



PENSION & BENEFITS



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PBGC

PBGC Intends to Develop New Version Of Proposed Rule on Reportable Events

The Pension Benefit Guaranty Corporation intends to develop a new version of a 2009 proposed regulation on reportable events in response to the Obama administration's regulatory reform initiative and public comments, according to a PBGC spokesman and practitioners in contact with PBGC staff.

PBGC spokesman Jeffrey Speicher confirmed April 20 that the agency intends to reintroduce the regulation.

"This is a very positive development," Harold J. Ashner, a former assistant general counsel at PBGC and now a partner at the law firm Keightley & Ashner in Washington, D.C., told BNA April 20.

"The proposed wholesale elimination of reporting waivers and extensions could have created undue burden for employers and, more important, led to problems under loan and other corporate agreements that reference the reportable events rules," said Ashner, a member of the Enrolled Actuaries Program Committee, which spoke recently to PBGC staff members.

Jim Keightley, a former general counsel at PBGC who is now a partner at Keightley & Ashner, said April 20 that "there was significant public comment urging PBGC to reconsider its proposed approach, and it is now clear that PBGC is willing to do so."

A presidential directive, Executive Order 13563, issued Jan. 18, asked federal agencies to review regulations that might be outmoded, ineffective, insufficient, or excessively burdensome (16 PBD, 1/25/11; 38 BPR 197, 2/1/11).

Blue Book. In response to questions posed by the Enrolled Actuaries Program Committee, PBGC staff members said informally that the agency is assessing how it can revise the reportable events regulation to make it less burdensome and considering whether small plans

should be subject to separate reportable events requirements.

A publication with the summarized answers of PBGC staff was released as the "Blue Book" at the 2011 Enrolled Actuaries Meeting in March.

Reportable Events Proposed Rule. PBGC published the proposed rule in November 2009, intending to eliminate most automatic waivers and filing extensions permitted under existing reportable events regulations and guidance (223 PBD, 11/23/09; 36 BPR 2674, 11/24/09; 74 Fed. Reg. 61,248).

PBGC has said that too many automatic waivers and extensions of existing reporting requirements are depriving the agency of early warnings that it could use to reduce distress terminations (15 PBD, 1/26/10; 37 BPR 250, 2/2/10).

Business officials have said that PBGC's proposed reportable events regulation would seriously interfere with credit arrangements between lenders and companies that sponsor defined benefit pension plans.

ERIC Comments. In a separate response to the executive order, the ERISA Industry Committee released a copy of an April 19 public comment letter to PBGC, asking the agency to consider instituting "a less burdensome regulatory system" that ERIC said would encourage more employers to sponsor defined benefit plans, provide more secure retirement benefits, and increase PBGC's premium base.

Among its recommendations for regulatory change, ERIC asked PBGC to consider:

- creating an advisory group that would meet regularly to review regulations, assess the effect of PBGC's activities on the U.S. private pension system, and identify before regulations are proposed a range of possible unintended consequences that could arise;

- relying on a negotiated rulemaking process instead of traditional rulemaking procedures to develop major regulations; and

- expanding PBGC's board of directors to include outside directors with diverse backgrounds, expertise, and knowledge that would be useful to PBGC.

BY FLORENCE OLSEN

Text of the ERIC letter is at <http://op.bna.com/pen.nsf/r?Open=foln-8g4nwk>. Text of the Blue Book for 2011 is at: <http://www.pbgc.gov/Documents/2011bluebook.pdf>.