans and terminating plans also represent practical approaches with which we agree. The various administrative changes included in the proposal should also reduce the compliance burden for ongoing plans, albeit nominally.

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The Pension Committee appreciates the opportunity to comment on these proposed regulations and would be happy to discuss any of these items with you at your convenience. Please contact David Goldfarb, the Academy's pension policy analyst (202-785-7868, goldfarb@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

Michael F. Pollack, FSA, MAAA, EA, FCA
Chairperson, Pension Committee
American Academy of Actuaries

[1] The American Academy of Actuaries is a 17,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Comments on Proposed Amendment to Rule Relating to Premium Rates and Payment of Premiums

September 23, 2013

Pension Benefit Guaranty Corporation
29 CFR Parts 4000, 4006, 4007, and 4047
[RIN 1212-AB26]

The American Society of Pension Professionals & Actuaries ("ASPPA") and the ASPPA College of Pension Actuaries ("ACOPA") appreciate this opportunity to comment on the proposed amendment to the rule relating to Premium Rates and Payment of Premiums issued by the Pension Benefit Guaranty Corporation on July 23, 2013 [RIN 1212-AB06].

ASPPA is a national organization of more than 16,000 retirement plan professionals who provide consulting, administrative and investment advisory services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, attorneys and investment professionals. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-based retirement plan system. All credentialed actuarial members of ASPPA are members of ACOPA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Summary

ACOPA commends PBGC for the proposed amended rule's focus on simplification and ease of administration. Once implemented, the uniform due date and look back rule for small plans will be a significant improvement over the current rule. ***ACOPA recommends*** that the final amendment to the rule extend the uniform due date to new and newly covered plans, provide transition year relief for small plans that will be required to make two premium payments in one calendar year, and extend the ability to file an estimated premium to plans of any size. These recommendations are described in greater detail in the **Discussion** section that follows.

Discussion

I. Extend the Unified Filing Date to New Plans

Under the proposed amendment to the rule, for new plans, or newly covered plans, the premium filing deadline is the later of the 9 ½ month deadline or 90 days after the later of the date the plan is adopted, or the date the plan is first covered by PBGC. This special due date is likely to result in missed filings. A simpler rule would be to provide that a plan adopted or first covered more than 6 ½ months after the first day of the plan year must file for the initial year by the due date of the premium for the following year.

ACOPA recommends that the special rule for new and newly covered plans be modified to maintain the single filing due date of 9 ½ months into the plan year by permitting a plan adopted or first covered more than 6 ½ months after the first day of the plan year to file for the initial year by the due date of the premium for the following year.

II. Provide Transition Relief to Small Plans

Under the proposed amendment to the rule, in the transition year small plans will be required to make two premium payments in 2014, with both based on the 2013 unfunded vested benefits (UVB) valuation date. As noted in the introduction, this will be beneficial or detrimental depending on whether the 2013 UVB is less than or greater than the 2014 UVB. ACOPA believes that after the transition year, the look back approach will make the premium process more efficient. However, there is concern that for some small employers, especially those with variable premiums due, the second premium payment may pose a cash flow problem. This could be mitigated by permitting payment of that premium to be smoothed over several years.

ACOPA recommends that employers be permitted to pay the premium due in 2014 for 2014 in three annual installments. For a calendar year plan, these installments would be due by October 15th in 2014, 2015 and 2016.

III. "True up" Period for Premiums

The proposed amendment to the rule allows plans to pay an estimate of the premium by the due date, then make a reconciliation filing within 6 ½ months of the original due date. Comments were requested as to whether extending this reconciliation period to small plans would be on the whole beneficial or create the potential for administrative error.

ACOPA recommends that the option to pay an estimated premium by the due date with a 6 ½ month reconciliation period be available to plans regardless of size. Uniform availability of this option is consistent with the "uniform due date" structure of the proposed amendment to the rule, and the existence of a different rule for large and small plans is far more likely to be confusing than offering the rule to all plans. Furthermore, the possibility of administrative error is not limited to small plans.

ACOPA suggests that PBGC consider further simplifying the filing process by eliminating the check box to designate the initial timely filing as an estimate, and permit plans of any size to do an amended filing within 6 ½ months of the original due date without penalty. The need to submit an amended filing should be rare, and this approach will eliminate both box checking errors and the need for unnecessary reconciliation filings when an estimate turns out to be final. More importantly, a plan that does a "final" filing but discovers an error and amends within 6 ½ months of the original due date would be treated the same as a plan that files an estimate followed by a timely reconciliation.

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These comments were prepared by ASPPA's Defined Benefit Subcommittee of the Government Affairs Committee and the ASPPA College of Pension Actuaries. Please contact Judy A. Miller, MSPA, ACOPA Executive Director, at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Judy A. Miller, MSPA
ACOPA Executive Director

/s/
Craig P. Hoffman, Esq., APM
General Counsel

/s/
John R. Markley, FSPA, Co-Chair
Gov't Affairs Committee

/s/
Ilene H. Ferenczy, Esq., APM, Co-Chair
Gov't Affairs Committee

/s/
Robert M. Kaplan, CPC, QPA, Co-Chair
Gov't Affairs Committee

September 23, 2013

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K St NW
Washington, DC 20005-4026

RE: RIN 1212-AB26: Premium Rates; Payment of Premiums; Reducing Regulatory Burden

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter to the Pension Benefit Guaranty Corporation (PBGC) in response to the proposed rule on various issues related to PBGC premium payments, including due dates and penalty relief, which was issued on July 23, 2013.[1]

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

We applaud the PBGC for this proposal and encourage the agency to finalize the proposed changes. As you are aware, administrative hurdles can be a significant burden for plan sponsors and can create a disincentive to maintaining retirement plans – particularly in the defined benefit plan space. Therefore, it is critical that these burdens be minimized to the extent possible. We believe the proposed rule considerably reduces burdens for defined benefit plan sponsors.

Overall, we believe that the proposed rule alleviates unnecessary complexity and burdens. Specifically, we believe that having one payment date for all plans, regardless of size, will eliminate unnecessary complexity. In addition, allowing small plans to use the previous

[1] 78 FR 44056, July 23, 2013.

year's data allows for a simplified system without creating additional burdens for small businesses. Finally, we appreciate the removal of administrative and financial burdens by lowering the penalty cap for plans that make voluntary corrections to their premium payments and by codifying the policy of not accessing penalties for payments made within 7 days of the due date. We support and encourage voluntary correction programs and lowering the cap for voluntary corrections from 100% of premium payments to 50% reinforces the incentive to participate in voluntary correction programs. In addition, providing a 7 day grace period encourages employers to comply with the rules without having to worry about being penalized for a minor timing error.

We note that the proposed rule states that a final rule would be effective for the 2014 plan year. Given the current timing, we are concerned that a final rule may not be issued in time to allow for compliance in the 2014 plan year. As such, we ask you to consider transition rules that align with the efforts in the proposal to simplify administrative burdens. We stand ready to assist with ideas and recommendations for compliance once the timing of the final rule is confirmed.

Thank you for your consideration of these comments. The defined benefit system covers millions of employees and pays out billions of dollars in pensions; thus, it remains a significant benefit for many workers and retirees. Consequently, any effort by the PBGC to make plan administration and maintenance less burdensome is sincerely appreciated by plan sponsors.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce

Aliya Wong
Executive Director
Retirement Policy
U.S. Chamber of Commerce

From: David Sawyer [mailto:dsawyer@retirement-horizons.com]
Sent: Monday, September 23, 2013 04:58 PM
To: RegComments
Subject: Regulation Identifier Number (RIN) 1212-AB26

I applaud the PBGC's initiative at simplifying the premium payment regulations. In general, the changes appear to meet the desired goal of reducing the administrative burden on plan sponsors. However, one of the PBGC's current practices operates to eliminate the ability of plan sponsors to self correct late premium filings. Below is my understanding of the current practice and a recommendation for additional change.

Currently, there is no penalty for a premium filing made within 7 days of the due date. However, due to advances in computer technology, the PBGC electronically monitors when filings are expected to be made and sends a penalty letter by U.S. mail immediately following the expiration of the 7 day window. As such, plan sponsors are immediately subject to the 5% penalty for late payment, and the proposed reduction in the ultimate penalty from 100% to 50% of the 1% penalty will have no practical implication.

A real improvement would be for the PBGC to send the reminder and allow the plan sponsor to pay the 1% penalty if the premium is submitted within 15 days. Even better, an electronic reminder on the day after the due date could be sent to those registered on the MYPAA website (plan sponsor, filings coordinator, actuary, etc). This would allow plan sponsors to pay the premium within the 7 day window, and avoid the oversight.

ERIC

The ERISA Industry Committee

September 23, 2013

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, DC 20005-4026

RE: RIN 1212–AB26 (Premium Rates; Payment of Premiums; Reducing Regulatory Burden)

Ladies and Gentlemen:

The ERISA Industry Committee ("ERIC") is pleased to respond to the request of the Pension Benefit Guaranty Corporation ("PBGC") for feedback on the proposed regulations relating to Premium Rates; Payment of Premiums; and Reducing Regulatory Burden (the "proposed regulations").[1]

ERIC'S INTEREST IN RETIREMENT PLANS

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, incentive, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that would affect its members' ability to provide secure pension benefits in a cost-effective manner.

SUMMARY OF COMMENTS

ERIC appreciates the efforts of the PBGC in the proposed regulations and response to the concerns of plan sponsors. The following is a summary of ERIC's comments, which are described in greater detail below:

- ERIC supports the PBGC's proposal to change the premium due date for large plans.
- ERIC supports the PBGC's proposal to lower the self-correction penalty cap.
- ERIC believes that the PBGC should not apply loading factors to premiums for plans that are at-risk.

[1] Pension Benefit Guaranty Corporation, *Premium Rates; Payment of Premiums; Reducing Regulatory Burden*, 78 Fed. Reg. 44056 (Jul. 23, 2013).

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DETAILED COMMENTS

I. The PBGC should finalize its changes to the premium due dates.

Currently, large plans must pay the flat-rate premium early in the year and the variable-rate premium later in the year. The proposed regulations would simplify these rules by providing that the annual premiums for plans of all sizes would be due on the 15^{th} day of the tenth calendar month after the premium payment year (i.e., October 15^{th} for calendar year plans).ERIC applauds the PBGC for the proposed changes to the due dates for premiums, which would create efficiencies consistent with Executive Order 12866 "Regulatory Planning and Review" and Executive Order 13563 "Improving Regulation and Regulatory Review." These Executive Orders direct agencies to maximize net benefits, promote flexibility, and reduce regulatory burdens on companies.

Establishing a uniform due date for premiums (the "uniform due date") would significantly benefit companies and their plans. As noted by the PBGC, the uniform due date would eliminate the need for the complex penalty safe harbor rules. [2] As a result, companies would no longer need to expend valuable resources to determine whether they satisfy the penalty safe harbor rules. Additionally, it would reduce the time and money that large companies have to spend on filings for their plans. It would eliminate interest payments on shortfalls in premium estimates. The proposed changes would also allow plan consultants to perform all premium and Form 5500 filings at the same time.

ERIC supports the PBGC's proposal to establish a uniform due date for premiums as described in the proposed regulations.

II. The PBGC should lower the self-correction penalty cap as proposed.

Currently, the PBGC assesses late premium payment penalties of 1% per month for filers that self-correct and 5% per month for those that do not. These penalties are currently capped at 100% of the underpayment amount. The proposed regulations provide that the cap for late premium payment penalties that are self-corrected would be reduced from 100% to 50%.

ERIC applauds the PBGC for proposing to cap the self-correction penalty for underpayments at 50%. We support the PBGC's efforts to provide greater incentives for companies to identify and self-correct underpayments – both recent underpayments and those that have existed for some time.

III. Loading factors should not apply to premiums for plans that are at-risk.

The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), contains separate provisions relating to the funding of pension plans and PBGC's premiums.

ERISA § 303(d) provides the funding rules for plans that are not in at-risk status. It states "Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year". ERISA section 303(i)(1) requires a plan that has been in at-risk status in two of the past four plan years to add a loading factor when calculating its funding target.

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[2] 78 Fed. Reg. at 44058.

ERISA § 4006 generally calculates the PBGC's annual premium rate for single-employer plans based on: (1) an amount for each participant in the plan; plus (2) an additional premium. The "additional premium" is essentially equal to a dollar amount for each $1,000 of unfunded vested benefits divided by the number of participants. The amount of the "unfunded vested benefits" is equal to "the funding target of the plan as determined under section [303(d)] of this title for the plan year by only taking into account vested benefits…" over the fair market value of the plan's assets.

The proposed regulations appear to include the loading factor contained in ERISA § 303(i)(1) when calculating the premium amount for plans in at-risk status. The proposed regulations state that the variable rate premium is based on the plan's unfunded vested benefits as determined under PBGC proposed regulation § 4006.4.[3] PBGC proposed regulation § 4006.4 states that if a plan is in at-risk status and it has been in at-risk status in two of the last four plan years, the funding target will include the loading factor provided by ERISA § 303(i).

ERIC believes that the premiums for at-risk plans should not include the loading factor. ERISA is not ambiguous on this issue: ERISA § 4006 could have referenced both 303(d) and (i), but instead specifically references only section 303(d). Furthermore, it is important to recognize that these two sections of ERISA serve different purposes and calculate their amounts in different ways. Section 303 is focused on providing adequate funding for plans at a reasonable pace and uses all vested and unvested benefits in its calculations. By contrast, section 4006 provides revenue for the PBGC and only includes vested benefits. Reading the loading factors from the funding rules into the premium calculation would blend these provisions together in a manner that is inconsistent with both the language of ERISA and the differing purposes of the two provisions. Participants in at-risk plans would be better served if the plan sponsors were able to use their assets to increase the funding of their plans rather than for higher premiums.

As a result, ERIC recommends that the PBGC not include ERISA § 303(i)'s loading factors for plans that are at-risk for purposes of the PBGC's premiums.

ERIC appreciates the opportunity to provide comments on the proposed regulations. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,

Kathryn Ricard

Kathryn Ricard
Senior Vice President, Retirement Policy

[3] PBGC Prop. Reg. § 4006.3(b)(1), 78 Fed. Reg. at 44067.

cc: Josh Gotbaum, Director
Leslie Kramerich, Deputy Chief Policy Officer
Judith R. Starr, General Counsel
Daniel Liebman, Attorney, Office of General Counsel
Catherine B. Klion, Assistant General Counsel, Regulatory Affairs Group, Office of the General Counsel

AON Hewitt

September 23, 2013

Submitted via email to reg.comments@pbgc.gov

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Dear Sir or Madam,

Subject: RIN 1212–AB26—Comments on Proposed Regulations under ERISA §§4006, 4007, and 4047 Premium Rates; Payment of Premiums; Reducing Regulatory Burden

Aon Hewitt welcomes the opportunity to submit comments on the proposed rules regarding payment of PBGC premiums. The proposed regulations were published in the *Federal Register* on July 23, 2013.

Who We Are

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 30,000 professionals in 90 countries serving more than 20,000 clients worldwide. For more information on Aon Hewitt, please visit www.aonhewitt.com.

Summary Comments

Overall, we believe the proposed changes to the premium payment and penalty rules will help lessen the burden on plan sponsors to file and pay PBGC premiums. Eliminating the estimated flat-rate premium filing will relieve plan sponsors from determining participant counts at two separate dates as well as alleviate the impact of potential late payment penalties and interest. Historically, the late interest due on estimated premiums has caused confusion among plan sponsors and has been difficult to pay. Plan sponsors have not had an obvious way to file and pay these amounts, which has led to misunderstanding when these amounts have been assessed by the PBGC. In addition, plan changes such as mergers and spinoffs have led to confusion as to whether or not an estimated premium payment is required. The proposed changes will substantially reduce the time and effort required to calculate and pay premiums. As suggested by the PBGC, these proposed regulations should be made effective beginning with 2014 premium payment years.

We believe there are several additional areas in which the premium payment rules can be improved to be less burdensome for plan sponsors including:

- Modifying the unfunded vested benefits "look-back" rule for small plans;
- Waiving the penalty charges for underpayment of variable-rate premiums paid on or before the reconciliation filing due date;
- Simplifying the participant count rules for de minimis mergers and spinoffs;
- Eliminating the need for an amended filing to indicate "final filing" for mergers and spinoffs; and

- Providing an additional 30 days to complete the final flat-rate premium filing for terminating plans.

Small Plan "Look-Back" Rule

While we agree with the PBGC's proposed changes to allow small plans to determine the unfunded vested benefits (UVBs) by looking back to a prior year, we believe that such plans should be provided an option to determine UVBs as of the valuation date if the valuation date is the first day of the plan year. Such plans will generally have the necessary information to determine the premium funding target as of the premium payment year. Requiring small plans that use a beginning-of-year valuation date to use year-old liabilities could penalize such plans by overstating the premium funding target in rising interest rate environments. It could also understate the market value of assets by ignoring contributions the plan sponsor may have made for the prior plan year to improve the plan's funded status.

In addition, since the definition of "small plan" is based on the number of participants in a single plan and not across all plans maintained by the plan sponsor, it is possible that a plan sponsor may have one (or more) "small" plans requiring a different premium calculation than other "large" plans they also sponsor. This would cause confusion and potentially inadvertent underpayment of variable-rate premiums. Allowing an option for "small" plans to determine UVBs as of the valuation date if the valuation date is the first day of the plan year would provide plan sponsors the ability to treat all plan filings and calculations in a similar manner.

Penalty Charges

We agree with the proposed reduction to the self-correction penalty cap. Plan sponsors should be encouraged to correct premium underpayments, and the amount of forgone revenue for the PBGC would likely be minimal. However, we would also recommend that the PBGC expand the waiver of the penalty for underpayment of premiums for an additional situation. Currently, if a plan sponsor files the variable-rate premium with an "estimated" premium funding target by the filing due date (e.g., October 15 for a calendar year plan), a final reconciliation filing is required no later than four months after the end of the plan year (e.g., April 30 of the following year for a calendar year plan.) Penalties, but not late interest, are waived if the variable-rate premium increases when reporting the final premium funding target.

This relief is reasonable and should be expanded for plan sponsors who do not file the premium funding target as "estimated," but who file an amended premium filing correcting the premium funding target from the amount previously filed on or before the due date of the variable-rate premium. Providing this relief would be consistent with the PBGC's desire to promote self-correction and with the goal of reducing the filing burden on plan sponsors. It is uncommon, but possible, that a plan sponsor may file a final variable-rate premium filing expecting no changes in the premium funding target. However, due to changes in assumptions or corrections in data that impact plan liabilities, this amount can change. A plan sponsor has up to 9-½ months following the end of the plan year to finalize the funding and liability calculations for the Form 5500 Schedule SB on which the premium funding target is based. Thus, it is possible that unexpected changes can occur after the variable-rate premium filing due date.

Currently, if a plan sponsor does not file an "estimated" premium funding target and amends a filing before the reconciliation filling due date, the self-correction penalty is assessed. However, if a plan sponsor files an "estimated" premium funding target, no penalty is assessed if the premium filing is amended no later than four months after the end of the plan year. The result of this inequitable treatment of changes after an initial variable-rate premium filing essentially forces plan sponsors to file "estimated" filings to avoid the *potential* for a penalty in case something changes within the following 6-½ months. This creates a burden for the plan sponsor who must always file an amended premium filing even if there were no changes just to ensure that penalties are not assessed. It also creates a burden for the PBGC to receive final filings (and follow-up on final filings not received) when the variable-rate premium is initially filed as "estimated."

We recommend that the PBGC eliminate this inconsistency in treatment and the resulting additional burden by applying no penalty for any changes in the premium funding target from the variable-rate premium filing due date to any amended filing made on or before four months after the end of the plan year (i.e., April 30 of the following year for calendar year plans.) This would support plan sponsors in self-correcting premium calculations and treat all plan sponsors in a consistent manner.

While this recommendation essentially eliminates the need to identify a premium funding target as “estimated,” it would result in fewer filings while preserving the same level of accuracy of variable-rate premium filings as under current rules. Plan sponsors would prefer to file once with final assumptions and avoid an amended filing and additional interest payments. Also, the opportunity for abuse in filing an artificially low variable-rate premium would not be allowable due to the required certification by the Enrolled Actuary that:

> “the variable-rate premium information in the filing is true, correct and complete and has been determined in accordance with PBGC's premium regulations and instructions; except that if the premium funding target is estimated, the estimate is reasonable, takes into account the most current information available to me and has been determined in accordance with generally accepted actuarial principles and practices.”

Overall, this change would reduce PBGC penalty follow-up and allow for better self-correction of the variable-rate premium.

Participant Count Date for De Minimis Mergers or Spinoffs

In addition to the changes the PBGC has proposed, we believe the PBGC should also update the regulation relating to the participant count date for certain mergers and spinoffs. The current rule determines the appropriate participant counts in all cases except for de minimis mergers or spinoffs effective the first day of a plan year.

Currently, if a merger is effective on the first day of a plan year and the merger is not de minimis, the participant count for the transferee plan is determined on the first day of the plan year rather than the last day of the prior plan year. This change requires the ongoing plan (transferee) to reflect the plan which was merged in, but only if the merger was not de minimis. However, if the merger was de minimis, the participant count is determined as of the last day of the prior plan year. This effectively removes all the participants from the transferor plan from the flat-rate premium count. (Note that the unfunded vested benefit date is always the first day of the plan year. Thus the premium funding target for the transferor plan would always be reflected for the combined plan regardless of whether or not the merger was de minimis.)

Also, under the current rules for spinoffs, if the spinoff is effective on the first day of a plan year and the spinoff is not de minimis, the participant count for the transferor plan is determined on the first day of the plan year rather than the last day of the prior plan year. This change in the date to determine the participant count effectively recognizes that participants are no longer part of the plan and such participants are effectively counted in part of the plan which was spun off. However, if the spinoff is de minimis, the participant count for the transferor plan is determined as of the last day of the prior plan year in which case the participants of the spun-off plan are still counted. This penalizes any plan with a de minimis spinoff as of the first day of a plan year.

Thus, we believe the exception in determining the participant count date for the flat-rate premium for a de minimis merger or spinoff is not necessary. This exception was needed prior to the Pension Protection Act of 2006 (PPA) since the measurement date of the unfunded vested benefits was determined as of the last day of the plan year under those prior rules. Post-PPA, the measurement for participants and the premium funding target (unfunded vested benefits) has been separated and thus, this exception to the merger and spinoff participant count date for de minimis transactions as of the first day of a plan year is no longer applicable.

Final Filing Reporting for Mergers or Spinoffs

The current premium instructions require plan sponsors to file an amended filing to indicate if a filing is a "final" premium filing in situations involving mergers or spinoffs. The instructions provide an exception to the requirement to file a "final" premium filing:

> "If you make a premium filing that is a "Final premium filing" as described in item 13 of the comprehensive premium filing instructions, and you do not provide the information required by item 13 **because the event referred to in item 13 has not yet occurred when you make the filing**, you are not required to make an amended filing. However, to avoid the need for correspondence to establish why you are not making any more premium filings, we recommend that you contact us to report the event, unless —
>
> - The event was a distribution of assets pursuant to plan termination and is being reported on PBGC Form 501, or
> - The event was a merger into or consolidation with another plan and is being reported on a premium filing for the surviving plan."

In our experience, the PBGC has required amended filings for many merger and spinoff situations including those which occur after the variable-rate premium filing has been made. For example, for a calendar year plan with a year-end merger or spinoff, the Comprehensive Premium Filing is due before the merger or spinoff may even be known. This typically results in amended filings or contact with the PBGC to clarify the following year's estimated premium filings.

Since the PBGC proposes to eliminate the estimated flat-rate premium filing for large plans, filing a "final" filing for events that occur after the filing should not be required or requested. Instead, the information can be reported on the following year's variable-rate premium as part of the information regarding plan transfers. Since the PBGC will not need to compare estimated flat-rate premiums filings to those actually received, there will be no need for information on the transaction until the following year's Comprehensive Filing is due.

This change would reduce the burden on plan sponsors to amend premium filings solely to indicate a merger or spinoff and would reduce the time spent by the PBGC in identifying filings needed solely to indicate that they are "final." If the PBGC desires to know about plan mergers or spinoffs prior to the due date of the subsequent Comprehensive Premium Filing, the PBGC should provide for an easier way to report this information than an amended premium filing which typically requires a new certification from the Enrolled Actuary even though premium amounts remain unchanged.

Flat-Rate Premium Due Date for Terminating Plans

We agree with the PBGC's proposed changes to the computation of the variable-rate premium for plans terminating during the plan year. While plan sponsors may need to file an amended premium filing if a distribution occurs after the variable-rate premium due date, this relief of premiums is reasonable for plan sponsors who are fully funding a plan in order to terminate it (so that the plan will essentially have no unfunded vested benefits).

In addition, while we agree with the proposed change to the final flat-rate premium due date for a terminating plan to the earliest of: (i) the normal premium due date; (ii) the last day the Form 501 can be filed without penalty; or (iii) the date when the Form 501 is filed; we also recommend that the PBGC allow a 30-day extension from such a due date. Compiling the final plan termination filing can be a time-consuming task and requiring both filings on the same due date may be burdensome for some plan sponsors. Allowing a short period of time following the final filings will allow plan sponsors to separate those tasks.

Closing

We appreciate the opportunity to submit these comments regarding the proposed regulations. If you have any questions regarding these comments, please contact the undersigned at the telephone number or electronic mail address provided below.

Sincerely,

Aon Hewitt

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