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

RE: Regulatory Planning and Review

To Whom It May Concern:

On behalf of the US Chamber of Commerce, we submit this letter in response to the Request for Information (RFI) on the Regulatory Planning and Review of Existing Regulations published by the Pension Benefit Guaranty Corporation (PBGC).¹ The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Chamber members are very concerned about the state of the defined benefit plan system and feel that the ensured stability of the PBGC is vital to that system. Therefore, we appreciate the opportunity to comment on the review of the regulatory system for simplification and easing the burden on defined benefit plan sponsors.

¹ 82 FR 34619, July 26, 2017.

Introduction

The RFI asks for input on what regulatory and deregulatory actions it should consider pursuant to various executive orders.² Recently, the PBGC has made significant efforts aimed at addressing employer concerns. In 2016, the PBGC issued a rule lowering the penalty on late payment of premiums.³ The rule considerably reduces burdens for defined benefit plan sponsors by revising penalties that are based on the significantly increased single-employer premiums. In 2015, the PBGC issued a final rule on reportable events under section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) which was substantially revised from the original proposal and removed many of the burdens that the Chamber had identified as unduly burdensome on plan sponsors without providing a corresponding benefit to the PBGC.⁴ In 2013, the PBGC issued a rule that simplified premium payments by requiring a single filing deadline for all plans.⁵ Consequently, we view the RFI as a significant opportunity to continue these achievements and submit the following comments in furtherance of that effort.

Our comments are focused on areas that we believe will reduce regulatory burdens and simplify the maintenance of defined benefit plans. Specifically, our recommendations encourage the PBGC to establish a voluntary corrections program to allow plan sponsors to self-correct for minor and de minimis errors; urge the PBGC to eliminate the requirement to provide de-risking information on filing forms as the burden of providing it outweighs any benefit to the PBGC; encourage the PBGC to finalize the missing participant regulations; and recommended that the relief granted for payment of late premiums be extended, in certain cases, to late payments made before 2016. Each of these recommendations is detailed below.

Comments

Question 2. Are there challenges affecting the establishment and maintenance of pension plans or other aspects of the private pension plan system that should be addressed through rulemaking or other guidance?

The PBGC Should Establish a Voluntary Correction Program. We recommend that the PBGC promote a correction program that is similar to correction programs at other agencies of jurisdiction. Both the Internal Revenue Service (IRS) and the Department of Labor (DOL) have

² Executive Order (E.O.) 12866 (issued in 1993) and E.O. 13563 (issued in 2011) direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 also calls for the periodic review of existing regulations to identify any that can be made more effective or less burdensome in achieving regulatory objectives. E.O. 13771 (issued in January 2017) seeks to reduce regulatory requirements and control regulatory costs. This executive order was followed by E.O. 13777 (issued in February 2017), which calls for a Regulatory Reform Task Force (RRTF) in each agency to evaluate existing regulations and make recommendations regarding their “repeal, replacement, or modification, consistent with applicable law.” In evaluating regulations, the RRTF should ask for input from persons and entities affected by such regulations.

³ 81 FR 65542, September 23, 2016.

⁴ 80 FR 54980, September 11, 2015.

⁵ 78 FR 44056, July 23, 2013.

established successful correction programs aimed at helping plan sponsors voluntarily correct errors.⁶

The IRS created its correction programs in 1991 to help plan sponsors correct tax qualification errors. The program has since grown and evolved in large part because of a robust and open dialogue with private industry.⁷ About 7,000 correction applications were submitted in fiscal year 2011.⁸ Similarly, the DOL's correction programs have been equally successful. In fiscal year 2015, the DOL's Voluntary Fiduciary Correction Program received 1,478 applications and the Delinquent Filer Voluntary Compliance Program received more than 22,800 annual reports.⁹ The Chamber believes that a correction program at the PBGC addressing filing and related errors would be extremely beneficial to both the PBGC and plan sponsors.

Question 7. Does PBGC have regulations or information collections (e.g., forms, reports, or notices) that are duplicative or that have conflicting requirements with other agencies, such as the Department of the Treasury, Internal Revenue Service, or Department of Labor?

The PBGC Should Eliminate its Proposal to Include De-risking Information on Premium Filing Forms. The PBGC has revised premium filing procedures and instructions to require reporting of certain undertakings to cash out or annuitize benefits for a specified group of former employees.¹⁰ The Chamber strongly discourages collection of this information as we see no benefit to it and also because no reason has been offered for it. In addition, it is not clear exactly what type of information will be sought. In a retirement plan, an employer has the option to satisfy benefit obligations by paying the benefit in a lump-sum cash-out or an annuity. Once this is done, benefit obligations are satisfied and neither the plan sponsor nor the PBGC have any remaining liabilities.¹¹ Since these benefit payouts have no direct bearing on future liabilities that might fall to the PBGC, any burdens or costs associated with this collection will outweigh the benefits because there are no benefits. As such, the collection of this information cannot be justified.

⁶ The IRS Employee Plans Compliance Resolution System (EPCRS) provides retirement plan sponsors with correction programs designed to voluntarily correct plan failures in order to maintain the tax-qualified status of their retirement plans. EPCRS has three components: the Self-Correction Program, the Voluntary Correction Program, and the Audit Closing Agreement Program. See <https://www.irs.gov/Retirement-Plans/EPCRS-Overview>. The DOL has two voluntary self-correction programs for plan administrators who need help satisfying ERISA requirements: the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program. See <http://www.dol.gov/ebsa/publications/correctionprograms.html>.

⁷ IRS Advisory Committee on Tax Exempt and Government Entities, "2013 Report on Recommendations," available at <https://www.irs.gov/pub/irs-prior/p4344--2013.pdf>.

⁸ More than 33,000 correction applications have been submitted to EPCRS since it was created in 1991. See Id.

⁹ Employee Benefits Security Administration, "EBSA Restores over \$696.3 Million to Employee Benefit Plans, Participants and Beneficiaries," FY2015Fact Sheet, available at <http://www.dol.gov/ebsa/newsroom/fsFYagencyresults.html>.

¹⁰ 79 FR 56831, September 23, 2014.

¹¹ ERISA section 4041(b)(3).

Question 13. Are there any other areas where PBGC could improve its regulations to better accomplish its mission?

The PBGC Should Finalize the Missing Participant Regulations. We encourage the PBGC to move forward with the missing participant program. In 2016, the PBGC proposed to expand its missing participants program to include multiemployer plans covered by Title IV, most defined contribution plans, and certain plans not already covered.¹² In general, the Chamber supports the proposed rule and encourages the agency to move forward in the finalizing the rule.

Specifically, the Chamber appreciates that the PBGC intends to streamline the process where applicable and minimize burdens on plan sponsors, particularly small plan sponsors. Understanding that the statute addresses only terminated plans, the Chamber nevertheless encourages the PBGC to coordinate with other efforts to track and locate participant accounts in active plans. For example, a bill has been introduced in Congress that would create a pension registry that would serve as a central location of retirement plan information and would connect individuals with their retirement benefits.¹³ While the Chamber has not specifically endorsed this bill, it is important that all efforts in this area be coordinated to ensure that various programs do not become complicated or duplicative for plan sponsors and participants.

Penalty Relief for Payment of Late Premiums Should be Extended As Necessary. In 2016, the PBGC issued a rule lowering the penalty on late payment of premiums.¹⁴ The rule considerably reduces burdens for defined benefit plan sponsors by revising penalties that are based on the significantly increased single-employer premiums. While this is a much appreciated step, we again urge the agency to apply the changes as well to any penalty assessments for pre-2016 plan years where the penalty assessment has not yet been resolved. We believe this will advance the intent of the agency and the proposal. We also urge the PBGC to consider providing similar relief, on a case-by-case basis, in appropriate situations involving late premium payments for pre-2016 plan years where the penalty assessment has already been resolved under pre-2016 rules. For example, relief may be appropriate where the post-2015 conditions for relief are met for a pre-2016 plan year, the penalty that had been assessed and resolved under pre-2016 rules was both large and clearly disproportionate in relation to the facts and circumstances surrounding the late payment, and there is clear and convincing evidence that the late payment was the result of inadvertence rather than any attempt to underpay the PBGC premiums.

¹²81 FR 64700, September 20, 2016. In 2013, the Chamber responded jointly with the ERISA Industry Committee and the Plan Sponsor Council of America to a Request for Information on Missing Participants in Individual Account Plans issued by the PBGC. (78 FR 37598, June 21, 2013.) In that comment letter, the Chamber encouraged the PBGC to move forward with allowing for option participation for individual account plans in the Missing Participants program and recommended that the PBGC create a program whereby fiduciaries of terminating plans that transfer the accounts for missing participants to the PBGC can be confident that: (1) they no longer have fiduciary liability for such amounts; (2) the funds will be handled appropriately; (3) the account will be charged no more than reasonable fees; and (4) the participant (once found) will be able to obtain an accounting of the manner in which their funds have been handled by the PBGC.

<https://www.uschamber.com/sites/default/files/documents/files/PBGC%20Missing%20Participants%20RFI%20-%20ERIC%20PSCA%20and%20Chamber.pdf>.

¹³ The Retirement Savings Lost and Found Act of 2016 (S. 3078). <https://www.congress.gov/bill/114th-congress/senate-bill/3078>.

¹⁴ 81 FR 65542, September 23, 2016.

Conclusion

The Chamber appreciates the opportunity to provide comments on the wide array of regulations under its jurisdiction that affect employers. Thank you for your consideration of these comments and we look forward to working with you on these important issues.

Sincerely,



Randel Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce



Aliya Wong
Executive Director, Retirement Policy
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce