

April 23, 2007

Filed Electronically

Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026
Attn: Termination Premium Fee, RIN 1212-AB10

Re: Proposed Termination Premium Fee Regulation

Dear Sir or Madam,

As Executive Director of the Association of Insolvency and Restructuring Advisors (AIRA) I appreciate the opportunity to comment on the Pension Benefits Guaranty Corporation's (PBGC) proposed regulations on the newly created termination premium fee. The AIRA is a nationwide not-for-profit organization serving the needs of business turnaround, restructuring and bankruptcy practitioners. Membership consists of accountants, financial advisors, attorneys, workout consultants, trustees, and others involved in insolvency and bankruptcy matters.

Gratitude is expressed to the PBGC for releasing proposed regulations so quickly after the Pension Protection Act of 2006 was enacted. When finalized, the regulations will provide certainty in many respects for plan sponsors. A suggestion is made for providing greater certainty for bankrupt companies and their controlled group members as discussed below.

The termination premium was created by the Deficit Reduction Act of 2005 and signed into law on February 8, 2006. It was amended by the Pension Protection Act of 2006, which was enacted on August 17, 2006. Generally, it applies to sponsors of pension plans unless a plan is terminated "pursuant to a bankruptcy filing occurring before October 18, 2005."

The law requires employers to pay \$1,250 per participant per year for three years after a pension plan is terminated. This premium, which is a joint and several liability, is not included in the amounts that PBGC recovers for unfunded benefit liabilities. This premium, also known as an "exit fee", is significant. For a pension plan with 5,000 participants, it totals \$18.75 million.

The premium becomes due and payable if a plan is terminated in an involuntary or distress termination. A pension plan gets terminated in order for a company to survive. Specifically, ERISA permits a pension plan to be terminated in order for a company to pay its debts as they become due or in order for a plan of reorganization ("POR") to be feasible. Adding an additional premium to an already distresses situation may cause a

company to be unable to pay its debts as they become due and possibly need to file for bankruptcy, or may cause an otherwise feasible POR to become unfeasible, possibly causing a company to be unable to emerge from bankruptcy.

It is not likely that this was a desired outcome and Congress may not have considered the financial ramifications of such an action. Therefore, it is recommended the PBGC adopt a facts-and-circumstance approach in collecting the termination premium fee. Specifically, it is requested that the PBGC consider limiting its recoveries of this termination premium to amounts that each company can afford to pay without jeopardizing its ability to stay in business.

PBGC has adopted a facts-and-circumstance approach in collection other amounts, such as those due for employer liability, due and unpaid contributions, and premiums. In these cases, PBGC has limited its recoveries so that a company can continue in business. Taking such an approach is not novel or unusual for PBGC and the PBGC has demonstrated a willingness to structure settlements that allow sponsors and controlled groups to pay amounts in proportion to their financial health. It is therefore requested that PBGC adopt similar flexibility in collecting the termination premium.

Sincerely,

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