TECHNICAL UPDATE 08-5

Pension Benefit Guaranty Corporation
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PBGC
Protecting America's Pensions

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Technical Update 08-5: Reportable Events; Funding-Related Determinations for Threshold Test, Waivers, and Extensions; Effect of the Pension Protection Act of 2006; Guidance for 2009 Plan Years.

This Technical Update 08-5 provides Pension Benefit Guaranty Corporation (PBGC) guidance on compliance with the reportable events requirements of section 4043 of the Employee Retirement Income Security act of 1974 (ERISA) and PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043) in light of the provisions of the Pension Protection Act of 2006 (PPA 2006) and the corresponding changes in PBGC's premium regulations.

In general, this Technical Update provides that for purposes of the reportable events regulation, a plan's unfunded vested benefits (UVBs) and the value of its assets and vested benefits are determined for a plan year beginning in 2009 in the same manner as for premiums for the preceding plan year. It also provides options for applying the "Form 1 extension" for plan years beginning in 2009.

I. 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 ("funding-based waivers") that are based on the level of UVBs or the ratio of assets to vested benefits for the plan year in which the event occurs (the "event year"), calculated as of the "testing date" for the event year. The testing date for a plan year corresponds to the "premium snapshot date" for that plan year — the date as of which the variable-rate premium (VRP) was determined for plan years beginning before 2008 (*i.e.*, before PPA 2006 became applicable). Thus the testing date for an event year is generally the last day of the plan year preceding the event year; in some cases it is the first day of the event year. The reportable events regulation also provides a "Form 1 extension"[1] of some reporting due dates if funding-based waiver criteria are met for the plan year preceding the event year (pending determination of whether waiver criteria are met for the event year and reporting is thus waived).

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

[1] The extension is until 30 days after the VRP filing due date for the event year if specified requirements are met. VRP filings for plan years beginning after 2007 are made on Form 1-C, not Form 1.

reportable events ("advance reporting"). Generally, a non-public 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.[2] Under the statute, UVBs, assets, and vested benefits are calculated in accordance with the VRP rules "as of the close of the preceding plan year." The reportable events regulation provides that these amounts are to be calculated as of the testing date for the plan year in which the reportable event becomes effective. (For convenience, this Technical Update uses the term "event year" for the plan year in which a reportable event becomes effective where advance reporting is required for the event.)

PPA 2006 modified the way the 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 UVBs. These modifications apply to plan years beginning after 2007. On March 21, 2008 (at 73 FR 15065), PBGC published a final rule to implement these PPA 2006 modifications. Under this 2008 amendment, the VRP is based on the amount of assets, vested benefits, and UVBs ("VRP values") determined not as of the "snapshot date" but as of the "UVB valuation date" — the funding valuation date for the premium payment year. The UVB valuation date for a plan year is a day within the plan year. It is typically the first day of the plan year, but for certain small plans may be any day in the plan year. For plan years after 2007, therefore, the testing date under the reportable events regulation no longer corresponds to the VRP determination date under the premium regulations.

Pending amendment of the reportable events regulation to conform to and implement the premium-related changes under PPA 2006 and PBGC's premium regulations, PBGC issued Technical Update 07-2 to provide temporary guidance about how to apply the advance reporting threshold test and the funding-based waivers under the reportable events regulation. Technical Update 07-2 provides that for purposes of the reportable events regulation, a plan's UVBs and vested benefits amounts (for event years beginning in 2008) are determined as of the testing date using the rules for determining the VRP under the law in effect before PPA 2006. The testing date for a plan year beginning in 2008 would typically fall in a plan year (the prior plan year) to which PPA 2006 premium rules did not apply. For plan years beginning after 2008, however, the prior plan year will always be one to which PPA 2006 premium rules apply.

II. Discussion.

As of the testing date for an event year beginning after 2008, the VRP values for the event year are typically unknowable. For a small plan, those VRP values may not become knowable until the end of the event year. Furthermore, for such event years, the testing date does not fall in a year subject to pre-PPA 2006 funding and premium rules. While neither the event-year VRP values nor the prior year's VRP values are in general determined as of the testing date, the prior year's VRP values (determined as of the prior year's valuation date) are knowable on the testing date. Accordingly, it is reasonable and practical to apply the reportable events regulation for

[2] 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.

event years beginning in 2009 by using prior-year VRP values as the VRP values determined as of the testing date for the event year.

The Form 1 extension is based on the premise that event-year VRP values, although determined as of the event-year testing date, may not in fact be calculated until the event-year VRP due date. Where the Form 1 extension is available, the filing due date is extended until 30 days after the VRP filing deadline for the event year if the criteria for one of the funding-based waivers were satisfied for the prior year. Under Technical Update 07-2, funding-based waiver criteria for event years beginning in 2008 were to be determined under the premium rules in effect before 2008 (*i.e.*, ignoring PPA 2006 changes). For events that occur in an event year beginning in 2009, VRP values for 2008 that have been determined under PPA 2006 rules will generally be known, and it may be inconvenient to determine 2008 VRP values based on old law. On the other hand, some filers (such as small plans with year-end UVB valuation dates) may not know new-law 2008 VRP values at the beginning of the 2009 event year but may know or be able to calculate old-law values, as Technical Update 07-2 provided for. Accordingly, it is reasonable to apply the Form 1 extension for event years beginning in 2009 by using as 2008 VRP values either those determined under PPA 2006 rules or those determined under Technical Update 07-2. Since Technical Update 07-2 did not apply old-law rules to the determination of the VRP itself, the 2008 VRP determined under PPA 2006 rules is the same as the 2008 VRP determined under Technical Update 07-2.

III. Guidance

The value of assets and vested benefits and the amount of UVBs as of the testing date for an event year beginning in 2009 are to be determined for purposes of subparts A through C of the reportable events regulation in the same manner as for premiums for the plan year preceding the event year under the premium regulations as amended in 2008.[3] In applying the "Form 1 extension" for an event year beginning in 2009, the value of assets and vested benefits and the amount of UVBs for 2008 may be determined either under the rules in Technical Update 07-2 or under the premium rules applicable to 2008 under PPA 2006 and PBGC's premium regulations as amended in 2008. This Technical Update 08-5 has no effect on subpart D of part 4043, Notice of Failure to Make Required Contributions.

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.

[3] As under Technical Update 07-2, the waiver based on "no variable-rate premium" is unaffected by this Technical Update 08-3. 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 2009, 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 2009 plan year, which under the 2008 premium amendments 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 2008 plan year, an extension would run to 30 days after the due date for the variable-rate premium for the 2009 plan year. Under the proposed premium rule, for a small plan, this generally would be April 30, 2010.

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

V. <u>Disclaimer</u>

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 (which you are not required to do), you may contact the PBGC.

VI. <u>PBGC Contact Points</u>

For questions about this Technical Update 08-5, contact Deborah Murphy of the Legislative and Regulatory Department at (202) 326-4223, ext. 3451, or 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.