

PBGC: Quarterly Contribution Relief for Small Plans

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On April 30, 2009, PBGC issued Technical Update 09-3, "Reportable Events; Missed Quarterly Contributions; Reporting Relief for Small Plans; Guidance for 2009 Plan Years"

(http://www.asppa.org/pdf_files/PBGC_Technical_Update_09-3.pdf). Earlier this year, PBGC had rescinded a long-standing waiver of missed quarterly contribution reporting (Form 10) for small plans (see asap 09-16). The relief in Technical Update 09-3 is in response to a letter from ASPPA and the ASPPA College of Pension Actuaries (ACOPA) and a follow up meeting asking PBGC to reinstate the previous reporting waiver. Although PBGC has not reinstated the previous waiver, it has acknowledged, with Technical Update 09-3, that relief for many plans is appropriate.

Technical Update 09-3 grants reporting relief for small plans (fewer than 100 participants for the prior plan year) that miss required quarterly contributions. The relief is available if the failure to make any quarterly contribution was not "motivated by financial inability". Therefore, plans that have missed current year quarterly contributions that have a prior year funding deficiency or a sponsor in financial distress must still file PBGC Form 10.

ASPPA and ACOPA argued that for most small plans, failure to make quarterly contributions is not indicative of financial problems - quarterly contributions are not made because the

actuarial valuation has not been completed the amount of the required contribution is not known and the employer is not averse to paying the additional interest charge. Therefore, Form 10 filings would not provide meaningful information.

If the motivation for missing quarterly contributions is not financial:

1. Required reporting of late quarterly deposits for 2009 is waived for plans with less than 25 participants in the prior year, and
2. Simplified reporting may be used to satisfy the required reporting if there were 25 or more participants, but less than 100 participants in the prior plan year.

For purposes of the relief, the number of participants is the number for whom the flat-rate premium was paid for the 2008 plan year.

Simplified reporting for those plans of 25 to 99 participants is done only once, instead of for each missed quarterly deposit. The simplified reporting is due by the reporting date for the first missed quarterly deposit or contribution (for example, due by May 15, 2009 for missing the April 15th quarterly contribution for a 2009 calendar year plan). The report can be mailed

or can be emailed to post-event.report@pbgc.gov by the parties designated in the technical update.

The information contained in the simplified reporting must include:

- (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 2009 plan year began;
- (3) that a quarterly contribution to the plan for the 2009 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 2009 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.

The technical update also includes sample notice language.

For plans with 100 or more participants in the prior year, reporting of missed quarterly contributions to PBGC will continue to be in accordance with the instructions to PBGC Form 10.

The relief is temporary – for 2009 plan years only. The relief applies only to missed *quarterly* contributions. As noted in the simplified reporting, if a plan qualifies for the relief, but then for any reason fails to make the full minimum required contribution within 8 ½ months after the end of the plan year, PBGC Form 10 must be filed within 30 days after the final contribution due date.