

TECHNICAL UPDATE 10-1

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Technical Update 10-1: Multiemployer Plans – Clarification of Schedule R (Form 5500) Instructions and Partial Reporting Relief for 2009

I. Background

Under section 103(f)(2)(C) of ERISA, as amended by the Pension Protection Act of 2006, multiemployer defined benefit pension plans are required to include in the annual report, as of the end of the plan year to which the report relates, “the number of participants under the plan on whose behalf no contributions were made by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years.” The provision is effective for plan years beginning after 2007. Beginning with the 2009 plan year, this information is required to be reported on Lines 14a through 14c of the Schedule R (Form 5500).¹

The Instructions for Line 14 require the plan to count only those participants whose last contributing employer had withdrawn from the plan by the beginning of the relevant plan year. For this limited purpose, the plan is to disregard retired and deferred vested participants whose last contributing employer had not withdrawn from the plan by the beginning of the relevant plan year (even if the employer made no contributions for the plan year).² The Instructions state that withdrawal liability payments are not to be treated as contributions for purposes of determining the number of participants on Line 14.

This Technical Update clarifies the Line 14 Instructions for the Schedule R (Form 5500) and provides partial reporting relief for completing Line 14 for the 2009 plan year.

II. Clarification of Line 14 Instructions – Last Employer Rule

To reduce plans’ recordkeeping burdens, the information required for Line 14 relates to the number of inactive vested participants (retired or deferred vested participants) whose last contributing employer had withdrawn from the plan. This Technical Update clarifies that for purposes of completing Line 14, a plan is not required to review the status of any employers that made contributions on behalf of a participant for covered service prior to the participant’s last contributing employer. If the participant’s last contributing employer had withdrawn from the plan by the beginning of the relevant plan year, the participant is counted on Line 14.

Example: Participant A is a deferred vested participant for the 2009 plan year. Employer X made contributions on Participant A’s behalf from 1985 through 1989, and Employer Y made contributions on Participant A’s behalf from 1990 through 2003. Participant A did not thereafter work for any employer that made contributions to the plan. To answer

¹ Under section 104(d)(1)(D) of ERISA, this information must be furnished to each employer with an obligation to contribute to the plan and each employee organization within 30 days after the due date for the filing of the annual report.

² The definitions of withdrawal are those contained in section 4203 of ERISA.

Line 14 of the 2009 Schedule R, the plan limits its review to whether Employer Y had withdrawn from the plan by the beginning of the 2009 plan year (disregarding whether Employer X had withdrawn from the plan). The plan determines that Employer Y withdrew from the plan in 2005, and includes Participant A in the number of participants on whose behalf no contributions were made by an employer as an employer of the participant on Lines 14a through 14c for the 2009, 2008, and 2007 plan years.

This Technical Update further clarifies that, under an alternative approach, a plan may count as participants on Lines 14a through 14c only those participants whose last contributing employer and all prior contributing employers had withdrawn from the plan by the beginning of the relevant plan year. Under this approach, the plan would review the list of all current contributing employers (employers that had not withdrawn from the plan by the beginning of the relevant plan year), and include on Line 14 only those inactive participants in the applicable plan year who had no covered service with any of these employers. A plan using this approach must so indicate on an attachment to the Schedule R.

III. Partial Relief for the 2009 Plan Year

A. Reasonable approximation of number of participants

Under this Technical Update, a plan must make a reasonable, good faith effort to provide all available data in accordance with the Instructions for Line 14. If a plan cannot reasonably obtain this data because of the need to modify the plan's records systems to capture such information, the plan may provide a reasonable approximation of the number of participants required to be reported on Line 14 of the 2009 Schedule R. An example of a reasonable approximation would be one based on a random sampling of the lesser of 25 percent of all inactive participants or 300 inactive participants.³ Using this approach, the plan would determine the percentage of the sampled participants whose last contributing employer had withdrawn from the plan by the beginning of the 2009 plan year,⁴ and would apply this percentage to the plan's total inactive participant population for the 2009 plan year. The same approach would apply for the preceding two plan years. A plan taking advantage of this relief must identify the data on Line 14 as a reasonable approximation of the participant count and describe the basis for the approximation on an attachment to the Schedule R.

Example: The plan has a total of 3,000 retired and deferred vested participants for the 2009 plan year. The plan conducts a review of the last contributing employer of a sampling of 300 of those participants, and finds that the last contributing employer of 100 of those 300 participants had withdrawn from the plan by the beginning of the 2009 plan year. The plan enters the number 1,000 (33.33% of 3,000) on Line 14a. On an attachment to the 2009 Schedule R, the plan identifies the data on Line 14a as a reasonable approximation based on a sampling of 300 out of 3,000 inactive participants. The plan uses this same sample to determine the number of participants to report on

³ This basis for sampling would limit the review to a manageable but significant number of participants in the case of both smaller and larger plans; the review of 25% of inactive participants for plans with up to 1,200 inactive participants would be reasonable, while larger plans would be limited to a review of 300 participants.

⁴ The plan could instead review all the employers of the participant, as described in Part II above.

Lines 14b and 14c. For Line 14b, the plan determines how many of the sample participants with a withdrawn employer as of the 2009 plan year (100 out of 300) had an employer that withdrew from the plan during 2008. The plan subtracts that number from both the number of sample participants with a withdrawn employer for 2009 (numerator), and the total sample size (denominator). The plan then multiplies the new fraction by the number of inactive participants for the 2008 plan year (2008 Form 5500, Line 7b plus Line 7c) to get the number for Line 14b. If the contributing employers of 8 of the 100 participants withdrew from the plan during 2008, and the plan had 2,500 inactive participants for 2008, then Line 14b would be 788 — $((100-8) \text{ divided by } (300-8)) \text{ times } 2,500$. The plan would perform a similar calculation to report the number for Line 14c.

B. Alternative method of compliance – number of participants of withdrawn employers

As an alternative to the method described in III.A. above, a plan may make a partial report of the information required on Line 14 of the 2009 Schedule R by reporting the number of employers that withdrew from the plan beginning in the 1998 plan year through the end of the plan year preceding the relevant plan year (2009, 2008, or 2007), and the number of participants on whose behalf these employers made contributions to the plan. For this purpose, the number of participants would be based on the largest number of participants on whose behalf each employer had an obligation to contribute during the 5 plan years preceding the employer's withdrawal. A plan may estimate the number of participants of each withdrawn employer by translating the highest number of contribution base units during the 5 plan years into the number of participants. On Line 14, the plan would enter the aggregate number of participants of all employers determined as described above (*i.e.*, on Line 14a, the number of participants of employers that withdrew beginning in 1998 through 2008; on Line 14b, the number of participants of employers that withdrew beginning in 1998 through 2007; and on Line 14c, the number of participants of employers that withdrew beginning in 1998 through 2006). On an attachment to the Schedule R for the 2009 plan year, the plan would identify the data on Line 14 as reflecting the alternative method of compliance under this Technical Update 10-1 and report the aggregate number of employers that withdrew from the plan for each relevant period under Lines 14a through 14c. The plan may take additional earlier years into account in its review.

IV. 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.

V. PBGC Contact Point

For questions about this Technical Update 10-1, contact Constance Markakis of the Legislative and Regulatory Department at (202) 326-4223, ext. 6779, or markakis.constance@pbgc.gov, or Michael Packard of the Policy, Research and Analysis Department at (202) 326-4000, ext. 3429, or packard.michael2@pbgc.gov.