



## **Comments on Electronic Filing - Annual Financial and Actuarial Information**

### **Comments:**

- 1- Comments submitted by ExxonMobil on Annual Financial and Actuarial Information.
- 2- Comments submitted by Mercer on Annual Financial and Actuarial Information.
- 3- Comments submitted by Hewitt on Annual Financial and Actuarial Information.
- 4- Comments submitted by Eric on Annual Financial and Actuarial Information.
- 5- Comments submitted by Mellon on Annual Financial and Actuarial Information.
- 6- Comments submitted by Peabody on Annual Financial and Actuarial Information.
- 7- Comments submitted by Towers Perrin on Annual Financial and Actuarial Information.

## ExxonMobil

January 21, 2005

Office of the General Counsel  
Pension Benefit Guarantee Corporation  
1200 K Street NW  
Washington, DC 20005-4026

Dear Sirs,

Exxon Mobil Corporation hereby submits the following comments on the PBGC's recently proposed regulations on Electronic Filing - Annual Financial and Actuarial Information, published in the December 28, 2004, Federal Register. You have solicited comments on, among other topics, whether the proposed collection of information is needed for the proper performance of the PBGC's functions; the accuracy of the PBGC's estimate of the burden of the proposed collection of information; and minimizing the burden of the collection of information on those who are to respond.

I. Necessity of proposed collection of information

A. Controlled Group Entities

The proposed regulations would amend section 4010.7 to require the filing of specific identifying information for all controlled group members, *including exempt entities*. The stated objective of the PBGC for requiring identifying information on all controlled group members is "these entities sometimes provide a source of recovery for PBGC claims (should any arise)" and that the "PBGC must be aware of the existence of such entities" to enable it to assert potential claims.

We do not deny the PBGC's has a potential interest in information on all controlled group entities, but we question whether the imposition of an annual reporting requirement with respect to all controlled group entities is necessary to enable the PBGC to protect its interests. ExxonMobil has over 1,000 controlled group members, many of which have little or no assets. Entities with de minimis amounts of assets will not provide any meaningful recovery mechanism, and having to provide or confirm information on each entity every year is more than is needed to protect the PBGC's interests.

We strongly urge the PBGC to retain a de minimis threshold for affiliates below which they would not be included in the filing

requirement. Ideally, from our perspective, the PBGC would retain the current reporting threshold for excluded entities. The current rules result in our having to report on approximately 60 controlled group entities, which together represent a significant portion of the total assets of ExxonMobil. These amounts far exceed the amount of any unfunded pension liability for which the PBGC could become obligated. For most companies, the current reporting standards should, therefore, be adequate for a routine, annual reporting requirement.

If the current reporting standard is not workable from your standpoint, we would recommend that an alternative be adopted that uses information that companies like ExxonMobil already prepare and report for other governmental filing purposes. For example, ExxonMobil already provides a list of subsidiaries under Exhibit 21 of SEC Form 10k "Subsidiaries of the Registrant". This exhibit lists, by subsidiary, the name, percentage ownership, and the state or country of incorporation or organization of each. By rule entities representing, in aggregate, at least 90% of the registrant's assets or operating income must be reported. Using this alternative would, thus, accomplish the PBGC's goal of providing a source of information to help with recoveries without imposing a new reporting burden, at least for SEC registrants.

Another alternative would be to limit the amount of information requested on a routine, annual basis from financially sound companies, with more extensive requirements being applied to those companies that pose a greater risk of default on their pension obligations. Because of its financial strength and credit quality, ExxonMobil poses very little, if any, imminent risk to the PBGC. The immediate risk posed by most other companies is likewise very small. We think a more rational compliance approach would be to limit the amount of information a financially strong company would have to provide, while imposing the more extensive reporting burden on companies that present more risk to the PBGC. Factors similar to those found in the Bush Administration's recent pension reform proposal could be used to designate "at-risk" companies that would be subject to the heightened disclosure requirements.

**B. Specific Requested Information**

Another aspect of the relevance issue has to do with the specific identifying information requested under paragraph 4010.7. While ExxonMobil maintains an extensive database of all of its affiliated companies, the database does not contain all of the information requested under paragraph 4010.7 for each affiliated entity. For example, TINs are maintained in a separate database, physical addresses (as opposed to registered addresses) are not universally maintained; and telephone numbers are not included.

In light of the extremely burdensome effort that would be required to assemble and report all of the identifying information required by the proposed regulations, we ask that you specifically permit a plan company to provide a single address and telephone number through which affiliate-specific information could be obtained, if needed.

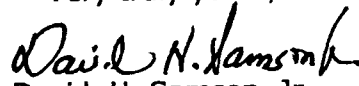
II. Reporting Burden

Although we understand the need to capture Report 4010 data in an electronic database, we believe input should be more user-friendly. The proposal, for example, calls for input on a separate screen for each new controlled group member. The effort to initially populate the database with over 1,000 controlled group members is, thus, extremely cumbersome and needlessly time consuming. Likewise, the method for updating identifying information is unwieldy for a group of companies as large as ours. In addition, the proposed input methodology exposes the entire process to a high degree of human error which in large measure defeats the reason for shifting to an electronic reporting system.

An alternate approach whereby the PBGC defined a format in a common spreadsheet or database application would enable companies to download the information directly from their own systems. For example, the proposed screen 10 "Schedule I - Identifying Information, Section 1 - Controlled Group Members" has ten fields. The PBGC could require companies to submit a spreadsheet with the ten fields defined in columns A through J and with the rows corresponding to each controlled group member.

We would be happy to discuss these issues with you. I can be reached at (972) 444-1278.

Very truly yours,



David. H. Samson, Jr.

Section Head Benefits Finance

# MERCER

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January 26, 2005

Office of the General Counsel  
Pension Benefit Guaranty Corporation  
Suite 340  
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Subject:

**Proposed Rule under ERISA sections 4000 and 4010: Electronic Filing – Annual Financial and Actuarial Information**

I am writing on behalf of a client of mine, which is a multinational company that sponsors several defined benefit plans. I am writing to comment on the recently proposed PBGC regulations on the annual financial and actuarial information filing (“the 4010 filing”).

## Overview

With a proposed effective date for the new rules that will require calendar year filers to comply by April 15, 2005, we do not believe the PBGC is giving plan sponsors sufficient advance notice. As explained in more detail below, we anticipate that the rushed effective date will result in considerable compliance burdens and costs. Therefore, we request that PBGC:

- delay elimination of the optional assumption set in PBGC regulations section 4010.4(b)(2) until changes to pension funding, disclosure, and PBGC premiums are implemented in 2006; and
- postpone mandatory electronic filing until the system has been enhanced to permit each filer to establish multiple user IDs with various levels of access to filing information and appropriate confidentiality protections.

## Optional assumption set

We do not think the PBGC should eliminate the optional set of assumptions in PBGC regulation section 4010.4(b)(2) to determine the \$50 million filing gateway. If this optional set of assumptions is not available it is more likely that the company will have a filing requirement when they wouldn't otherwise.

Furthermore, it's likely there will be a different methodology required in 2006 for determining the \$50 million gateway as new funding and premium calculations are expected to take effect

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next year. Postponing the effective date of the elimination of the optional assumption set for one year would be in the best interests of efficient pension administration and the PBGC.

## **Single user ID**

The regulations require additional data collection and the electronic submission (or availability) of all the 4010 filing information. Moreover, each filer must use a single account with a single user ID/password to enter all required data. The stated purpose of the rule change is to "streamline the filing process." While that may or may not be the case for the PBGC, we submit that it certainly will not be the case for our organization.

***Confidentiality concerns mean increased filing burdens.*** Because of confidentiality concerns, a company will have to enter all the plan and controlled group data, actuarial information, and financial data itself to protect the privacy of the information. Since our company is not publicly traded, these privacy concerns are extremely troublesome. The new rules will create additional data collection and data entry burdens. Someone at the company must abstract the information, enter it into the new web based system, check it, print the actuarial information for each plan and obtain the enrolled actuary's signature. We submit that a different approach, such as that used for "My PAA," could result in more efficient and accurate collection of the 4010 information.

Under the current rules, when a 4010 filing is required, the company enlists the cooperation of actuaries and other professionals providing services to the non-exempt plans by asking them to provide information readily at hand. Because there is currently no standard format or form for a 4010 filing, information from multiple sources can be compiled into a single filing relatively simply. Under the proposed regulations, the only way for service providers to participate directly in making the filing is for the company to share the single user ID and password. But this would give the service provider access to confidential financial information about the company and also to information about plans the service provider does not work on. This is unacceptable. Therefore, the proposed regulations promise to make the compilations of multi-source information much more complicated.

***Need for multiple user IDs.*** We are surprised that the PBGC would mandate a filing procedure with the built in restriction of a single user ID. The new electronic PBGC premium filing process, My PAA, provides for multiple entry points to allow different actuaries and other professionals who work on different plans to submit appropriate filing information and certifications, thus alleviating confidentiality concerns. We do not understand why the PBGC

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chose to move away from this model for 4010 filings, which include much more sensitive company financial information.

Enhancing the 4010 filing system to allow multiple user IDs, each of which would have access to only specified information, would resolve many of our concerns with the electronic filing process. For example, we would like to see a multiple-ID system with the following capabilities:

- One user ID would have authority to submit the completed filing; other user IDs could be established with authority to enter and view general information, but not submit a filing.
- Each plan's enrolled actuary would have a user ID, enabling the actuary to enter and certify the plan actuarial information directly. The enrolled actuary would not have access to other information, such as actuarial information about other plans or company financial information.
- Additional user IDs could be established for entry of financial information for specified non-exempt entities. Again, the user authorized to enter data for one entity would not have access to data for other entities.

*Need for testing new procedures.* We believe the PBGC should make the new electronic 4010 filings optional, at least for the first few years, similar to how it handled "My PAA". This way the PBGC can receive feedback from filers, and make any necessary changes, before it is mandatory.

In summary, to address concerns with confidentiality and data entry burdens, mandatory electronic filing should be postponed until the system has been enhanced to permit each filer to establish multiple user IDs with various levels of access to filing information and appropriate confidentiality protections. In the meantime, electronic filing should be optional, giving users an opportunity to "test-drive" the system and provide input to PBGC on its functionality.

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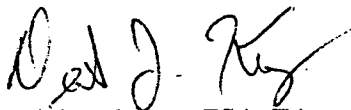
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## **Conclusion**

We have very real concerns about our ability to gather the required information and make the other necessary administrative changes in time for an April 15, 2005 filing. Since there does not appear to be any penalty relief, even for the first filings under the new procedures, the PBGC has created the potential for a real financial hardship for the company.

We do not understand why PBGC is mandating these changes in the same year that we anticipate legislative changes affecting defined benefit plans, some of which may require further revisions to these filing rules. We respectfully request that the PBGC delay the effective date of these proposed regulations, or at least make them optional for filings due in 2005.

Respectfully submitted,



Daniel J. Kunitz, FSA, EA

ST/ST/ST:ks



# Hewitt

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January 27, 2005

Office of the General Counsel  
Pension Benefit Guarantee Corporation  
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Attention: Comments on Proposed Regulations under ERISA Section 4010

We are writing to comment upon the regulations proposed by the Pension Benefit Guarantee Corporation regarding reporting under ERISA Section 4010. The proposed regulations were published on December 28, 2004 in 69 Fed. Reg. 77679.

## Who We Are

Hewitt Associates ([www.hewitt.com](http://www.hewitt.com)) is a global outsourcing firm delivering a complete range of human capital management services to companies including: HR and Benefits Outsourcing, HR Strategy and Technology, Health Care, Organization Change, Retirement and Financial Management, and Talent and Reward Strategies. Our clients include more than 65 percent of the Fortune 500 companies, as well as many smaller and medium-sized firms. Hewitt is the largest U.S. employee benefits consulting firm (by revenues).

We commend the PBGC for attempting to provide for electronic filing of Section 4010 requirements. However, we do have some concerns and believe that the PBGC should delay the effective date of these regulations by one year.

## Timing of Changes in Requirements

The changes to Section 4010 reporting are significant and will require changes in the processes which plan sponsors use to collect and summarize information. There will be very little time for filers to implement these changes once the regulations are final before the April 15, 2005 reporting deadline.

In addition, the changes in regulations allow no time for proper planning for filers who may be impacted by the Section 4010 requirements. Filers may have planned to rely on the optional assumptions under Section 4010.4(b)(2) which allow the use of 100% of the 30-year Treasury rate and the market value of assets for measuring the \$50 million threshold. If a filer's benefit liabilities were below the \$50 million threshold using those optional assumptions, they likely have not begun to plan for a filing due as early as April 15, 2005. However, if regulations are finalized removing the optional assumptions, a filer such as this may now be required to report to the PBGC. Because there is such a short timeframe to meet filing requirements after these regulations are finalized, a filer will have little time to not only prepare the filing but also to determine if an alternative such as additional contributions would be a possible to decrease benefit liabilities below the \$50 million threshold.

Argentina  
Australia  
Austria  
Belgium  
Brazil  
Canada  
Channel Islands  
Chile  
China  
Czech Republic  
Dominican Republic  
France  
Germany  
Greece  
Hong Kong SAR  
Hungary  
India  
Ireland  
Italy  
Japan  
Korea  
Latvia  
Lithuania  
Mexico  
Netherlands  
Philippines  
Poland  
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South Korea  
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A one year delay in the effect date of the final regulations should be provided in order for filers to have enough time to prepare accurate and complete filings based on the final regulations. The PBGC could allow filers to optionally file on the PBGC Web site, but also continue to allow paper filing through at least 2005.

### **Electronic Requirements**

We have several concerns regarding the requirement to file ERISA 4010 information via the PBGC Web site.

The proposed ERISA Regulations Sections 4010.6, 4010.7 and 4010.8 allow the PBGC to make changes to reporting requirements through modifying the instructions or forms posted on the PBGC Web site. While we understand why the PBGC desires to have this flexibility, this will likely impose a larger burden on filers and on those who assist them if the PBGC does not formally announce and communicate the changes publicly. In addition, filers and their actuaries will need advance notification of changes in filing requirements in order to have adequate time to assemble any newly required information or make changes to existing information.

In addition, many filers do not have complete filing information until very near the filing date. The Web site must be able to handle the stress of potentially hundreds of users accessing the Web site at the same time. The regulations should address what remedies exist if a filer could not file by a due date due to the system capabilities. The PBGC should provide for the use of filing paper forms that could be scanned as an alternative to filing solely on the Web site.

The availability of only a single user ID per filer is also concerning. For medium to large-size companies, where data will likely be gathered by multiple people in multiple locations, it could be difficult to have one single person coordinate the filing data. We suggest the PBGC allow for multiple user ids and passwords (similar to My PAA) for one filer, or allow more than one person sign on at the same time using the same user ID and password. Otherwise, gathering the data may be very time consuming as multiple locations must wait for other locations to finish. Moreover, one person entering what can be very large quantities of data in some cases will greatly increase the likelihood of data errors since the process is manual. Thus, PBGC will likely be getting less reliable information.

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The process for providing and certifying results as entered on the Web site is also a concern. First, the required electronic filing adds time to the process. Currently, the actuary provides plan information and certification to the person assembling all of the required filing information. In some cases, there may be multiple enrolled actuaries from multiple firms involved. The plan information is simply incorporated into the rest of the filing. If these proposed regulations were finalized, the actuary would still supply the same information. Then the person coordinating the filing would need to reenter the information to the PBGC Web site. After the data is reentered and presumably checked, the filer must send each actuary a copy of the information they intend to file so the enrolled actuary can certify the information. All of this adds time to the process especially if errors are detected. Also, the actuary has no way of verifying that what he or she certified was actually the amounts which were filed under Section 4010.

Lastly, neither the proposed regulations nor the preamble to the proposed regulations provide that the Web site on which the ERISA 4010 data will be submitted is a secure site. Certain information, especially for private companies, may not be publicly available. The site should have standard internet security as the configuration on My PAA.

#### **Changes to Existing Regulations**

As mentioned above, filers may have relied upon the use of the optional assumptions under Section 4010.4(b)(2) when planning for filing or not filing for the information year ending December 31, 2004. The PBGC should provide notification of removing the optional assumptions at least one year prior to doing so.

For filers who provide consolidated financial reports, the additional reporting for controlled group members under Section 4010.9(b) who are not contributing sponsors will be significant to many filers. There is the potential for hundreds of subsidiaries or affiliates, many of them foreign concerns, that will now need to be reported. Many of these subsidiaries have no significant assets, revenue or relationship to the pension plan. The data on these such subsidiaries is also not tracked or completed for any other purposes. Gathering this information to report to the PBGC may take a significant effort. We suggest the PBGC determine a threshold below which this additional data is not necessary to report or keep the existing regulations unchanged in the final regulations.

#### **Clarification Needed in Final Regulations**

As provided in ERISA Section 4010.6(b), the PBGC can request in writing additional information that must be provided within ten days. A filer should be allowed to respond to requests for additional information via regular mail rather than electronically.

# Hewitt

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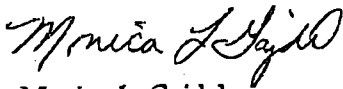
Also, Section 4010.4(b)(2) allows contributions made for the plan year ending within the filer's information year that are paid on or before the due date to be included in determining benefit liabilities for the \$50 million threshold. The PBGC should clarify that "due date" refers to the due date of the 4010 Filing requirement and not the due date of the contributions themselves.

## Conclusions

We appreciate your consideration of the above comments as you draft the final regulations under ERISA 4010. If necessary or appropriate, we would be happy to discuss any aspect of these comments in more detail. Please contact the undersigned at the telephone number or electronic mail address provided below.

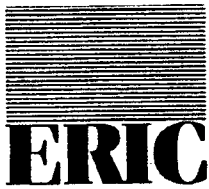
Sincerely,

Hewitt Associates LLC



Monica L. Gajdel

(847) 295-5000  
monica.gajdel@hewitt.com



THE  
ERISA  
INDUSTRY  
COMMITTEE

COMMENTS OF  
THE ERISA INDUSTRY COMMITTEE

PROPOSED RULE  
REGARDING  
SECTION 4010 FILINGS

January 27, 2005

The ERISA Industry Committee ("ERIC")<sup>1</sup> is pleased to submit the following comments on the proposed rule regarding filings under § 4010 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

The proposed rule was published in the December 28, 2004, issue of the Federal Register. 69 Fed. Reg. 77,679. The preamble to the proposed rule states that comments on the proposed rule must be submitted by January 27, 2005.

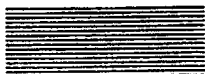
I. Summary of Comments

1. ERIC commends the PBGC for proposing to require the electronic submission of standardized § 4010 reports.
2. The PBGC should delay the effective date of the proposed rule so that it can coordinate the content and effective date of the proposed rule with the content and effective date of any pension funding or disclosure legislation that Congress enacts.
3. In any event, the PBGC should postpone the proposed rule's effective date by *at least one year* so that the rule will not apply to reports for any information year ending before December 31, 2005.
4. The PBGC should extend the comment period on the proposed rule from 30 days to at least 90 days.

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<sup>1</sup> 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 affecting its members' ability to deliver those benefits, their costs and effectiveness, and the role of those benefits in the American economy.

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The ERISA Industry Committee is a non-profit association committed to the advancement of the employee retirement, health care coverage, and welfare benefit plans of America's major employers.

5. The PBGC should amend the proposed rule to allow § 4010 information to be submitted to the PBGC by transmitting the information on an electronic spreadsheet or other commonly-used electronic format, rather than exclusively through the PBGC's Web site.
6. The PBGC should amend the proposed rule to allow a filer to designate a single point of contact for further information about controlled group members and to eliminate the requirement to list the address, telephone number, and EIN information for each controlled group member.
7. The PBGC should amend the proposed rule to eliminate the requirement to identify controlled group members that account for only a de minimis percentage of the controlled group's revenues or assets.
8. The PBGC should revise the proposed rule to make clear how filers should submit actuarial valuation reports and other "hard copy" materials to the PBGC.

## II. Comments

1. ERIC commends the PBGC for proposing to require the electronic submission of standardized § 4010 reports. As defined benefit plan sponsors and premium payers, ERIC's members support efforts to strengthen the defined benefit plan system and to carry out the PBGC's mission effectively and efficiently. Because the electronic submission of standardized § 4010 reports is likely to help plan sponsors to submit (and the PBGC to collect) timely, complete, accurate, and useable information in a cost-effective manner, ERIC commends the PBGC's efforts to provide for standardized electronic § 4010 reports.

2. The PBGC should delay the effective date of the proposed rule so that it can coordinate the content and effective date of the proposed rule with the content and effective date of any pension funding or disclosure legislation that Congress enacts. On January 10th of this year, the Administration announced a single-employer pension reform proposal that calls for, among other things, reform of the pension funding rules and improved disclosure of pension funding to workers and regulators (including the PBGC). The issuance of this legislative proposal and the Congressional consideration that will ensue argue strongly for the deferral of any regulatory changes at this time.

It makes little sense to change the disclosure requirements of existing law or to change the assumptions that may be used to calculate the value of vested benefits under § 4010 -- at great expense to plan sponsors and administrators -- when Congress might shortly enact legislation that overhauls the existing statutory regime governing pension funding and disclosure. Not only might the legislation cause any intervening regulatory changes to be short-lived, but the repeated changes in regulatory and statutory requirements, and the costs and confusion that such changes create, will also provide yet another reason for employers to abandon their defined benefit plans, directly contrary to the PBGC mission mandated by Congress:

“to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants.” ERISA § 4002(a)(1).

For example, the proposed rule eliminates the optional assumptions method of calculating the value of vested benefits permitted by the current rule under § 4010. Under the optional assumptions method, unfunded vested benefits are determined using (1) an interest rate equal to 100% of the annual yield for 30-year Treasury constant maturities, (2) the fair market value of plan assets, and (3) mortality tables specified by the PBGC rule. *See* 29 C.F.R. § 4010.4(b)(2).

Repeal of the optional assumptions method will require many companies to redo their § 4010 calculations and, with very little advance notice, will require some companies to make § 4010 filings that would not be required if the optional assumptions method remained in effect. The same companies might be subject to entirely different requirements under any revised funding and disclosure standards that Congress enacts. It is overkill to subject these companies to new regulatory requirements at this time since these companies are -- by definition -- currently at or near the \$50 million threshold.

The PBGC should defer action on the proposed rule until Congress has acted on the Administration's legislative proposal. At that time, the PBGC should reconsider whether the proposed changes in the § 4010 disclosure requirements (including the proposed repeal of the optional assumptions method) are necessary and, if so, whether any revisions should be made to the proposed rule to take into account the intervening legislation.

3. In any event, the PBGC should postpone the proposed rule's effective date by at least one year so that the rule will not apply to reports for any information year ending before December 31, 2005. As we shall explain, the proposed rule substantially expands the information that must be compiled and submitted under § 4010 and, as explained in Comment #4, below, also expands the class of employers that must make § 4010 filings. The additional information that the proposed rule requires cannot be compiled and submitted overnight -- even by employers that already are § 4010 filers.

Because the proposed rule applies to reports for information years ending on or after December 31, 2004, the proposed rule will become effective for reports due on April 15, 2005. Even if the PBGC issues a final rule on February 14th (which is hardly a certainty, given that comments can be filed as late as January 27th), this will leave calendar-year § 4010 filers with only two months to compile and submit the required information.

The proposed rule will not give many § 4010 filers the time they need to compile and submit the information required by the proposed rule. The proposed rule requires a voluminous amount of information to be entered manually at a single entrance point on the PBGC's Web site. Some of this information is likely to be completely unavailable to the individuals responsible for making the § 4010 filing; but even to the extent

that the information can be obtained, a protracted period of time will be required to collect the information and to enter it manually on the PBGC's Web site.

For example, under the proposed rule, the filer must identify all members of its controlled group, including "exempt entities" (small entities that are not contributing sponsors). The PBGC originally excluded "exempt entities" from the § 4010 rule because of the burden that a reporting requirement would create. The proposed rule repeals that exemption and requires the filer to provide identifying information for every exempt entity in the controlled group.

The proposed rule requires the § 4010 report to identify all of the entities in the controlled group -- regardless of the assets or revenues of the member -- and to identify the address and telephone number of each entity in the group, together with the legal relationships with other members of the controlled group. The proposed rule also requires a listing of each entity's employer identification number or "EIN" (or an explanation for the absence of an EIN) and, in any case where the entity became a member of the controlled group during the information year, the date it became a member. In addition, the proposed rule requires a listing of the entities that *ceased* to be members of the controlled group, together with the date on which this occurred and identifying information regarding the former member.

These requirements will impose enormous burdens on major employers, including both employers that are current § 4010 filers and employers from whom the proposed rule (but not the current rule) will require § 4010 filings. Many major employers have hundreds of controlled group members; some have thousands. Many of these controlled group members are foreign entities, and many have little or no assets. Moreover, major employers regularly engage in mergers, acquisitions, and reorganizations. All of this makes it extremely difficult to identify all the members of the controlled group -- let alone to obtain the required information about each member of the controlled group and to do so by April 15, 2005, for calendar-year filers. At the very least, therefore, the PBGC should defer the effective date of the proposed rule by at least one year so that the rule will not apply to reports for any information year ending before December 31, 2005.

4. The PBGC should extend the comment period on the proposed rule from 30 days to at least 90 days. The truncated 30-day comment period does not give the public sufficient time to digest, analyze, and comment on the proposed rule. A 30-day comment period is inadequate under any circumstances, but the particular 30-day period that applies here is especially inadequate because it began during the Holiday season (when many employers were closed and many employees were on vacation) and included *three* federal holidays (New Years Day, Martin Luther King Day, and (in the District of Columbia) Inauguration Day).

Moreover, the notice of proposed rulemaking does not adequately alert the public that one effect of the proposed rule is to expand the class of companies required to file § 4010 reports. Although the preamble mentions that the proposed rule eliminates the use of



the optional assumptions method in connection with the \$50 million § 4010 gateway test,<sup>2</sup> the preamble does not give prominence to this change nor does it alert the public to the effect of the change. As a result, and particularly in light of the truncated 30-day comment period, many companies are not even aware that they are (or could be) affected by the proposed rule.

5. The PBGC should amend the proposed rule to allow § 4010 information to be submitted to the PBGC by transmitting the information on an electronic spreadsheet or other commonly-used electronic format, rather than exclusively through the PBGC's Web site. Under the proposed rule, § 4010 information must be submitted to the PBGC web site from a single source. It is a great mistake to rely on a single source within a large controlled group to provide all of the information that the proposed rule requires. Within a large controlled group, information is often widely dispersed within the group and is not readily available to a single source. Requiring information to be submitted by a single source is likely to create a bottleneck at many companies, slowing down (and making more difficult) the submission of all of the information that § 4010 requires.

The PBGC should revise the proposed rule to allow § 4010 information to be transmitted on an electronic spreadsheet or other commonly-used electronic format that can be uploaded by the PBGC. This approach allows a number of people at a controlled group to assemble, enter, and review the § 4010 information simultaneously, thereby avoiding the bottleneck created by the proposed rule, and providing information that is more accurate and timely than the information that the PBGC will collect under the proposed rule.

6. The PBGC should amend the proposed rule to allow a filer to designate a single point of contact for further information about controlled group members and to eliminate the requirement to list the address, telephone number, and EIN information for each controlled group member. The proposed rule requires a § 4010 filer to list the address, telephone number, and EIN of each member of the controlled group. Because this information frequently changes (due to mergers, acquisitions, reorganizations, and changes in business location) and because this information is typically widely dispersed within a large controlled group (and often pertains to entities outside the U.S.), a requirement to provide this information will make it far more difficult to make timely, accurate, and complete submissions to the PBGC.

Moreover, it is far from evident that the PBGC needs all of this information. Only a tiny percentage of the plans sponsored by § 4010 filers will be terminated in an underfunded condition. And in any event, many of the members of a large controlled group are quite small and account for a de minimis percentage of the group's revenue and assets.

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<sup>2</sup> Although the \$50 million test is mandated by § 4010 itself rather than by PBGC rule, ERIC continues to believe that the obligation to submit information under § 4010 should be based on the *percentage* of the plan's vested benefits that are unfunded rather than on the *absolute dollar amount* of the plan's unfunded vested benefits. \$50 million of unfunded vested benefits represents a de minimis percentage of a large plan's total vested benefits.

As a result, submitting information about these companies is unlikely to strengthen the PBGC's financial position significantly. It is far more efficient and useful to require only that the filer designate one or more individuals at the controlled group whom the PBGC may contact to obtain additional information about particular members of the group.

7. The PBGC should amend the proposed rule to eliminate the requirement to identify controlled group members that account for only a de minimis percentage of the controlled group's revenues or assets. The proposed rule requires each filer to provide for each member of the controlled group (*including exempt members*):

- the name, address, telephone number of the member,
- the legal relationship of the member to the other members of the group,
- either the member's EIN or an explanation of why there is no EIN, and
- if the member joined the controlled group during the information year, the date on which it became a member. *See Prop. Reg. § 4010.7(a)(1).*

In addition, for any entity that ceased to be a member of the controlled group during the information year, the filer must identify the date the entity ceased to be a member of the group and the identifying information listed above as of the date immediately before the entity's departure from the controlled group. *See Prop. Reg. § 4010.7(a)(2).*

These requirements are both unduly burdensome and unnecessary. As we have explained, the information regarding each of the members of a controlled group frequently changes (due to mergers, acquisitions, reorganizations, and changes in business location), is typically widely dispersed within a large controlled group, and often pertains to entities outside the U.S. Moreover, it is far from evident that the PBGC needs all of the information that the proposed rule requires. Many of the members of a large controlled group are quite small and account for a de minimis percentage of the group's revenue and assets.

We recommend that the PBGC retain the exclusion for exempt entities that appears in its current rule. *See 29 C.F.R. § 4010.7(a).* The exclusion for exempt entities appropriately balances the PBGC's need for significant information against the burden imposed by an indiscriminate request for every bit of information.

Alternatively, the PBGC could expand the information required by the current rule without imposing undue burdens on filers by requiring a list of only the information required to be listed in Exhibit 21 to Form 10-K. The SEC regulation regarding Form 10-K allows the names of individual subsidiaries to be omitted from the list if the unnamed subsidiaries, considered in the aggregate, do not constitute a "significant subsidiary." *See 17 C.F.R. § 229.601(b)(21).* In general, the SEC's regulations define "significant subsidiary" as a subsidiary (including its subsidiaries) that meets any of the following conditions:

- the registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10% of the total assets of the registrant and its subsidiary consolidated as of the end of the most recent fiscal year;
- the registrant's and its other subsidiaries' proportionate share of the total assets of the subsidiary exceeds 10% of the total assets of the registrant and its subsidiary consolidated as of the end of the most recent fiscal year; or
- the registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10% of such consolidated income of the registrant and its subsidiaries. *See* 17 C.F.R. § 210.1-02(w).

Unlike the information required by the proposed rule, the information required by the SEC's regulations is readily accessible to major public companies and excludes immaterial information that is likely to be of little or no value to the PBGC.<sup>3</sup>

8. The PBGC should revise the proposed rule to make clear how filers should submit actuarial valuation reports and other "hard copy" materials to the PBGC. Although the proposed rule requires most § 4010 information to be submitted electronically, it appears to require "hard copies" of some materials, such as actuarial valuation reports and actuarial certifications. The proposed rule does not specify how such material is to be submitted, and states only that the material is to be provided "in accordance with the instructions on the PBGC's Web site." *See* Prop. Reg. § 4010.8(a).

Neither the proposed rule nor the PBGC's Web site appears to give filers the guidance they need regarding the submission of non-electronic documents. The proposed rule refers to the Web site and, although the Web site provides instructions regarding § 4010 filings, the instructions (if any) on how to submit non-electronic documents are not prominently displayed. The PBGC should remedy this deficiency.

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We appreciate the opportunity to submit these comments. We reserve the right to supplement these comments as our members gain more time to study the proposed rule.

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<sup>3</sup> The PBGC should establish a similar rule for companies that are not regulated by the SEC. Although such companies are not required to file Forms 10-K, a rule similar to the SEC rule will avoid requiring such companies to compile and submit information that is not likely to be useful to the PBGC.

If the PBGC has any questions about our comments, or if we can otherwise be of assistance, please let us know.

THE ERISA INDUSTRY COMMITTEE



Human Resources & Investor Solutions

January 27, 2005

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

by email to <http://www.pbgc.gov.regs>

Re: Proposed Regulation on Electronic Filing – Annual Financial and Actuarial Information

Dear Sir or Madam:

Mellon's Human Resources and Investor Solutions ("Mellon HR&IS"), a leading international employee benefits and human resources consulting firm, is pleased to be able to offer these comments on subject proposed regulation, as published in the Federal Register of December 28, 2004 and as amended in the Federal Register of January 12, 2005.

We do not feel that, in the short period available for studying these regulations, we have fully mastered their consequences for sponsors, plans and actuaries. In two areas, however, we feel that the regulations pose obvious problems and we limit our comments to those areas. The first area of concern is the proposed elimination of the alternative method of calculating the value of vested benefits, and the second is the mechanics of electronic filing. We also ask for clarification on three points related to the proposed electronic filing.

*Elimination of the alternative method of calculating the value of vested benefits*

PBGC regulations under Section 4010 require the filing of certain financial and actuarial information by a controlled group where the aggregate unfunded vested benefits of the pension plans of the group fail a gateway test, that is they exceed \$50 million. (For this purpose, plans whose vested benefits are fully funded are ignored.) To determine the value of unfunded vested benefits, regulations mandate actuarial assumptions that include an interest rate equal to 85% of a specified corporate bond index and assets valued at the actuarial asset value used for the determination of minimum funding requirements. Alternatively, the plan sponsor may choose to value the vested benefits using 100% of the yield rate on the 30-year Treasury bond and value assets at fair, or market, value. The proposed regulations would eliminate the alternative set of assumptions effective with the April 15, 2005 filing of 2004 information.

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*A Mellon Financial Company<sup>SM</sup>*

We are opposed to the elimination of the alternative method at this time. Those of our clients who concluded that they did not have to file based on a calculation under the alternative method will have to redo the gateway calculation, and if they fail the \$50 million gateway, they will have substantial additional work to perform in a limited period of time. Alternatively they will have to make additional contributions to satisfy the gateway.

The additional time and effort required of sponsors and consultants does not strike us as being well spent if PBGC's principal concern is about assuming additional liabilities. The only plans affected will be those at the margin of the gateway – the plans least likely to add to the PBGC's deficit. In fact, the alternative measurement assumptions strike us as superior, at least in theory, to the standard assumptions – fair value has greater validity than a smoothed value and the rate of return on a long-term Treasury security is an excellent and conservative interest rate to measure a pension liability.

We recommend instead that either PBGC continue to allow use of the alternative assumptions indefinitely, or at least delay their elimination until 2006.

A more far-reaching solution would have the PBGC defer action until Congress has acted on the Administration's legislative proposal. At that time, the PBGC should reconsider whether the proposed changes in the 4010 disclosure requirements (including the proposed repeal of the alternative method of calculating the value of vested benefits) are necessary and, if so, whether any revisions should be made to the proposed rule to take into account the intervening legislation.

#### *Mechanics of Electronic filing*

We have examined the materials on the PBGC web site and we question whether the process can be streamlined on a timely basis for an April 15 filing. Our most urgent concern is that the site doesn't seem to recognize the existence of controlled groups where information is widely dispersed. By contrast, PBGC's online system for premium payers, MyPAA, allows multiple sources of input and communication among those different sources. A Section 4010 filing can be much more complex than a premium filing, yet the proposed system seems to be limited to use by a single source.

We recommend that PBGC not require the use of an electronic system until it has been thoroughly field tested. In the case at hand, that would mean deferring mandatory use until at least the 2006 filings.

#### *Clarification of information requested*

There seems to be a conflict between the online instructions and the screen shot. With respect to the method used to determine benefit liabilities, the screen shot lists "projection of prior year's

Office of the General Counsel  
January 27 2005  
Page 3

data," "actual calculation using data as of end of the prior plan year," and "actual calculation using data as of the beginning of the current plan year." The relevant instruction lists "projection of prior year's data," "actual calculation using year-end data," and "actual calculation using data as of the beginning of the current plan year." The two documents should be aligned.

With regard to retirement age for active participants, the instructions say to explain if average age varies between different participant groups. It's not clear what constitutes a "participant group" for this purpose. For example, if a plan covers both salaried and hourly employees, would each constitute a separate group?

The proposed regulation requires the breakdown of participants and benefit liabilities as of the end of the plan year between retirees, terminated vesteds and active employees. Benefit liabilities may be determined based on any of three bases - (1) by projection of prior year's data, (2) by using data as of the end of the plan year or (3) by using data as of the beginning of the current plan year. We recommend that the filing instructions indicate that the number of participants and the associated benefit liabilities should be categorized on the basis of the participant's status as of the date that the underlying data was collected. If prior year's data is used, then the projection will typically reflect the actuarial experience during the projection period on an expected basis, including expected retirement and turnover. Recategorization of the liabilities and number of participants using the expected status as of the end of the plan year would require a significant amount of work without much added credibility to the information being reported.

If you need any further clarification of our position, please feel free to call me at (212)330-1200, or e-mail me at [rumack.f@mellon.com](mailto:rumack.f@mellon.com).

Very truly yours,



Frederick W. Rumack  
National Director of Tax and Legal Services

FWR:eak

DOC:L01041R



**PEABODY INVESTMENTS CORP.**

701 Market Street  
St. Louis, Missouri 63101-1826  
314.342.3400

January 24, 2005

Office of the General Counsel  
Pension Benefit Guaranty Corporation  
Suite 340  
1200 K Street, NW  
Washington, D.C. 20005-4026

Subject:

**Proposed Rule under ERISA Sections 4000 and 4010: Electronic Filing – Annual Financial and Actuarial Information**

Peabody Investments Corporation is a U.S. company whose subsidiaries sponsor several defined benefit plans, with an employer identification number of 20-0480084. We are writing to comment on the recently proposed PBGC regulations on the annual financial and actuarial information filing (“the 4010 filing”).

### **Overview**

With a proposed effective date for the new rules that will require calendar year filers to comply by April 15, 2005, we do not believe the PBGC is giving plan sponsors sufficient advance notice. As explained in more detail below, we anticipate that the rushed effective date will result in considerable compliance burdens and costs as well as filing errors. Therefore, we request that PBGC:

- Delay elimination of the optional assumption set in PBGC regulations section 4010.4(b)(2) until changes to pension funding, disclosure, and PBGC premiums are implemented in 2006;
- Postpone mandatory electronic filing until the system has been enhanced to permit each filer to establish multiple user IDs with various levels of access to filing information and appropriate confidentiality protections; and
- Limit the exempt companies required to be identified in the filing.

### **Optional assumption set**

We do not think the PBGC should eliminate the optional set of assumptions in PBGC regulation section 4010.4(b)(2) to determine the \$50 million filing gateway. It is likely there will be a different methodology required in 2006 for determining the \$50 million gateway as new funding and premium calculations are expected to take effect next year. Postponing the effective date of



the elimination of the optional assumption set for one year would be in the best interests of efficient pension administration and the PBGC.

### **Single user ID**

The regulations require additional data collection and the electronic submission (or availability) of all the 4010 filing information. Moreover, each filer must use a single account with a single user ID/password to enter all required data. The stated purpose of the rule change is to "streamline the filing process". While that may or may not be the case for the PBGC, we do not believe this will not be the case for our organization.

**Confidentiality concerns mean increased filing burdens.** Because of confidentiality concerns, a company will have to enter all the plan and controlled group data, actuarial information, and financial data itself to protect the privacy of the information. The new rules will create additional data collection and data entry burdens, especially the requirement to provide identifying information about exempt controlled group members. Someone at the company must abstract the information, enter it into the new web-based system, check it, print the actuarial information for each plan and obtain the enrolled actuary's signature. We submit that these new rules and procedures have increased the potential for filing errors, as described below, and that a different approach, such as that used for "My PAA" could result in more efficient and accurate collection of the 4010 information.

Under the current rules, when a 4010 filing is required, our company enlists the cooperation of actuaries and other professionals providing services to our non-exempt plans by asking them to provide information readily at hand. Because there is currently no standard format or form for a 4010 filing, information from multiple sources can be compiled into a single filing relatively simply. Under the proposed regulations, the only way for service providers to participate directly in making the filing is for the company to share the single user ID and password, but this would give the service provider access to confidential financial information about the company and also information about plans the service provider does not work on. Sharing the user ID would also increase the probability that incomplete or incorrect information is submitted. These risks are unacceptable. Therefore, the proposed regulations promise to make the compilations of multi-source information much more complicated.

**Actuarial certification issues.** Under the proposed regulations, we would be required to obtain the information from the actuary, enter it into the web-based system, print the information, obtain the actuary's certification on the printout, and keep it on file. This passing of information back and forth increases the possibility of error. Moreover, it is our understanding that once the 4010 filing is submitted electronically there cannot be any corrections to the filing. If the filing is submitted with an error in the actuarial information, the plan's actuary will be unable to certify the filing, and it is unclear how the problem can be corrected, even if it is identified before the filing due date. Since there is no opportunity to correct the information once submitted, we will need to obtain and abstract the actuarial information much earlier in the process in order to

obtain the actuary's signatures well in advance of the filing. We are not sure this is doable within the compacted filing period.

***Need for multiple user IDs.*** We are surprised that the PBGC would mandate a filing procedure with the built in restriction of a single user ID. The new electronic PBGC premium filing process, "My PAA", provides for multiple entry points to allow different actuaries and other professionals who work on different plans to submit appropriate filing information and certifications, thus alleviating confidentiality concerns. We do not understand why the PBGC chose to move away from this model for 4010 filings, which include much more sensitive company financial information.

Enhancing the 4010 filing system to allow multiple user IDs, each of which would have access to only specified information, would resolve many of our concerns with the electronic filing process. For example, we would like to see a multiple-ID system with the following capabilities:

- One user ID would have authority to submit the completed filing; other user IDs could be established with authority to enter and view general information, but not submit a filing;
- Each plan's enrolled actuary would have a user ID, enabling the actuary to enter and certify the plan actuarial information directly. The enrolled actuary would not have access to other information, such as actuarial information about other plans or company financial information.
- Additional user IDs could be established for entry of financial information for specified non-exempt entities. Again, the user authorized to enter data for one entity would not have access to data for other entities.

***Need for testing new procedures.*** We believe the PBGC should make the new electronic 4010 filings optional, at least for the first few years, similar to how they handled "My PAA". This way the PBGC can receive feedback from filers, and make any necessary changes, before it is mandatory.

In summary, to address concerns with confidentiality and data entry burdens, mandatory electronic filing should be postponed until the system has been enhanced to permit each filer to establish multiple user IDs with various levels of access to filing information and appropriate confidentiality protections. In the meantime, electronic filing should be optional, giving users an opportunity to "test-drive" the system and provide input to PBGC on its functionality.

### **Exempt entity information**

The proposed regulations also introduce new data collection burdens. We know the new requirement to provide identifying information on exempt entities is problematic, although the short 30-day comment period has made it impossible for us to investigate fully whether any of the other new data collections will also be difficult.

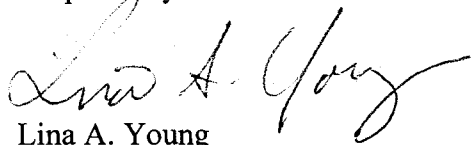
While we are used to determining which companies are exempt from reporting, to now collect the EIN and contact information for each of these entities is asking for information we do not maintain in any organized manner for any business purpose. Moreover, this information, if available, is constantly changing. We find it unreasonable for the PBGC to require us to gather this information for the first time and then manually enter it into the PBGC's web site in the short timeframe required for an April 15, 2005 filing. Ongoing, manual entry of a large amount of information is difficult. At a minimum, the system should be enhanced to provide the ability to download information (including plan actuarial information) from excel spreadsheets.

### **Conclusion**

We have very real concerns about our ability to gather the required information and make the other necessary administrative changes in time for an April 15, 2005 filing. Since there does not appear to be any penalty relief, even for the first filings under the new procedures, the PBGC has created the potential for a real financial hardship for the company.

We do not understand why PBGC is mandating these changes in the same year that we anticipate legislative changes affecting defined benefit plans, some of which may require further revisions to these filing rules. We respectfully request that the PBGC delay the effective date of these proposed regulations, or at least make them optional for filings due in 2005.

Respectfully submitted,



Lina A. Young  
Vice President, Benefits  
Peabody Investments Corp.

cc: Sharon Fiehler



**TOWERS  
PERRIN**  
HR SERVICES

January 18, 2005

Office of the General Counsel  
Pension Benefit Guaranty Corporation  
1200 K Street, N.W.  
Washington, D.C. 20005-4026

Dear Sirs and Mesdames:

We are submitting comments in response to the proposed rule regarding Electronic Filing – Annual Financial and Actuarial Information published in the Federal Register on December 28, 2004.

With more than 8,000 employees and 78 offices in 24 countries, Towers Perrin is one of the world's largest global management consulting firms. We help organizations manage their people, performance and risk, advising them on human resource management, compensation and communications, as well as overall strategy and organizational effectiveness.

Actuarial and employee benefits consulting are core businesses for Towers Perrin. We provide actuarial services to more than 2,000 retirement plans in the U.S., and we have the largest market share for actuarial services for Fortune 100, 500 and 1000 companies. With this experience, we have developed an expertise that allows us to address a wide variety of employee benefit plan issues. As part of our services we help companies determine whether reporting of financial and actuarial information to the PBGC is required under ERISA section 4010. If it is, we help them provide this information. We welcome this opportunity to comment.

Our first and most important comment, before considering the specifics of the proposed rule, is that the effective date should be delayed. We would suggest that any new rule be effective for information years ending on or after 30 days from the publication of the final rule. It is simply unfair to impose new filing requirements -- and to change the rules for determining if a filing is required -- after the close of the information year. Companies have planned and implemented funding policies, data collection procedures and resource allocations based on their anticipated reporting needs under the current rules. Companies had no reason to doubt their ability to rely on these rules, especially given PBGC actions and statements associated with the passage of the Pension Funding Equity Act (PFEA). After the PFEA was passed, PBGC essentially left the reporting process and requirements unchanged except for the substitution of interest rates. In addition, PBGC representatives informally indicated that the optional assumptions under the general method for the 4010 gateway test continued to be available. Changing these positions at such a late date when companies have little time to react and adapt to new rules will only add to

employers' frustrations surrounding the high administrative cost and effort of maintaining a defined benefit plan and could lead to more employers exiting the system. As PBGC is well aware, the exit of employers from the defined benefit system is not a good outcome for PBGC, the system as a whole, nor more broadly for American workers.

### **Specific Comments on the Proposed Changes**

The comments below reflect our thoughts on the proposed changes, assuming they will have a delayed effective date that allows companies the proper time to plan and prepare for the new requirements.

#### **Electronic Filing in Standardized Format**

We agree that standardization of filings would be a positive development. In our experience, the content and form of information filed can vary greatly. The lack of clarity around what to file leads to inefficiency in the process for both plan sponsors and PBGC. Filing electronically would also represent an improvement assuming that the system used to submit filings is efficient, sufficiently easy to learn and use and sufficiently assures the confidentiality of the information submitted.

From an efficiency standpoint, many of the additional categories of the information proposed to be required would lend themselves to bulk electronic submission through standardized spreadsheets, rather than entity-by-entity, plan-by-plan keyboarding via the proposed website. Examples include identification information for controlled group entities, financial information for non-exempt entities, plan liabilities by participant group, plans' current liabilities, and plan valuation assumptions.

#### **Benefit Liability Separated by Participant Group**

We agree that this information would be useful to the PBGC in determining how benefit liabilities would respond to changes in economic conditions or plan provisions. We do not see what value the number of participants in each category will provide to PBGC, but we agree that providing this information should not present a substantial burden to plan sponsors. However, we note that this information may not be readily available for previous determinations upon which current estimates might be based and therefore this could present a burden without a delay in the effective date.

#### **Additional Valuation Information**

We agree that additional information on current liability and disbursements would be helpful to the PBGC and that such information must be available in order to complete Schedule B of Form 5500. We suggest that the plan sponsor be allowed to provide

this information as a supplement to the valuation report or by supplying a copy of Schedule B. We also suggest that PBGC provide some guidance around what types of events would be deemed to be significant and need to be summarized.

### **Specified Actuarial Assumptions**

In the proposed rules, PBGC correctly notes that the assumptions used to determine benefit liabilities for 4010 filings are prescribed assumptions. Therefore, it strikes us that it would be sufficient to simply ask if the required assumptions, which could be listed by PBGC on the form, were used.

### **Information on Exempt Entities and Exempt Plans**

We believe that the reporting of even identifying information on exempt entities would present an administrative burden to all plan sponsors and would result in little, if any, improvement in the PBGC's recovery against claims. Exempt entities are by nature small and therefore the recovery available from them is quite limited. Claims typically arise over an extended time period so there is ample time for PBGC to identify such entities without placing a burden on the entire universe of plan sponsors.

With regard to the burden, some organizations have more than a thousand affiliates and subsidiaries around the world. Under current regulations, most of these entities sponsor no U.S. plan and are so obviously non-exempt that filers do not need to determine if they are in fact part of the controlled group. Under the proposed changes, such filers would need to collect the information necessary to determine which of these entities are part of the controlled group, together with the identification information. Much of this information is not readily available. Once the information has been collected, the filer would have to identify the controlled group members and have the identification information keyboarded into the PBGC's website.

Whether or not identifying information is required to be submitted for exempt entities, we urge that the regulation specify -- as required under ERISA section 4010 -- what additional information the PBGC could request about these entities and in what circumstances. It is not clear to us that the portion of the proposed regulation giving PBGC the unrestricted right to request further information in any situation would comply with ERISA section 4010.

### **Financial Information on Controlled Group Members**

Extending the requirement to report revenue, assets and income to controlled group members who are not contributing sponsors (and not exempt entities) seems to impose the administrative burdens of sponsoring a defined benefit plan on entities who choose not to sponsor such plans. In addition, financial information on other

controlled group members may not be available to the plan sponsor who will be responsible for submitting this information. Accordingly, we suggest that this additional requirement be eliminated.

Note also that the actual proposed changes to 4010.9 do not seem to tie in with the discussion of these changes in the preamble. The actual proposed change seems to add language to 4010.9(b)(2) that will be redundant to language being left unchanged in 4010.9(b)(1). Moreover, it is not clear how the language proposed to be added to 4010.9(b)(2) relates to the language that is already there.

### **Identification of Controlled Group Changes**

We understand PBGC's need to monitor controlled group activity; however, we have two concerns. First, we suspect that substantive changes are adequately tracked through reportable event notifications. We suggest that information already contained in a reportable event filing need not be repeated. Second, we are concerned that the complexity of controlled groups of large corporations will lead to a relatively high volume of year to year changes which are not substantive. Reporting and tracking such changes will not benefit employers nor the PBGC. We suggest that exemptions to this requirement, particularly with respect to exempt entities, be considered.

### **Frozen Plan Information**

We believe that information on frozen plans provides little benefit in assessing PBGC's future liabilities considering that the increase in current liability due to benefits accruing in the current year is being added as an additional item to report. There will be no such increases reported if a plan is completely frozen and diminished increases reported for a plan that freezes service but not pay. In addition, the meaning of "freezing" a plan is ambiguous, since the proposed regulation includes an example in which accrued benefit amounts will continue to increase in the future.

We note that plan "freezes" would be described in detail in plan summaries contained in the actuarial valuation report in a manner that is not ambiguous, and this information should be sufficient for PBGC's purposes.

### **Demonstration by Previous Filer of Exemption**

We disagree that previous filers should be required to demonstrate that they are not required to file in the current year. Companies are responsible for determining if they need to file or not and the rules regarding filing should not be more onerous just because a filing was required in the past. We note that the statute clearly defines the

persons required to provide information, and the PBGC's proposal goes far beyond an interpretation of the statutory provision.

If such a demonstration is retained, we strongly recommend that the requirement to report the amount of unfunded vested benefits be eliminated. There is no basis to require the submission of this information if the amount is less than \$50 million. In many cases, the amount will not be precisely determined. It is common practice to broadly estimate the amount of unfunded vested benefits and not to refine this estimate if it is clear that the result will be less than \$50 million. The requirement to disclose this amount will increase the regulatory burden on plan sponsors.

### **Elimination of Optional Assumptions under the General Method for Gateway Test**

For reasons cited previously, we strongly believe that it is inappropriate to eliminate this method for information years ending in 2004. Companies have planned around this rule being present and this was supported by formal and informal comments from PBGC. To change this position retroactively would not be reasonable.

### **Gateway Test -- Treatment of Contributions for the Plan Year Ending within the Filer's Information Year**

The proposed regulation specifies when contributions paid for the plan year ending within the filer's information year can be included in plan assets in the \$50 million unfunded vested benefit gateway test. In this regard, the proposed regulation is intended to clarify one portion of the discussion of such contributions in Technical Update 96-3. However, it does not seem clear whether or not the proposed regulation's silence with regard to the rest of this discussion in the Technical Update means that the rest of that earlier discussion no longer applies. In particular, must such contributions continue to be discounted, as discussed in the Technical Update? If so, it might be desirable also to clarify whether the discounting goes back to the last day of the information year or the last day of the plan year.

### **Filing Process**

We have some concerns regarding the logistics of the filing process. These concerns only highlight the need to delay the effective date.

We are concerned about the status and release timing of the electronic filing system. Since 80% of the controlled groups required to file 4010 information must complete the first year of their electronic filing less than three months from now, we presume that the programming for electronic filing has been completed and is currently undergoing extensive testing. It will be imperative that the system be made available



to filers by mid-February. It will also be imperative that there be little down-time due to system problems after that date. We are concerned that most systems – despite extensive pre-release testing – go through a frustrating breaking-in period as problems arise in actual use and are identified and corrected. The PBGC's timetable seems to leave no room for this process.

We are also concerned that the filing process seems to allow little time for the back and forth that will be associated with actuarial certification. Actuaries will not be prepared to certify the website entries regarding plan actuarial information until the entries have been finalized. At the same time, filers will not want to finalize their website entries until their actuaries have reviewed them. For these reasons, each controlled group will have to work out a process for the review and certification of the plan information by the enrolled actuaries.

Lastly, there should be some mechanism to pre-populate information into the filing system in a bulk manner to avoid the manual inputting of a large volume of information. For a 2005 effective date, the lack of this pre-population combined with the shorter time frame and the lack of familiarity with the filing system, will serve to increase the compliance burden significantly.

We appreciate the opportunity to comment on these important issues. We would be happy to discuss our comments in greater detail. If you have any questions, please call me at (203) 326-5469 or e-mail me at [mike.pollack@towersperrin.com](mailto:mike.pollack@towersperrin.com).

Sincerely,



Michael F. Pollack, FSA  
Principal

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MFP:bam