PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2628

RIN 1212–AA78

Annual Financial and Actuarial Information Reporting

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to implement section 4010 of the Employee Retirement Income Security Act of 1974, as amended by the Retirement Protection Act of 1994. Section 4010 requires controlled groups maintaining plans with large amounts of underfunding to submit annually to the PBGC financial and actuarial information as prescribed by the PBGC.

EFFECTIVE DATE: January 19, 1996.

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SUPPLEMENTARY INFORMATION: On July 6, 1995, the PBGC published in the Federal Register (60 FR 35308) a proposed regulation implementing section 4010 of ERISA. The PBGC received over 20 comments. Section 4010 requires a small number of large controlled groups—those with covered pension plans that (1) have more than $50 million in unfunded vested benefits in the aggregate, (2) have missed contributions in excess of $1 million, or (3) have received funding waivers in excess of $1 million—to file annual financial and actuarial information.

Who Must File—$50 Million Test

In response to comments, the final regulation gives controlled groups the option of using 100% of the 30-year Treasury interest rate and the fair market value of assets (instead of 80% of the 30-year rate and the actuarial value of assets) solely for purposes of calculating the $50 million threshold test. These are the standards that will apply for calculating the variable rate premium under ERISA section 4006 after the Secretary of the Treasury adopts revised mortality tables for post-1999 plan years. Consistent with the post-1999 rules, the PBGC is conditioning use of the option on the use of prescribed mortality tables. For now, controlled groups may continue to use GAM–83 mortality tables. If the PBGC amends the mortality tables under its valuation regulation before the Secretary of the Treasury's revised tables go into effect, the updated mortality tables must be used.

The PBGC did not adopt the suggestion that the PBGC waive reporting if the controlled group's plans meet some prescribed funding percentage or are fully funded on an ongoing basis. The absolute size of the underfunding represents a large exposure to the PBGC and, in many cases, to plan participants.

Who Must File—Missed Contributions and Waivers in Excess of $1 Million

In response to comments, the final regulation provides that missed contributions will not lead to a reporting obligation if they are paid within a ten-day grace period. The final regulation also clarifies that, during the amortization period of a minimum funding waiver, the waiver will be considered to be outstanding (thereby requiring reporting) unless there is a credit balance in the funding standard account that is sufficient to pay the outstanding balance of the waiver and not available to satisfy future minimum funding requirements.

Exempt Entities

In response to comments, the final regulation exempts the controlled group from submitting information for de minimis entities (''exempt entities'') and exempts those entities from all reporting requirements. An entity is de minimis if it does not sponsor a nonexempt plan and its revenue, net assets and annual operating income are five percent or less of the controlled group's revenue, net assets and annual operating income. Alternatively, the net asset test or the annual operating income test is satisfied if an entity's net assets or annual operating income, respectively, is $5 million or less.

Commenters suggested that the PBGC exempt certain foreign members and new members of controlled groups from the regulation's requirements. In most cases, foreign corporations should not present problems for controlled groups. A foreign corporation with U.S. subsidiaries or a domestic corporation with foreign subsidiaries will normally include each foreign entity in its consolidated financial statements. The regulation does not require individual financial information concerning a foreign company covered by consolidated financial statements unless it sponsors a U.S. plan. The PBGC will consider waivers or extensions in the limited cases where foreign companies are not included in consolidated financial statements and are not already exempt under the new de minimis exemption.

Other commenters requested a grace period with respect to entities that become members of a controlled group late in the information year. The de minimis rule will deal with many of these situations. Filers may also request waivers or extensions where information about a filer or a plan is not available by the due date because the filer entered the controlled group late in an information year.

Actuarial Information

The proposed regulation required filers to provide the value of plan benefit liabilities and assets, certain participant data matrices, and an actuarial valuation report containing or supplemented with specified information. The final regulation eliminates the requirement that controlled groups routinely submit the participant data matrices. (The PBGC may request this information.) The regulation permits the enrolled actuary to qualify the actuarial certification in the same manner as is permitted for the Form 5500, Schedule B.

Commenters objected to having to determine the value of benefit liabilities using the PBGC's termination assumptions. The PBGC needs this information to determine the risk of a transaction to participants and to premium payers and to determine whether to terminate a plan. Other liability measures do not reflect plan underfunding on a termination basis; they can seriously understate the PBGC's exposure for plans subject to this regulation. The comments confirmed that the cost of calculating benefit liabilities consists mainly of a one-time cost for adding the PBGC's termination assumptions to existing computer programs. The final regulation simplifies the calculation somewhat by providing for use only of the PBGC's annuity methodology (rather than both its annuity and lump sum methodology).

Exempt Plans

The proposed regulation exempted reporting for plans with fewer than 500 participants and plans with no unfunded benefit liabilities (using the PBGC's termination assumptions), other than plans with funding waivers or missed contributions. The final regulation keeps but simplifies this exemption. Solely for exemption purposes, the controlled group may determine the value of a plan's benefit liabilities using the plan's retirement assumptions (instead of the PBGC's expected retirement age assumptions).