



September 25, 2015

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

Regulatory Information Number 1212-AB30

This letter is Towers Watson's response to the request for public comments included within the proposed Employee Retirement Income Security Act (ERISA) §4010 regulations published in the Federal Register on July 27, 2015. Towers Watson is a leading global professional services firm that employs approximately 16,000 associates on a worldwide basis. Our more than 600 Enrolled Actuaries provide actuarial and consulting services to more than 1,700 defined benefit (DB) plans in the U.S.

Towers Watson commends the Pension Benefit Guaranty Corporation (PBGC) for updating the regulations to reflect changes that have occurred as a result of the introduction of stabilized interest rates in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Highway Transportation and Funding Act (HATFA), and to incorporate the related guidance PBGC provided through Technical Updates 12-2 and 14-2. We appreciate the opportunity to comment. The undersigned have prepared Towers Watson's response, with input from others in the firm, to the two questions the PBGC asked in the preamble to the proposed regulations. We have also provided additional observations.

Question 1: Would using a different participant count threshold or tying the \$15 million aggregate underfunding waiver directly to non-stabilized rates be more appropriate?

We believe that the waiver should be tied directly to aggregate underfunding and not participant count. We would not object if the PBGC wishes to provide additional waivers for small plans that consider participant counts; however we strongly believe that large plans should not be barred from using the waiver solely due to their size.

We understand PBGC's concern that the use of an ERISA §4010 \$15 million aggregate underfunding waiver based on stabilized rates exempts some plans that have significant underfunding today on a plan termination basis from §4010 reporting. To address this concern, however, we believe PBGC could base the waiver on non-stabilized rates. We do not agree that determining the shortfall using non-stabilized rates "would be overly complicated and administratively burdensome". Plan sponsors typically need to determine funding targets using non-stabilized rates for certain purposes, including the §4010 Funding Target Attainment Percentage (FTAP) (as defined in the proposed regulation), PBGC variable rate premium calculations under the Alternative Method, the Annual Funding Notice (AFN) supplement, and the Internal Revenue Code (IRC) §404 deduction limits.

We also believe that PBGC should weigh its concern and need for information against the likely unintended consequences of the proposed rule. In our view restricting the availability of the waiver based on any level of participant count will be counterproductive to PBGC's interests, as in our experience plan sponsors often increase plan funding to meet the exemption.

A sponsor of a large plan or plans that has less than \$15 million in aggregate underfunding in the controlled group will almost by definition have §4010 FTAPs in excess of 80% in its larger plans, absent large funding balances. So one situation where the current exemption is helpful is a large plan that is well funded on non-stabilized rates and has large funding balances and therefore a §4010 FTAP under 80%. In our view the waiver is appropriate in such a situation because the plan does not pose a substantial risk to PBGC. Under the proposed rule the waiver would be lost (unless the funding balance was forfeited) and over time we believe that the result would be that plan contributions would be reduced in many such situations.

Many plan sponsors who fund their plans in excess of the minimum required contributions want to create funding balances to provide flexibility in future years, even if they have no specific plan to make use of that flexibility. The \$15 million waiver provides an incentive to fund to that level. If such plans cannot avoid a §4010 filing without forfeiting (or not creating) funding balances, there will be less incentive to fund more than the minimum required contribution. In short, we believe that such plan sponsors would, overall, contribute less if the incentive of avoiding a §4010 filing by keeping the underfunding below \$15 million were eliminated.

Another situation where this exemption comes into play is in an acquisition where an entity is acquired that has a much smaller and less well funded plan, potentially triggering a §4010 filing requirement for the controlled group. The acquiring organization may have no ability to timely increase the acquired plan's §4010 FTAP. It does not seem appropriate that a §4010 filing should be required for a sponsor with large plans that are well funded enough not to trigger a §4010 filing requirement simply because they acquire (or otherwise have) a much smaller plan that has a §4010 FTAP less than 80%. The \$15 million waiver allowed many such employers to avoid filing, and also provided an incentive for such an employer to keep plans funded at a higher level than 80% (to stay within the \$15 million threshold). Of course, we would welcome a broader transition rule that would prevent a small plan acquired late in the year from triggering required §4010 reporting.

We recognize that a controlled group with less than \$15 million in aggregate underfunding using non-stabilized IRC §430 rates has unfunded liabilities measured on a plan termination basis today in excess of \$15 million, and the larger the plan the larger the potential dollar amount of the unfunded plan termination liabilities. However, that is equally true of a plan with a §4010 FTAP of 80% (or 100% for that matter). Making the \$15 million exemption available to larger sponsors does not aggravate that situation, provides an incentive to fund additional amounts, and avoids unnecessary §4010 filings triggered by large employers acquiring small plans too late to influence the §4010 FTAP of those small plans for the year of acquisition.

Question 2: Would eliminating the option of using the form-of-payment assumption used for minimum funding purposes, and instead requiring that the §4044.51 assumption

be used, necessitate significant programming changes or result in additional burden or cost?

The programming changes required would not be significant for Towers Watson, however that may not be the case for other service providers. In addition, there would be some cost and complexity for plan sponsors as this would add another set of calculations to the many that are already required. Unlike the funding shortfall determined using non-stabilized rates referred to above, these calculations would be additional ones as they do not currently exist for any other purpose.

Under either approach, benefits in payment status at the valuation date would be valued in the form in which they are being paid. The §4044.51 assumptions require that benefits for which a proper election has been made, but which are not yet being paid, be valued in the form of payment elected. The enrolled actuary performing the §4010 calculations will typically not have information regarding elections that have been made for benefits not yet in payment status (if any such elections even exist), and the cost of collecting such information and reflecting it in the valuation for §4010 reporting purposes would be disproportionate to its value.

If no election has yet been made, §4044.51 requires an assumption that benefits will be paid in the automatic form (i.e., the QJSA, including the QJSA for an unmarried individual, which is typically a single life annuity). Given that the plan's optional forms of benefit may have significantly different values when measured using §4010 assumptions, we do not believe the §4010 assumptions should be required over the IRC §430 assumptions, which must be the enrolled actuary's best estimate of anticipated experience under the plan. For example:

- While the QJSA is required to be the most valuable optional form of benefit using "reasonable assumptions", it may not be the most valuable option using the assumptions used for §4010 purposes. For example, assume that the joint and survivor annuity factors are actuarially equivalent to the single life annuity using a long term assumed interest rate of 6%, and that the required §4010 interest rate is effectively 4%. A 100% survivor annuity will be more valuable than the 50% QJSA (which will be more valuable than the single life annuity).
- If a lump sum form of payment is available that does not include early retirement subsidies, assuming that all participants elect annuity payments will overstate liabilities.

Given the potential differences in value measured using §4010 assumptions of the different optional forms of benefit under the plan, we believe that the alternative to use the actuary's best estimate assumptions of actual election patterns (as reflected in the IRC §430 valuation) should continue to be available.

Additional Comments

We appreciate the opportunity to make the following additional comments and observations regarding the proposed regulations:

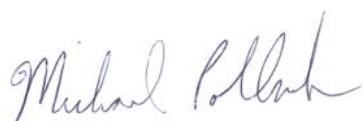
- **Waiving §4010 Reporting Requirements Due to Missed Contributions and Funding Waivers** - The proposed regulations would waive reporting for controlled groups that are subject to §4010 reporting **solely** because of (i) a statutory lien resulting from missed

required contributions over \$1 million, or (ii) outstanding minimum funding waivers exceeding the same amount, assuming that the missed contributions or minimum funding waivers were reported (on Form 10 or 200) by the due date for the §4010 filing. We agree that sufficient information regarding these situations is available to PBGC through other means (e.g., the Internal Revenue Service (IRS) consulting with PBGC before granting funding waivers, Form 10 and 200 filings), and applaud PBGC for waiving §4010 reporting obligations in these situations.

- **Effective Date** – PBGC proposes that any changes would be effective for information years beginning after December 31, 2015. The proposed effective date should be workable assuming the regulation is finalized during 2015. However, we believe that plan sponsors whose 2015 plan year contributions may be influenced by the §4010 reporting triggers need to know the final rules well in advance of the September 15, 2016 deadline for contributing for 2015 calendar year plan years, and thus we ask that PBGC consider a delay in the effective date if there is a material delay in finalizing the regulations.
- **Determination of Asset Values for the §4010 FTAP** – We appreciate the PBGC not requiring calculation of the smoothed asset value disregarding stabilized rates for purposes of determining whether the §4010 FTAP is less than 80% (thus triggering a §4010 reporting requirement). However, we believe that this calculation should not be required at all as the difference in values should generally be small. We note that other agencies (i.e., IRS and the Department of Labor) have not required this calculation and that if PBGC does require it then both asset values will need to be reported in the annual funding notice adding to complexity and participant confusion.

We appreciate the opportunity to offer these comments and would be pleased to provide any additional information that might be helpful to the PBGC. Please contact one of the undersigned if you have any questions or need further information regarding the substance of our comments.

Sincerely,



Michael F. Pollack, F.S.A., E.A.
Senior Consulting Actuary
Towers Watson
One Stamford Plaza – 263 Tresser Blvd.
Stamford, CT, 06901
Phone: 203.326.5469
mike.pollack@towerswatson.com



Maria M. Sarli, F.S.A., EA
U.S. Retirement Resource Actuary
Towers Watson
One Alliance Center
3500 Lenox Road, Suite 900
Atlanta, GA 30326-4238
Phone: 404.365.1708
maria.sarli@towerswatson.com