

TECHNICAL UPDATE 09-4

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, DC 20005-4026



_____, 2009

Technical Update 09-4: Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for 2010 Plan Years.

This Technical Update 09-4 provides Pension Benefit Guaranty Corporation (PBGC) guidance for plan years beginning in 2010 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).

This Technical Update addresses two topics:

- Funding-related determinations for purposes of waivers, extensions, and the advance reporting threshold test.
- Missed quarterly contributions.

Regarding funding-related determinations for purposes of waivers, extensions, and the advance reporting threshold test, this Technical Update provides in general 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 2010 in the same manner as for variable-rate premiums (VRPs) for the preceding plan year.

Regarding missed quarterly contributions, this Technical Update provides in general that for purposes of the reportable events regulation, if a required quarterly contribution for the 2010 plan year is not timely made to a plan, and the failure to make the contribution is not motivated by financial inability, the reporting requirement under § 4043.25 of the reportable events regulation —

(1) is waived if the plan has fewer than 25 participants for the prior plan year, and

(2) if the plan has at least 25 but fewer than 100 participants for the prior plan year, will be considered satisfied if a simplified notice is filed with PBGC by the time the first missed-quarterly reportable event report for the 2010 plan year would otherwise be due.

PBGC expects to supersede the guidance in this Technical Update with a final rule amending the reportable events regulation sometime during 2010, as discussed below.

I. Background

ERISA section 4043 and subparts A through C of the reportable events regulation require that PBGC be notified of certain “reportable events.” In some cases, where (among other things) a “threshold test” is met, advance reporting is required. The reportable events regulation provides for waivers and extensions, some of which (“funding-based” waivers and extensions) are based on quantities used in calculating VRPs — assets, vested benefits, and UVBs (“VRP values”) — for the plan year in which the event occurs or becomes effective, calculated as of the “testing date” for that year.

The Pension Protection Act of 2006 (PPA 2006) modified the way the VRP is determined, and PBGC has implemented those modifications in its premium regulations. Pending amendment of the reportable events regulation to conform to and implement the changes, PBGC issued two Technical Updates to provide temporary guidance about how to apply the advance reporting threshold test and the funding-based waivers and extensions under the reportable events regulation: Technical Update 07-2 (dealing with event years beginning in 2008) and Technical Update 09-1 (dealing with event years beginning in 2009).

One reportable event, described in § 4043.25 of the reportable events regulation, is the failure to timely make a required funding contribution, including a required quarterly contribution. In Technical Update 09-3, PBGC provided a waiver of this reporting requirement for certain small plans, and an alternative method of compliance with the reporting requirement for certain other small plans, with respect to quarterly contributions for plan years beginning in 2009.

On _____, 2009, PBGC published (at __ FR _____) a [proposed rule](#) to amend the reportable events regulation to accommodate the changes to the VRP rules. The proposed rule would also eliminate most automatic waivers and extensions and would require reporting of a missed quarterly contribution without regard to plan size or the motivation for missing the contribution. Under the proposed rule, the amendments would apply to post-event reports for reportable events occurring on or after the effective date of the final rule and to advance reports due on or after the effective date of the final rule. PBGC expects the final rule to be effective sometime after the beginning of 2010. Accordingly, there is a need for interim guidance for 2010 as to compliance with the existing (unamended) regulation for reportable events to which the final rule will not apply.

II. Discussion.

To provide interim guidance for 2010, PBGC in this Technical Update is extending the guidance in Technical Updates 09-1 and 09-3 until the amendments to the reportable events regulation become effective — except for the guidance in Technical Update 09-1 regarding the Form 1 extension. As the following discussion explains, the guidance previously provided for applying the Form 1 extension is not needed for 2010.

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. For 2009, the “look-back” year was 2008, for which, under Technical Update 07-2, funding-based waiver criteria were to be determined under the premium rules in effect before 2008 (*i.e.*, ignoring PPA 2006 changes). Thus Technical Update 09-1 permitted the Form 1 extension to be applied using VRP values determined either under either pre- or post-PPA 2006 rules.

For events that occur in an event year beginning in 2010, the look-back year is 2009, for which, under Technical Update 09-1, VRP values are to be determined in the same manner as for premiums for the prior plan year (generally 2008, to which post-PPA 2006 premium rules apply). There is no choice of using pre-PPA 2006 rules, and indeed no choice is needed for purposes of the Form 1 extension, because by the beginning of the 2010 plan year, 2008 VRP values under post-PPA 2006 law will be known. Accordingly, no special guidance for the Form 1 extension is needed for 2010.

III. Guidance

Funding-related determinations for purposes of waivers, extensions, and advance reporting. The VRP values (the amount of UVBs and the value of assets and vested benefits) as of the testing date to be used for an event year beginning in 2010 for purposes of subparts A through C of the reportable events regulation are those determined for premium purposes for the plan year preceding the event year under the premium regulations as amended to conform with PPA 2006.¹ For example, in the case of a calendar year plan with a January 1 valuation date, the VRP values determined as of January 1, 2009, for purposes of the 2009 variable rate premium are also used for applying the \$50 million advance-reporting threshold test for events becoming effective in 2010.

Missed quarterly contributions — plans with fewer than 25 participants. In the case of a plan that had fewer than 25 participants for whom flat-rate premiums were payable for the 2009 plan year, the reporting requirement under § 4043.25 of the reportable events regulation is waived with respect to a failure to make one or more required quarterly contributions for the 2010 plan year under section 303(j)(3) of ERISA if financial inability to make the contribution(s) is not the reason for not making the contribution(s).

Missed quarterly contributions — plans with 25 or more but fewer than 100 participants. In the case of a plan that had 25 or more but fewer than 100 participants for whom flat-rate premiums were payable for the 2009 plan year, the reporting requirement under § 4043.25 of the reportable events regulation will be considered satisfied with respect to a failure to make one or more required quarterly contributions for the 2010 plan year under section 303(j)(3) of ERISA if

¹ The waiver based on “no variable-rate premium” is unaffected by this Technical Update.

financial inability to make the contribution(s) is not the reason for not making the contribution(s) and if, by the time the first missed-quarterly reportable event report for the 2010 plan year would otherwise be due, the person(s) that would be required to report (or a duly authorized representative) file(s) with PBGC a notice stating —

- (1) the name of the plan and the Employer Identification Number and Plan Number most recently reported for the plan in a PBGC premium filing;
- (2) the date the 2010 plan year began;
- (3) that a quarterly contribution to the plan for the 2010 plan year has not been (or will not be) timely made;
- (4) that financial inability to make the contribution is not the reason for not making the contribution;
- (5) the last day for satisfying the minimum funding requirement for the plan for the 2010 plan year (the “final payment date”);
- (6) that the filer understands that if the minimum funding requirement for the plan is not satisfied by the final payment date, a reportable event notice must be filed under the reportable events regulation; and
- (7) the name, telephone number, and e-mail address of a person (who may be the filer) whom PBGC may contact for additional information.

Reports must be made either in the manner required for reportable events reports generally or by e-mail to post-event.report@pbgc.gov. See Technical Update 09-3 for sample notice language.

As noted above, PBGC has issued a proposed rule to amend the reportable events regulation, and unless the related final rule provides otherwise, that final rule will supersede this Technical Update with respect to reportable events to which the final rule applies.

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 PBGC Form 10-Advance.

This Technical Update has no effect on subpart D of the reportable events regulation, Notice of Failure to Make Required Contributions.

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

VI. PBGC Contact Points

For questions about this Technical Update 09-1, 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.