

# TECHNICAL UPDATE 07-2

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## **Technical Update 07-2: Funding-Related Determinations for Reporting Under Parts 4010 and 4043; Effect of the Pension Protection Act of 2006; Transitional Guidance.**

This Technical Update 07-2 provides guidance on the applicability of the changes made by the Pension Protection Act of 2006 (PPA 2006), and the corresponding changes proposed for Pension Benefit Guaranty Corporation (PBGC) premium regulations, to the determination of funding-related amounts for purposes of PBGC's regulations on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) (the "annual employer reporting" regulation) and Reportable Events and Certain Other Notification Requirements (29 CFR part 4043) (the "reportable events" regulation).

This Technical Update 07-2 also provides guidance on the effective date of the changes made by the Pension Protection Act of 2006 to ERISA section 4010 (dealing with annual employer reporting).

### **I. Overview**

PPA 2006 modified the way the variable-rate premium (VRP) under ERISA section 4006 (dealing with premium rates) is determined. The modifications affect the valuation of vested benefits and assets and the determination of unfunded vested benefits (UVBs). These modifications apply to plan years beginning after 2007. On May 31, 2007 (at 72 FR 30308), PBGC published a proposed rule to amend PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) to implement these PPA 2006 modifications.

PBGC's annual employer reporting regulation and its reportable events regulation contain provisions that refer to the determination of UVBs, vested benefits amounts, and VRPs under ERISA section 4006 and the premium rates regulation. PBGC expects to amend both the annual employer reporting regulation and the reportable events regulation to conform to and implement the premium-related changes under PPA 2006; this Technical Update is intended to provide guidance for the period before those amendments apply.

This Technical Update uses the following terms:

- The "event year" (a term used in the reportable events regulation) is the plan year in which a reportable event occurs. See 29 CFR § 4043.2.

- The “information year” (a term used in the annual employer reporting regulation) is generally the employer’s fiscal year, which in most cases is the calendar year. See 29 CFR § 4010.5.
- The term “testing date” is used in the reportable events regulation to refer to the date (generally the end of the plan year preceding the “event year”) as of which certain funding-related tests are applied. The term “testing date” is not used in the annual employer reporting regulation; in the context of discussions of the annual employer reporting regulation in this Technical Update, it refers to the end of the plan year that ends within the “information year.”

PBGC interprets PPA 2006 to provide that new annual employer reporting rules apply to information years beginning after 2007.

In general, this Technical Update provides that for purposes of the annual employer reporting and reportable events regulations, a plan’s UVBs and vested benefits amounts (for the transition plan years covered by this Technical Update) are determined as of the relevant year-end “testing date” using the rules for determining the VRP under the law in effect before PPA 2006.

The guidance in this Technical Update generally applies (1) under the annual employer reporting regulation, to information years that begin before 2008 and (2) under the reportable events regulation, to event years that begin in 2008.<sup>1</sup>

## **II. Annual Employer Reporting Under ERISA Section 4010**

### **A. Background**

Currently (*i.e.*, without regard to PPA 2006 amendments), ERISA section 4010 generally requires a controlled group to report to PBGC if the aggregate UVBs in plans maintained by the controlled group, as determined for VRP purposes under ERISA section 4006(a)(3)(E)(iii), exceed \$50 million, disregarding plans with no UVBs (the “\$50 million gateway test”). UVBs are calculated on a plan-by-plan basis as of the last day of the plan year that ends within the information year (the testing date).

There generally has been a correspondence between the way a plan’s UVBs are determined for purposes of the \$50 million gateway test under the annual employer reporting regulation and the way UVBs are determined for premium purposes under the premium rates regulation for the plan year following the plan year in which the testing date falls.<sup>2</sup> The two determinations have generally been made as of the same date using the same assumptions. Under PBGC’s proposed

<sup>1</sup> Note that for information years ending before December 31, 2007, no guidance is needed because the PPA 2006 changes to the variable rate premium do not affect any plan years ending within such an information year. Similarly, the PPA 2006 premium changes have no effect under the reportable events regulation on determinations for event years beginning in 2007. PBGC expects to amend the reportable events regulation by 2009.

<sup>2</sup> See fn. 1, Technical Update 04-2 (March 19, 2004).

premium rule, that would no longer be the case where the testing date is on or after December 31, 2007, because the following plan year would be subject to new premium determination rules.

## B. Guidance

PPA 2006 amends ERISA section 4010 (most notably, to replace the \$50 million gateway test with a new test), effective for “years beginning after 2007.” PBGC interprets the PPA 2006 amendments to ERISA section 4010 as applying to *information* years beginning after 2007. Therefore, for information years beginning before 2008, the \$50 million gateway test is still used.

For purposes of the \$50 million gateway test for an information year that begins before 2008,<sup>3</sup> UVBs for any plan year ending within the information year are to be determined as of the testing date using the premium rules in effect before 2008<sup>4</sup> (*i.e.*, ignoring the PPA 2006 premium changes that take effect for plan years beginning after 2007).<sup>5</sup>

## C. Examples

Plan A is a calendar year plan and is maintained by Controlled Group I with a calendar 2007 information year. Plans B and C are maintained by Controlled Group II with an information year that runs from July 1, 2007, to June 30, 2008. Plan B’s plan year begins on July 1 and ends on June 30. Plan C has a short plan year that begins on January 1, 2008, and ends on March 31, 2008. The following table summarizes the assumptions and methods used to determine whether a filing under the annual employer reporting regulation is required in these situations.

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<sup>3</sup> Note that under PBGC’s interpretation of the effective date of the PPA 2006 changes to ERISA section 4010, the \$50 million gateway test would not apply to a short information year beginning and ending in 2008 (*i.e.*, the new PPA 2006 rules would apply). In that rare case, an employer should contact PBGC for guidance.

<sup>4</sup> This guidance may be followed even if the plan year that includes the testing date is a short year beginning in 2008.

<sup>5</sup> PBGC expects that the Department of the Treasury will continue to publish the interest rates used for this purpose because those rates will continue to be used by a number of plans to which the PPA 2006 funding rules do not yet apply. (For certain plans, the effective date of PPA 2006 funding rules is deferred beyond 2008.)

<b>\$50 Million Gateway Test</b>			
	<b>Controlled Group I</b>	<b>Controlled Group II</b>	
Information Year	Calendar Year 2007	7/1/07 to 6/30/08	
	<b>Plan A</b>	<b>Plan B</b>	<b>Plan C</b>
Plan Year	Calendar Year 2007	7/1/07 to 6/30/08	1/1/08 to 3/31/08 <sup>6</sup>
Gateway Testing Date	12/31/07	6/30/08	3/31/08
VRP Interest Rate	100% of Dec. 07 Composite Corporate Bond Rate	100% of June 08 Composite Corporate Bond Rate	100% of March 08 Composite Corporate Bond Rate
Asset Valuation	Market value on testing date	Market value on testing date	Market value on testing date
Mortality Table	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> 26 CFR 1.412(l)(7)-1(d)	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> <del>26 CFR</del> <u>26 CFR</u> 1.412(l)(7)-1(d)	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> <del>26</del> <u>26</u> CFR 1.412(l)(7)-1(d)

### **III. Reportable Events Under ERISA Section 4043**

#### **A. Background**

ERISA section 4043(a) and subparts A and B of the reportable events regulation require plan administrators and contributing sponsors to notify PBGC within 30 days after they know or have reason to know that a reportable event has occurred (“post-event reporting”). The regulation provides certain waivers based on the level of UVBs or vested benefits amounts, calculated as of the testing date (generally the last day of the plan year preceding the event year) using the VRP interest rate for the event year.

ERISA section 4043(b) and subparts A and C of the reportable events regulation require certain non-public companies to notify PBGC at least 30 days before the effective date of certain

<sup>6</sup> For purposes of determining which law applies, this rule treats the short plan year as though it were a full year ending within the information year (i.e., a short plan year ending on March 31, 2008, is treated as beginning on April 1, 2007).

reportable events (“advance reporting”). Generally, a company is subject to advance reporting if a “threshold test” is met: (1) in the aggregate, the UVBs of plans maintained by the controlled group exceed \$50 million (disregarding plans with no UVBs) and (2) the aggregate funded vested benefit percentage (*i.e.*, the ratio of assets to vested benefits) for those plans that are underfunded is less than 90 percent.<sup>7</sup> UVBs and vested benefits are calculated as of the testing date (generally the last day of the plan year preceding the event year<sup>8</sup>) using the VRP interest rate for the event year.

There generally has been a correspondence between the way a plan’s UVBs and vested benefits amount are determined for purposes of qualifying for waivers or applying the threshold test under the reportable events regulation and the way those quantities are determined for premium purposes under the premium rates regulation for the event year. The two determinations are made as of the same date using the same assumptions. Under PBGC’s proposed premium rule, that would no longer be the case for an event year beginning after 2007 because the event year would be subject to new premium determination rules.

## B. Guidance

Vested benefits amounts and UVBs for an event year beginning in 2008 are to be determined for purposes of subparts A through C of the reportable events regulation as of the testing date using the premium rules in effect before 2008<sup>9</sup> (*i.e.*, ignoring the PPA 2006 changes that take effect for plan years beginning after 2007).<sup>10</sup> This Technical Update 07-2 has no effect on subpart D of part 4043, Notice of Failure to Make Required Contributions.

## C. Examples

Plan A is a calendar year plan that began in 1980. Plan B is a calendar year plan that began on January 1, 2008. Plan C is a calendar year plan that began in 1980. However, as of February 1, 2008, plan C switched to a plan year beginning on February 1. In each case, a reportable event occurs on February 15, 2008. The following table shows how UVBs (and vested benefits amounts) are to be determined.

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<sup>7</sup> 29 CFR § 4043.61 is superseded to the extent it requires using the actuarial value of assets. See Technical Update 07-1 (February 13, 2007), paragraph III.C.

<sup>8</sup> For advance reporting, the Event Year is the plan year in which the reportable event becomes effective.

<sup>9</sup> This guidance may be followed even if the plan year preceding the event year is a short year beginning in 2008.

<sup>10</sup> Note that the waiver based on “no variable-rate premium” is unaffected by this Technical Update. That waiver applies if the plan owes no variable-rate premium for the plan year in which the reportable event occurs. For an event that occurs in a plan year beginning in 2008, the PPA 2006 rules would apply. For small plans, a reportable event might occur before the valuation date for making the VRP determination for the 2008 plan year, which under the proposed premium rule could be as late as the end of the year. But the reportable events regulation would continue to provide reporting extensions in appropriate cases. For example, if no variable-rate premium was owed for the 2007 plan year, an extension would run to 30 days after the due date for the variable-rate premium for the 2008 plan year. Under the proposed premium rule, for a small plan, this generally would be April 30, 2009.

<b>Test for Reportable Events</b>			
	<b>Plan A</b> (continuing plan)	<b>Plan B</b> (new plan)	<b>Plan C</b> (beginning after short plan year)
Plan year	Calendar 2008	Calendar 2008	2/1/08 – 1/31/09
Testing Date	December 31, 2007	January 1, 2008	January 31, 2008
Interest Rate	100% of Dec. 07 Composite Corporate Bond Rate	100% of <del>Jan. 08</del> <u>Dec. 07</u> Composite Corporate Bond Rate	100% of Jan. 08 Composite Corporate Bond Rate
Asset Valuation	Market value on testing date	Market value on testing date	Market value on testing date
Mortality Table	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> 26 CFR 1.412(l)(7)-1(d)	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> <del>26-26</del> CFR 1.412(l)(7)-1(d)	Tables in effect for plan years beginning <del>after 2006</del> <u>in 2007</u> <del>26-26</del> CFR 1.412(l)(7)-1(d)

#### **IV. Further guidance and other effect**

This Technical Update updates the guidance provided in the instructions to PBGC Form 10 and in the instructions to Form 10-Advance.

This Technical Update has no effect on the determination of premiums or on any other requirements under other PBGC regulations other than the annual employer reporting and reportable events regulations.

#### **V. Disclaimer**

This guidance represents PBGC's current thinking on this topic. It does not create or confer any rights for or on any person or operate to bind the public. If an alternative approach satisfies the requirements of the applicable statutes and regulations, you can use that approach. If you want to discuss an alternative approach (you are not required to do so), you may contact the PBGC.

## **VI. PBGC Contact Points**

For questions about this Technical Update 07-2, contact Deborah Murphy of the Legislative and Regulatory Department at (202) 326-4223, ext. 3451, or [murphy.deborah@pbgc.gov](mailto:murphy.deborah@pbgc.gov) or Amy Viener of the Policy, Research and Analysis Department at (202) 326-4080, ext. 3919, or [viener.amy@pbgc.gov](mailto:viener.amy@pbgc.gov).

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