PBGC Issues

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PBGC Issues - Agenda

• New Rules on:
  – Standard Termination
  – Reportable Events for Small Plans
  – Premiums
  – My PAA

• Premium examples

Standard Terminaton Notice / Form 500

New filing requirement

• Must submit:
  - Copy of Notice of Intent to Terminate (NOIT)
  - Sample Notice of Plan Benefits (NOPB) for all applicable categories
    ✓ Actives
    ✓ Retirees
    ✓ Separated vesteds and non-vesteds
Standard Termination Notice / Form 500 (Cont.)

• PBGC reviews Notices within its 60-day review period

• PBGC may issue a Notice of Noncompliance or require issuance of corrected Notices

• PBGC will follow its regulations, which allow consideration of plan participants’ interests as well as correction of good faith errors, to determine if nullification is appropriate

Post-Distribution Certification

Form 501

New Filing Requirement - must submit:

• Proof of Distributions
• Copy of most recent complete plan document and any amendments (Prototype and Adoption Agreement)
Post-Distribution Certification Form 501

- Proof of distributions and plan documents may be sent electronically
- PBGC’s secure upload link is http://pbgc.leapfile.com
- Will need email address of recipient at PBGC
- Email addresses at PBGC are the employees’: lastname.firstname@pbgc.gov

Proof of Distributions

Irrevocable Commitments:

- Copy of annuity contract(s), annuity certificates, written notices to participants identifying –
  - Contact information for annuity provider
  - Group contract numbers
  - List of participants
Proof of Distributions

Lump Sums:
• Cancelled checks
• Bank statement with names and distribution amounts
• Can cause delay in submitting PDC
  – PDC is due within 30 days after last distribution date
  – Penalty is assessed only to the extent filing is more than 90 days after distribution deadline
  – PBGC waives penalty if delay is for reasonable cause

Proof of Distribution

• Rollovers/Direct Deposits
  – Provide documentation from financial institution
  – 1099-R’s suggest payment, don’t prove it
Reportable Events

Reportable Events: Overview

• What is a Reportable Event?
• Importance of Reportable Events
• Former Reportable Events Regulation
  – Sometimes referred to as “Current Reg” as still effective until applicability date of final rule
• Why the Reg was Changed
• Final Rule
• Benefits of Final Rule
• Forms and Instructions
What is a Reportable Event?

- Events may be indicative of a need to terminate the plan
- Most events reportable within 30 days after event occurs; penalties apply if filing late

### Corporate Events
1. Extraordinary Dividend or Stock Redemption
2. Change in Contributing Sponsor or Controlled Group
3. Bankruptcy
4. Liquidation
5. Loan Default

### Plan Events
1. Active Participant Reduction
2. Transfer of Benefit Liabilities
3. Distribution to a Substantial Owner
4. Failure to Make a Required Contribution
5. Application for a Funding Waiver
6. Inability to Pay Benefits When Due

Importance of Reportable Events

- Early intervention can prevent plan termination; PBGC works to encourage plan continuation
- If plan termination inevitable, early intervention can maximize recovery of plan assets for benefit of participants and lessen the need to use PBGC funds
- PBGC often notified plan needs to terminate after assets depleted or sponsor out of business
- All involved (actuaries, TPAs, sponsor) should notify us if continuation of plan is at risk
Former Reportable Events Regulation

• Waivers under former regulation include:

  - Small Plans
  - Small Transactions
  - Plan Funding ≥ 80%
  - Public Companies

Note: Not all waivers apply to all events

Former Reg Outdated and Waivers Ineffective

• PPA made changes to funding concepts that needed to be incorporated into the regulation

• The system of waivers caused undue burden and ineffective reporting:
  - PBGC did not receive reports it needed
  - PBGC received reports from plans that do not truly pose risk to the pension insurance system
New Reportable Events Regulation

• Applies to events occurring on or after 1/1/16
• No changes to due dates
  – Generally, 30 days after event occurs
  – In some cases, 30 days after plan administrator knows (or has reason to know) that event occurred
• Mandatory e-filing
  – Emailing pdf version of Form 10 is acceptable
  – Optional new “portal” method to be discussed later

New Reportable Events Regulation
Small Plan Waivers

• “Small” defined
  – Same as for premiums (100 or fewer participants)
  – Based on prior year’s premium filing
• Small plans waived from reporting certain events:
  – Extraordinary Dividend or Stock Redemption
  – Active Participant Reduction
  – Change in Controlled Group
  – Transfer of Benefit Liabilities
  – Missed Quarterlies
New Reportable Events Regulation

• Other notable changes re: waivers
  – New waivers
    • Tied to financial health of the sponsor
    • Public companies
  – Funding based waiver modified: No VRP (100% funded)
• Small plans generally won’t need/use these waivers
  – With one exception, where these waivers apply, the small plan waiver also applies
  – Exception: “distribution to substantial owner” event
    • No small plan waiver
    • Financial health and “No VRP” waivers apply

New Reportable Events Regulation

Distribution to substantial owner

• Event definition expanded to include:
  – Distribution to owner during 1-year is more than 1% of year-end plan assets as reported on prior two year’s 5500.
  – Aggregate distributions to all owners during 1-year is more than 5% (same asset measure)
• One time reporting for substantial owners receiving benefit in an annuity form
• New reporting waivers
New Reportable Events Regulation

Corporate Events

Bankruptcy, liquidation or loan default

• In court bankruptcies no longer need to be reported
• Liquidations – no change
• Loan default pertains to loans greater than $10 million; most waivers eliminated

New Reportable Events Regulation

Failure to make a required contribution event

• Companies often fail to report
  – Lowest compliance rate of all reportable events
• Reporting waived if:
  – Reason contribution missed solely due to not waiving a credit balance timely,
  – Contribution made up within 30 days, or
  – For small plans only, missed contribution is a quarterly
• Missed final contribution MUST be reported regardless of plan size (i.e., contribution due 9/15/2016 for 2015 calendar year plan)
New Reportable Events Regulation

Other events

- Inability to Pay Benefits When Due
  - Time limit of 2 months does not apply to delay in paying a missing payee
- Application for Funding Waiver
  - Submitting application to IRS is not sufficient
  - Need to report to PBGC also

Reportable Events Forms and Instructions (Form 10)

- Pre-2016 events
  - Current (“old”) regulation applies
  - Applicable forms and instructions revised 9/1/15 and available on PBGC’s website
  - Enhanced requirements re: actuarial information
  - Signature and certification on completeness and accuracy
- Post 2015 events
  - Forms will be further revised to reflect new rules
  - Will be posted before year-end
Proposed Changes to 4010 Regulation

4010 reporting

• Generally just for large companies/plans
• Reporting required if any plan in controlled group has an FTAP < 80%
• FTAP determined w/o regard to stabilization rules
• Reporting waived:
  – Current rule: total underfunding, all plans combined, less than $15 million
  – Proposed change:
    • Total underfunding, all plans combined, less than $15 million, and
    • Total # of participants < 500
• New e-filing portal
PBGC Premiums

• Recent changes
  – First effective for 2014 plan year
  – Biggest changes for small plans
    • Lookback rule for determining variable-rate premium
    • Accelerated due date

• Other changes
  – Accelerated due date for some terminating plans
  – New certification option
  – Change in timing re: certifications for uploaded filings
  – Optional contact information
PBGC Premiums - Due Dates

• Starting with 2015, same due date rules apply to plans of all sizes
  – Small calendar year plan example:
    • 2014: February 17, 2015 (weekend/holiday rule)
    • 2015: October 15, 2015
• Special rules for new and newly covered plans
• Special rules for standard terminations – to be discussed later

PBGC Premiums
Variable Rate Premium Overview

• Rate - $X per $1,000 unfunded vested benefits
• Assumptions used to determine premium liability
  – No changes since PPA was implemented
  – Choice between:
    • Standard (spot segment rates), and
    • Alternative (whatever is used for funding, but w/o regard to stabilization rules)
  – Whichever option is used, must be used for at least 5 years
PBGC Premiums
VRPs – when to measure UVBs

• “UVB valuation date” - same valuation date used for funding purposes
• Regardless of valuation date, exclude benefits accrued during plan year
• Which year’s valuation date?
  – Default: Lookback year (use 2014 valuation for 2015 VRP)
  – Plans can “opt out” of the lookback rule (subject to certain constraints)
    • Opting out generally a one-time thing
    • Opting out doesn’t work for plans with year-end valuation dates

PBGC Premiums
Opting out of lookback rule

• Automatic approval to opt out for 2014 VRP
  – No official election required
  – Tied to whatever’s reported as the UVB valuation date
• PBGC consent generally required to opt back in (or out) for a future year.
• Permission to opt-out after 2014 isn’t required:
  – The first time UVBs are reported
    • Newer plans
    • Plans paying small-employer cap and not reporting UVBs
  – The first year a large plan becomes small
PBGC Premiums

Requesting Permission

- Send an email to premiums@pbgc.gov at least 60 days before due date
- Subject line: “Request re: lookback rule”
- In body of email
  - Identify plan
  - Explain the reason the plan wants to make the change

PBGC Premiums

UVB valuation date vs. participant count date

- Participant count date
  - Date for counting participants for flat-rate premium
  - Tied to plan year, not valuation date
  - Generally last day of prior plan year.
- UVB valuation date
  - Date for measuring UVBs for VRP purposes
  - Always tied to funding valuation date
  - Could be prior or current year’s valuations date (depending on whether lookback rule is used)
- The two are usually different
- The two are the same if a small plan with a year-end valuation date uses the lookback rule for determining UVBs
PBGC Premiums
Which participants count

• Anyone for whom the plan has Benefit Liabilities as of the Participant Count Date (whether active, inactive, retired, or deceased).

• PBGC Participant count may not match the 5500 Participant count for the same Plan Year

VRP Exemptions for On-going Plans

• New or newly covered plans
• Plans with no vested benefits (as of UVB valuation date)
• Interplay of these two exemptions may lead to two year exemption for some plans
  – Consider a new plan with no vested benefits as of the UVB valuation date for the first year.
    • First year: Plan qualifies for “New Plan” exemption
    • Second year, if lookback rule is used, plan qualifies for “No Vested Benefits” exemptions
Standard Termination VRP exemptions

• Final distribution during the plan year exemption
  – Exemption can be claimed even if not fully closed out at time of filing
    • Leave “date of final distribution” item blank (item 13 of illustrative form)
    • No need to amend later when date is known
    • PBGC system will update that information when Form 501 has been processed
  – If the distribution doesn’t end up happening by year end, filing must be amended
    • Any VRP owed will be considered late
    • Late fees will likely be assessed

(CONT)

• Final distribution during the plan year exemption (CONT)
  – If you’re not certain the plan will be closed out by year end, might be safer to skip the exemption and have the PA pay the calculated VRP.
  – If distribution does happen before year end, you can request a refund.
  – PBGC will know about distribution from Form 501, so no need to amend filing necessary.

• To request a refund in this situation for the VRP and any proration (if applicable), email premiums@pbgc.gov
Premium Rates

<table>
<thead>
<tr>
<th>Year</th>
<th>Single-employer Plans</th>
<th>Multis</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Flat</td>
<td>Variable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rate per $1,000 of UVBs</td>
</tr>
<tr>
<td>2015</td>
<td>$57</td>
<td>$24</td>
</tr>
<tr>
<td>2016</td>
<td>$64</td>
<td>$29*</td>
</tr>
</tbody>
</table>

* Subject to indexing and therefore, might be higher than what’s shown above. After 2016, all rates will be subject to indexing.

- Small-employer cap still applies to VRP
  - $5 * # of participants

PBGC’s MyPAA

- All PBGC Comprehensive Premium Filings must be submitted online through the PBGC’s My Plan Administration Account (MyPAA)
- **Manually** fill in the data within the MyPAA screens. Must have an account for each Plan.
- **Import** operates exactly the same as above except the data entries are imported via xml file.
- **Upload** the data from an xml file. Filing cannot be reviewed or edited. Only the person doing the upload needs a single MyPAA account.
PBGC’s MyPAA

• **Import method**
  – Assume the ‘user’ of the system is the Filing Coordinator, and is either the TPA or actuary.
  – Certification is required by Plan Administrator (PA) and actuary.
  – Both PA and actuary can certify electronically.
  – The alternative is for the user to electronically certify on behalf of PA (or actuary).
  – Must first secure hard signature certifications.

PBGC’s MyPAA

• If user is certifying on behalf of PA, permissions should be set as follows:
PBGC’s MyPAA

• In practice, task list might look like this while waiting for the PA signature:

Filing Task List

- View/Edit Filing
  - The filing contains all the required information; however, a complete filing does not necessarily indicate that there are no errors. To review warning messages related to common mistakes, click the View button.
- Sign
  - Sign as Plan Administrator or PA Representative
- Enrolled Actuary e-signature completed
  - 3:36 AM, 5/26/2016 Eastern Time
- Authorization alternative completed
  - Payment alternative selected: Paper Check
  - 3:31 AM, 5/26/2016 Eastern Time

PBGC’s MyPAA

• Upload Method – change in manual certification procedures
  – In the past, actuary could submit filing before the PA had signed a hard copy.
  – That option is no longer available.
  – Now: PA’s hard copy certification must be received before filing can be uploaded
    • With new certification, uploader is certifying that he/she has seen the PA’s manual certification.
  – Revised process fairly consistent with 5500 e-filing manual certification rules
    • One difference – for 5500, scanned version of hard copy with manual signature gets attached to e-filing. No such requirement for premium filing
Examples

Example 1 – Flat Rate Premium - 2015

• New plan established 1/1/15 covers 2 employees
• No past Service Benefits.
• 2/20 vesting excluding service prior to effective date.
• 2015 PBGC Participant Count Date = 1/1/15

Examples

Example 1 – continued

• Participant Count = 0
• Flat Rate Premium = -0
• Premium filing still required
Examples

Example 2 – Flat Rate Premium – 2016

• 2016 Participant Count Date = 12/31/15
• Participant count = 2 (even though benefits are not yet vested)
• Flat Rate Premium = $64 x 2 = $128

Examples

Example 3 – UVB for 2015 BOY Val

• 2015 UVB Valuation Date for Calendar Plan is 1/1/15.
• Benefits earned on 1/1/15, valued on 1/1/15
• Assets on 1/1/15 including 2014 contributions made after val date (but before filing date)
• 2015 UVB includes 2014 benefits and contributions (if deposited by filing date).
Examples

Example 4 – UVB for 2015 EOY Val

• Benefits earned on 1/1/15, valued on 12/31/15
• Assets on 12/31/15 excluding any 2015 Plan Year contributions deposited before year end.

PBGC Premiums – VRP

Example 5A – VRP BOY Val – No Lookback

• Plan Effective Date: 1/1/13
• 3 year cliff vesting excluding YOS prior to eff date.
• Participants hired by 1/1/13 are 0% vested until mid year 2015
• 25 Participants in plan on 1/1/13
• 26 Participants on 7/1/15
PBGC Premiums – VRP

Example 5A – VRP BOY Val - No Lookback Cont’d

• 2015 PBGC filing
• Participant Count Date = 12/31/14
• Participant Count = 25
• Flat Rate Premium = 25 * $57 = $1,425
• UVB Valuation Date = 1/1/15
  – UVB = -0-
  – VRP = -0-
• Total Premium = $1,425

PBGC Premiums – VRP

Example 5A – VRP BOY Val - No Lookback Cont’d

• 2016 PBGC filing
• Participant Count Date = 12/31/15
• Participant Count = 26
• Flat Rate Premium = 26 * $64 = $1,664
• UVB Valuation Date = 1/1/16 (participants are vested)
• 1/1/16 Premium Funding Target = 874,000
• 1/1/16 FMV Assets = 800,000
PBGC Premiums – VRP

Example 5A – VRP BOY Val - No Lookback Cont’d

• UVB = 874,000 – 800,000 = 74,000 = $75,000
• Uncapped Premium = $75,000 x .029* = $2,175
• Total Premium = $1,664 + $2,175 = $3,839

PBGC Premiums – VRP

Example 5B – VRP BOY Val – with Lookback

• 2016 PBGC filing (same plan) with Lookback
  Participant Count Date = 12/31/15
• Participant Count = 26
• Same Flat Rate Premium = 26 * $64 = $1,664
• UVB Valuation Date = 1/1/15 (no vested Part.)
• UVB = $-0-
• VRP = $-0-
• Total Premium = $1,664 (vs $3,839)