ASPPA® College of Pension Actuaries

March 24, 2009

Vincent K. Snowbarger
Acting Executive Director
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005

Re: Reporting of missed quarterly contributions

Dear Mr. Snowbarger:

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to ask you to reconsider rescission of the waiver on reporting of missed quarterly contributions for small plans. Because the first filing would be due May 15, it is critical that this decision be revisited as soon as possible.

ASPPA is a national organization of more than 6,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system. All credentialed actuarial members of ASPPA are members of the ASPPA College of Pension Actuaries (ASPPA COPA), which has primary responsibility for the content of comment letters that involve actuarial issues.

Summary of Request

The following is a summary of ASPPA COPA's request. It is described in greater detail in the Discussion of Issue section.

ASPPA COPA strongly recommends that the PBGC reconsider its February 20 announcement that it would no longer waive Reportable Event filings for missed quarterly contributions for small plans. The filings will be an additional administrative expense for small plans, and will not provide PBGC with useful information. ASPPA COPA appreciates PBGC's good intentions, reflected in the concern that "if missed-quarterly reports had been made, PBGC might have been able to work with plan sponsors to avoid the underfunded terminations." However, the reality is that missing quarterly contribution deadlines for a small employer is usually more a matter of reasonable business practices than a sign of a troubled employer about to default on pension promises. Nearly all of the thousands of Form 10 filings you will receive reporting missed quarterly contributions will not require your attention, and the information you will be receiving will not permit you to separate distressed small employers from healthy ones. The rescission of the waiver on Reportable Event reporting for small plans seems to be at odds with the recent final guidance on 4010 reporting, which retains PBGC's focus on larger plans with substantial underfunding.

Discussion of Issue

On February 20, PBGC announced that, effective for 2009 plan years, it would no longer waive Reportable Event filings for small plan sponsors who fail to make timely quarterly contributions. The waiver, which had been in effect since 1997, reflected the PBGC's understanding of special operational factors affecting small plans, especially as they relate to quarterly contributions. Technical Update 97-4, which provided for the initial waiver, explained the waiver by referencing small employer concerns that "many small employers delay making quarterly contributions because the plan's actuarial valuation has not been performed, and they are concerned about being subject to the excise tax under Code section 4972 for nondeductible contributions."

The small employer concerns referenced in 1997 are still true for 2009. For a calendar year 2009 plan, there is a quarterly contribution due on April 15, 2009 if there was a funding shortfall for the 2008 plan year. The quarterly contribution is equal to 25% of the lesser of 90% of the 2009 required contribution and 100% of the 2008 required contribution. Thus, in order to determine if a plan has a quarterly requirement for 2009, the 2008 valuation must be completed. To determine the exact amount of the quarterly requirement, both the 2008 and the 2009 valuations must be completed.

For a vast number of small plans, neither of these valuations will be completed in time to determine the April 15, 2009 quarterly requirement. This is because most small plans make use of end of year valuation dates, and in order to perform the 2008 valuation, both asset and demographic data as of December 31, 2008 must be gathered from the plan administrator and trustee, reviewed and reconciled and then contribution amounts determined. In many cases, this will simply be impossible. Since these plans will be unable to determine if they have a 2008 shortfall in time for the reportable event filing, they will be forced to file a Form 10 to register the possible reportable event.

Another factor that may be unique to small plan sponsors is that many small plans look to maximize the tax deductible contributions for the sponsor. The "penalty" for failure to make a timely quarterly contribution is an additional interest contribution, which increases the available deduction for the sponsor. For this reason, it is a common funding strategy for small plans to never make a timely quarterly and to simply fund the maximum deductible contribution on the due date for the tax return. While the PPA funding rules make this deduction less important, it is unlikely that the changed funding rules or the newly reinstated PBGC reporting will change these long standing practices.

Given the short time frame between the PBGC announcement and the due date for the first quarterly, we have been unable to collect actual data. However, the 2007 Pension Insurance Data Book showed over 13,000 covered plans with fewer than 25 participants, and another 5,000 with 25 to 99 participants. Assuming further attrition in the number of plans since 2007, that still leaves well over 15,000 plans under 100 lives affected by this reporting change. Because of stiff penalties for failure to file, we expect most of these plans under 25 lives, and many of larger "small" plans will file at least once for 2009, and many will be forced to file for all four quarters.

ASPPA and ASPPA COPA have previously discussed the need for the PBGC to consider plans with end of year valuations in crafting their rules and were very disappointed to see this announcement. In addition to the relief sought here, we continue to ask for relief on the due date for the Form 1 filing. Since it is impossible for many plans with end of year valuations to complete the Form 1 both accurately and timely, corrected filings will be required, creating unnecessary administrative expense for small employers.

Recommendation

ASPPA COPA strongly recommends that the PBGC reconsider its February 20 announcement and continue to waive the reporting of missed quarterly contributions for small plans. The volume of forms filed, and the information contained in the forms will not permit PBGC to determine which plans are truly troubled. Requiring a plan that has failed to make payments due within 8 ½ months after the end of the year to report the failure to PBGC within 30 days saves time and money for plan sponsors and the PBGC, and allows PBGC to focus on troubled small employers. The continued reporting waiver for small plans would also be consistent with the recent guidance on 4010 reporting, generally exempting small plans (less than $15 million in unfunded liabilities) from reporting requirements.

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These comments were prepared by ASPPA COPA and ASPPA's Defined Benefit Plan Subcommittee of the Government Affairs Committee, and were primarily authored by Thomas J. Finnegan, MSPA, CPC, Chair. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Teresa T. Bloom, Esq., APM
Chief of Government Affairs

/s/
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/s/
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/s/
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/s/
Thomas J. Finnegan, MSPA, CPC
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