



August 23, 2019

Submitted via email to reg.comments@pbgc.gov.
Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Dear Sir or Madam,

Subject: RIN 1212-AB34—Comments on Proposed Technical Corrections, Clarifications, and Improvements to Pension Benefit Guaranty Corporation (PBGC) Regulations

Aon welcomes the opportunity to submit comments on the proposed changes to regulations under ERISA sections 4006, 4010, 4041, and 4043. The proposed regulations were published in the *Federal Register* on June 27, 2019.

Who We Are

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance. Our Retirement & Investment practices help clients design, manage, and deliver retirement programs to their employees, including pension plans that are covered by the PBGC. We serve as the Enrolled Actuary for more than 900 qualified defined benefit pension plans in the United States.

Comments

We believe the PBGC's proposed changes will generally reduce the burden of various required filings and allow for better compliance with requirements. Our comments reflect the proposed changes that we believe should be modified or clarified in final rules.

Premiums

Several changes are proposed that relate to a special rule to determine the participant count date in the event of a merger or spinoff on the first day of a plan year. In the event of a merger or spinoff that occurs on the first day of a plan year and that is not de minimis, the participant count is shifted to the first day of the plan year instead of the last day of the prior plan year.

The PBGC proposes changes to clarify the definition of "de minimis" for this purpose to prevent the application of the rule to situations for which it was not intended. While we understand the rationale for the PBGC's proposed changes, we believe the proposed rule would continue to be overly complex and cause confusion as to whether a merger or spinoff on the first day of a plan year should be treated differently than a merger or spinoff on the last day of the prior plan year for PBGC premium purposes.

The PBGC could address these concerns by eliminating any distinction based on whether a merger or spinoff is de minimis, and simply apply the special rule in all cases. For example, for every plan merger that takes effect on the first day of a plan year or the last day of the prior plan year, the participant count date would move from the last day of the prior plan year to the first day of the current plan year for the merged plan regardless of the size of the merger. Because participant counts are not needed for PBGC premium filing purposes until nine and a half months after the first day of the plan year, the sponsor of a merged plan (even one created from a de minimis merger) should have sufficient time to determine the appropriate participant counts.

Applying this rule in all cases would also eliminate a situation that forces double-counting of participants for a de minimis spinoff on the first day of a plan year. Currently, if a new plan is created in a de minimis spinoff on the first day of the plan year, the participant count is not shifted to the first day of the plan year for the transferor plan, which results in double counting participants because they are also counted as part of the new plan. Eliminating the distinction between de minimis and non-de minimis situations would treat all mergers and spinoffs equally and would eliminate unintended results driven by the size of the transaction.

In addition, the PBGC should clarify how to count participants when there is a spinoff on the last day of a plan year. If a plan spins off a group of participants to a new plan as of the last day of a plan year and the new plan begins a new plan year the following day, we believe the participants in the new plan should not be counted in the originating plan. For example, if a calendar-year plan spins off participants on December 31, 2019 (the last day of the 2019 plan year), those participants should not be included in the participant count for the transferring plan for the 2020 premium payment year, as the participants will be counted in the new plan for the premium payment year beginning January 1, 2020. This clarification would be useful to ensure that the rules for counting participants are the same regardless of whether the merger or spinoff is the last day or the first day of the plan year. This would also clarify the treatment of participants when there is a “transfer” from one plan to another plan, which is essentially a spinoff immediately followed by a merger.

Finally, the PBGC did not specify an intended effective date in the proposed regulations. In many cases, plan merger and spinoff transactions have already occurred during 2019, and plan sponsors have applied the rules as they exist in the current regulations and 2019 premium instructions. To avoid retroactive application of the proposed premium changes and clarifications in these situations, we believe the proposed regulations should only apply to premium payment years beginning after the date final regulations are issued, and no earlier than the first premium payment year beginning on or after January 1, 2020.

Reportable Event—Change in Contributing Sponsor

The PBGC proposes to require reporting when there is a change in contributing sponsor even if the old and new contributing sponsors are members of the same controlled group. We believe such a change in contributing sponsor should not trigger a reportable event. ERISA Section 4043(c)(9) only requires reporting when “a person ceases to be a member of the controlled group.” Requiring a plan sponsor to report a change in the plan sponsorship without a change in the controlled group would go beyond this statutory requirement.

In addition, the PBGC does not need to change the reportable event requirements to learn about changes in sponsorship within the controlled group. The annual premium filing provides plan sponsor information that would reflect any change in contributing sponsor. The information will also be available in a Section 4010 filing, which requires reporting each plan associated with each controlled group member. Since Section 4010 filings target less-well-funded plans, the PBGC is already receiving information about the contributing sponsor and changes therein for the plans that are of greatest concern. Finally, the current reporting rules for this event require reporting a description of the old and new controlled group and the controlled group members, plans maintained by each member, and actuarial and financial information. A change in the contributing sponsor within the controlled group would not have old and new controlled group members to report. Also, the other required information for the reportable event would be contained in a Section 4010 filing to the extent a filing is required.

Reportable Event—Public Company Waiver

The preamble to the proposed regulations requested comments on whether the public company waiver should be expanded to apply in situations where a parent company timely files a Form 8-K but is not a contributing sponsor to the plan. We believe expanding the public company waiver could provide for the opportunity to lessen the burden of reporting in some situations. If the 8-K would be regarded as sufficient if it were issued by the plan sponsor, then an 8-K with substantially the same information but issued by the parent company should also be regarded as sufficient.

Employer Reporting under ERISA Section 4010

The PBGC proposes to provide a simple method for filers in larger controlled groups to submit information about the controlled group by providing an organizational chart or diagram rather than listing each parent and subsidiary relationship in the 4010 filing. We agree that this would likely reduce the burden of reporting for many plan sponsors. However, some organizations may have already completed Section 4010 filings in the past and prepared a controlled group listing without having prepared an organizational chart or diagram for the controlled group. Requiring these plan sponsors to prepare an organizational chart or diagram would result in additional work for the plan sponsor without providing the PBGC with additional information. We would ask that the PBGC continue to allow plan sponsors to report controlled group relationships as required in the past and allow the provision of an organizational chart or diagram as an optional, alternative method to meet the requirement.

The PBGC also proposes to waive Section 4010 reporting in situations where reporting is required solely due to a plan in the controlled group with a 4010 funding target attainment percentage (“4010 FTAP”) below 80%, for which an election to waive funding balances and increase the 4010 FTAP to at least 80% is made after the applicable waiver deadline but before the Section 4010 reporting deadline. We agree that a reporting waiver would be helpful for some situations. However, it is unclear how this provision would operate in practice. The Treasury regulations under Internal Revenue Code Section 430(f) do not permit a voluntary election to waive funding balances for a plan year to be made after the applicable deadline (i.e., the last day of the plan year). As a result, it is unclear whether the plan sponsor would need to make an election to waive funding balances for the following plan year, and if so, whether any adjustments to the amount of the waiver would be needed (e.g., to reflect the actual return on plan assets during the plan year). Further clarification of this provision, including an example, would be helpful.

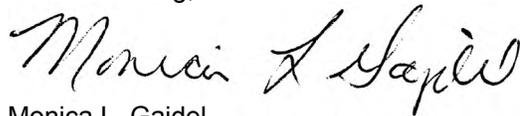
Also, if a waiver of Section 4010 reporting is to be provided based on an election to waive funding balances made after the applicable waiver deadline but before the Section 4010 reporting deadline, then it would seem that a similar provision should be provided for cash contributions made during the same period. Unlike waivers of funding balance, cash contributions would improve the plan's true funded status and reduce risk to the PBGC. We would ask that the PBGC consider adding such a provision to the final regulations.

Closing

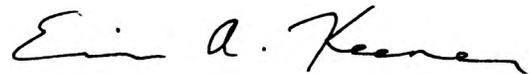
Aon appreciates the opportunity to submit our comments and recommendations. Please contact the undersigned at the telephone number or email address provided below with any questions.

Sincerely,

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