

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

September 16, 2015

Subject: Annual Financial and Actuarial Information Reporting (“4010 filings”) — Proposed Changes to Waivers

Mercer is pleased to provide input to the Pension Benefit Guaranty Corporation on proposed regulations § 4010, which would limit use of the \$15 million shortfall waiver to controlled groups with fewer than 500 participants in all pension plans. Our comments suggest changes to ease the filing burden for sponsors affected by the proposed change, and also for all sponsors required to provide actuarial information under § 4010.

Mercer is a global consulting leader in talent, health, retirement, and investments. Mercer provides consulting and actuarial services to approximately 1,000 US pension plans and assists many plan sponsors with preparation of 4010 filings.

As discussed in more detail below, we recommend that final rules:

- Allow sufficient lead-time between publication of the final rules and the effective date and provide transition relief such that affected controlled groups may, if desired, take action to avoid 4010 filings.
- Modify the proposed 500-participant threshold for the \$15 million shortfall waiver to only count participants in plans with 4010 funding target attainment percentages (FTAPs) below 80% (determined using nonstabilized rates).
- Provide alternative, less burdensome methods of compliance with requirements to report two liability measures plans would not otherwise calculate: the year-end plan termination liability and, for plans that are not at-risk, the at-risk funding target.

Effective date and transition

Some employers losing access to the \$15 million shortfall waiver will choose to waive carryover or prefunding balance or make additional contributions to improve each controlled-group plans’ 4010 FTAP to 80% to avoid a 4010 filing. But doing so requires the employer to take action long before the filing is due. For the common situation when the employer’s information year and the plan’s year are both the calendar year, additional contributions required to avoid a 4010 filing for the 2016 information year (due April 15, 2017) must be made by Sept. 15, 2016. But 2016 contribution budgets are typically set early in the third quarter of 2015 and must be disclosed in 2015 year-end financial statements. To enable employers to plan for the new waiver criteria, the effective date of the final regulations should be no earlier than information years beginning 18 months after the final rules are published.

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When the plan year doesn't align with the employer's information year, even 18 months may not be sufficient time to allow the employer to take action to avoid a 4010 filing. This is because the 4010 FTAP is determined as of the valuation date for the plan year *ending* in the information year. If an employer with calendar information year sponsors a plan with February 1 – January 31 plan year, any additional contributions required to avoid a 4010 filing for the 2016 information year must be made by October 15, 2015 — less than a month after the end of the comment period on the proposed rules. Employers in this situation may need additional transition relief for the first year the final rules take effect. For example, the final rules might allow employers a one-time election to use the 4010 FTAP for the plan year *beginning* in the first information year the new waiver rules apply — gaining an additional year to fund up to the 80% 4010 FTAP threshold — then revert to the plan year *ending* in the information year thereafter.

500-participant threshold

The proposed regulations would waive a 4010 filing triggered solely by the 80%-funded gateway test if the controlled group meets two conditions:

- The aggregate 4010 funding shortfall of all controlled-group plans (ignoring plans with no 4010 funding shortfall) does not exceed \$15 million (measured using stabilized rates or the full yield curve), and
- The aggregate number of participants in all controlled-group plans is fewer than 500.

But this means filings may be triggered when a small, poorly funded plan becomes part of a larger controlled group, for example, as part of a corporate transaction. And this may happen too late in the information year for the employer to take action to improve the newly acquired plan's funded status. To avoid triggering "nuisance" filings for controlled groups committed to maintaining well-funded plans, the final rule should count only participants in controlled-group plans with 4010 FTAPs below 80% (determined using nonstabilized rates) toward the 500-participant threshold.

Relief from burdensome liability calculations

The cost of reporting plan actuarial information in 4010 filings is substantially increased by requirements to report two liability measures plans do not otherwise calculate: the year-end plan termination liability and, for plans that are not at-risk, the at-risk funding target. PBGC should provide "alternative methods of compliance" with these statutory requirements to lessen the burden of 4010 reporting for all filers, regardless of whether they previously qualified for the \$15 million shortfall waiver. Providing such an alternative is consistent with the approach PBGC has taken with respect to other burdensome and costly statutory requirements, such as the alternative 4010 FTAP calculation, alternative method for determining unfunded vested benefits for variable-rate premiums and the alternative method for supply the annual funding notice to PBGC.

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Year-end plan termination liability. The year-end plan termination liability is particularly costly to calculate because of the prescribed retirement assumption. The prescribed retirement assumption takes a very different approach than the retirement rates used in most funding valuations. To accurately calculate plan termination liability, the expected retirement age must be individually determined for each participant — a difficult task in complex plans with multiple benefit structures and multiple sets of early retirement factors that apply to various subsets of participants.

In lieu of requiring all plans to perform these complex and costly calculations, we recommend that PBGC allow plans to instead supply the year-end benefit liability reported in the plan's annual funding notice ("AFN liability") and an expense load determined from the AFN liability in the same manner as the expense load included in the plan termination liability. Like the termination liability, the AFN liability is determined as of plan year-end and reflects market interest rates at that date. Because the AFN must be furnished around the same time as (or, if the plan year and information year don't align, earlier than) the 4010 filing, this value is readily available without performing any additional calculations. For those cases that PBGC determines represent significant risk to the agency, the termination liability could be provided upon request. For example, the final rules might provide that plans using the alternative method of compliance must report the plan termination liability to PBGC within 120 days after receiving a written request from the agency.

If our suggested alternative method is unacceptable to PBGC, other simplified approaches could be specified that partially alleviate the reporting burden. For example, an estimated termination liability using the interest and mortality assumptions prescribed for the termination liability, the retirement decrement used to determine the plan's funding target, and no other preretirement decrements would be far less burdensome than the current requirement to use PBGC's prescribed retirement assumption.

At-risk funding target. Determining the at-risk funding target requires a detailed analysis of plan terms and manipulation of decrement assumptions — and PBGC doesn't even use this liability. According to PBGC's 2013 4010 report to Congress:

PBGC also recommends eliminating the requirement to report the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years (ERISA Section 4010(d)(1)(B)). PBGC does not use this information because termination liability ... is the relevant amount. It is burdensome and costly for companies to calculate the 4010(d)(1)(B) amount and, unless a plan has actually been in at-risk status for at least 5 consecutive plan years, that amount is not used for any purpose other than reporting under ERISA Section 4010.

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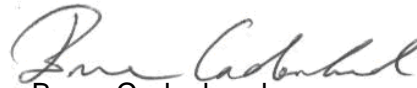
PBGC should provide an alternative method of complying with this burdensome and costly requirement: Plans that are not at risk should have the option to report the funding target determined using nonstabilized rates (that is, the funding target used to determine the plan's 4010 FTAP). This liability must be calculated to perform the 80%-funded gateway test and calculate the 4010 FTAP, which also must be reported, so it represents no added cost or burden for plan administrators.

If you have any questions or need further information, please contact Heidi Rackley at +1 206 214 3662 or Bruce Cadenhead at +1 212 345 7257.

Sincerely,



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