

Update on PBGC Legislative and Regulatory Activity

Pension, Profit-Sharing, Welfare, and Other
Compensation Plans

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Overview

- Legislation
 - Flat-rate premium increase
 - Ongoing “save the PBGC” legislative debate
- Final rules
 - Mortality update for termination liability
 - Annual employer reporting
 - E-filing
 - Additional information

Overview (Cont.)

- Proposed rules
 - E-filing of premium information
 - Liability for “cessation of operations”
- PBGC-specific Katrina/Rita relief
- ERISA section 4010 reporting relief
- On the horizon

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Flat-Rate Premium Increase

Sec. 8101 of Deficit Reduction Act of 2005 (Signed by President 2/8/06)

- Per-participant flat-rate increase (2006 plan year)
 - Single-employer: \$30 (up from \$19)
 - Multiemployer: \$8 (up from \$2.60)
 - NOTE: “Safe-harbor” penalty relief for 2006 Form 1-ES must be based on new rates
- Future automatic indexing (SS wage index)

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Flat-Rate Premium Increase (Cont.)

- New premium “exit fee” for distress or involuntary terminations by ongoing employers
 - \$1,250 per participant x 3 years = \$3,750
 - Example: 4,000 participants: \$15 million
 - Effective for plans terminating on/after 1/1/06
 - Exemption for certain pre-10/18/05 bankruptcy petitions
 - 3-year period
 - General rule: starts shortly after termination date
 - Involuntary and certain distress terminations during bankruptcy reorganization proceedings: starts post-reorganization

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“Save the PBGC” Legislative Debate

- S. 1783 (“Pension Security and Transparency Act of 2005”) passed by Senate 11/16/05
- H.R. 2830 (“Pension Protection Act of 2005”) passed by House 12/15/05
- Key issues, differences, etc.
 - Whether employer credit rating should drive “at risk” status
 - Level of “smoothing” of assets and interest rate changes
 - Use of credit balances
 - Transition rules

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“Save the PBGC” Legislative Debate (Cont.)

- Likely/possible PBGC-specific changes include
 - Variable-rate premium (“risk-based” premium)
 - Eliminate full-funding limit exemption
 - Base underfunding directly on new “funding target”
 - Expand from vested benefits to all benefits?
 - Participant Notice (ERISA § 4011) to be required by *all* single-employer plans and moved to Title I
 - Annual employer reporting (ERISA § 4010)
 - Changes to triggers for reporting
 - Greater disclosure of information

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“Save the PBGC” Legislative Debate (Cont.)

- Likely/possible PBGC-specific changes (cont.)
 - Restrictions on payment and/or guarantee of shutdown benefits
 - “Alternative funding agreements”
 - New and small plan premium relief
 - Expansion of missing participants program to terminating DC plans
 - Ability of plans to transfer mandatory \$1K to \$5K cashouts to PBGC

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“Save the PBGC” Legislative Debate (Cont.)

- Next step: conference
- Target for completion/enactment
 - April 15, 2006 (quarterly contribution deadline)
 - But if not enacted by then, can rely on 100% safe harbor using 2005 funding rules

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Mortality Update for Termination Liability

Final Rule (70 Fed. Reg. 72205 (Dec. 2, 2005))

- PBGC’s valuation regulation used to determine
 - Employer liability in distress/involuntary termination
 - Funding of plan benefits by plan assets upon termination
 - Funding of plan benefits by employer liability recoveries
 - Whether plan is sufficient for guaranteed benefits and thus may attempt private-sector closeout
 - Reported benefit liabilities value under ERISA section 4010
 - IRC § 414(l) allocations (optional)

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Mortality Update for Termination Liability (Cont.)

- General approach to valuation
 - Match market annuity pricing
 - PBGC solves for interest “factors” that best “fit” with reported annuity prices and reg-specified mortality
- Outdated reg mortality resulted in
 - Poor “fit” with reported annuity prices
 - Lower interest factors (as compared to those that would have been derived with updated mortality)

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Mortality Update for Termination Liability (Cont.)

- Final rule updates mortality assumptions
 - From GAM-83 to GAM-94 (with 10-year projection)
 - Derived interest factors will be higher
 - But for most plans, no significant effect on overall price
- Limited rulemaking
 - Basic “match the market” valuation approach remains
 - No change to “one-size-fits-all” approach to mortality
 - No effect on private-sector lump sums that still reference PBGC rates (different rate set involved)

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Annual Employer Reporting

Final Rule (70 Fed. Reg. 11540 (Mar. 9, 2005))

- Annual employer report (ERISA section 4010) required if:
 - Aggregate underfunding (on premium basis) *throughout* controlled group > \$50M,
 - Any CG plan has missed contributions > \$1M, *or*
 - Any CG plan has outstanding funding waiver > \$1M
- Must provide identifying, financial, & actuarial information
- Report due 105 days after end of CG fiscal year (*e.g.*, 4/15/05 for 2004 calendar-year filers)

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Annual Employer Reporting (Cont.)

- For reports due on/after 4/15/05
 - Mandatory e-filing (email attachment option permitted for first year)
 - Additional information required
 - Prior year filer who is no longer filer must still “file” to “demonstrate” non-filer status
- For reports due on/after 4/15/06
 - Email attachment option may disappear (must use PBGC application)
 - “Optional” assumptions for \$50M test disappear

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E-Filing of Premium Information

Proposed Rule (70 Fed. Reg. 11592 (Mar. 9, 2005))

- Optional e-filing of premium information currently in effect through “My Plan Administration Account” (“MyPAA”)
 - Available since 2004 plan year
 - Integration with private-sector software available since mid-2005 plan year
 - “Upload” option: no further processing on MyPAA
 - “Import” option (starting with 2006 plan year): further routing, editing, certifying, etc., permitted on MyPAA
 - Payment permitted with or outside MyPAA

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E-Filing of Premium Information

Proposed Rule (70 Fed. Reg. 11592 (Mar. 9, 2005))

- PBGC *proposal* to mandate e-filing of premium information
 - Large plans (500+ participants for *prior* plan year) to e-file starting with all 2006 plan year filings
 - Mandatory for all plans starting with 2007 plan year filings
 - Exemptions available for “good cause”
 - Payment need not be made electronically
- Revised implementation schedule
 - Large plans: 2006 plan year filings made on/after 7/1/06
 - All plans: 2007 and later plan year filings

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Liability for “Cessations of Operations”

Proposed Rule (70 Fed. Reg. 9258 (Feb. 25, 2005))

- ERISA section 4062(e) liability triggered when
 - “Cessation of operations in facility at any location” *and*
 - More than 20% decline in active participants as result
- Liability
 - Satisfied with escrow or bond (5 years)
 - Amount based on allocable share of plan termination liability
- Statutory allocation formula unworkable
 - Relies on M-E withdrawal liability rules that apportion liability based on each employer’s contribution history
 - With *one* employer, allocable share would be 100%

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Liability for “Cessations of Operations” (Cont.)

- PBGC proposal: tie liability to percent separated
 - Simple approach that could work well in simple cases
 - But could overstate/understate liability
- Many open interpretive issues, including
 - Is asset sale covered?
 - What is “facility in any location”?
 - What constitutes a discrete set of “operations”
 - What constitutes a “cessation”?
 - Which separations are as “result” of cessation?
- PBGC to continue to address case-by-case

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PBGC Disaster Relief for Katrina/Rita

Disaster Relief Announcements 05-10, 05-11

- Disaster relief applies where person responsible for meeting PBGC deadline:
 - Is located in disaster area for which IRS has provided Form 5500 disaster extension, or
 - Cannot reasonably obtain information or other assistance needed to meet deadline from service provider, bank, or other person whose operations are directly affected by hurricane

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PBGC Disaster Relief for Katrina/Rita (Cont.)

- Various PBGC deadlines were extended to Feb. 28, 2006 (in certain areas, August 28, 2006)
 - Premiums (but only for penalties, not for interest)
 - Standard terminations (Forms 500/501 and distribution deadline)
 - Distress terminations (Form 601)
 - Post-event reportable event notices (Form 10)
 - Participant notices (ERISA section 4011)
 - Administrative appeal and request for reconsideration deadlines
 - Certain multiemployer deadlines (but only for PBGC enforcement, not for enforcement by others)
 - PBGC deadlines tied to Form 5500 due dates extended by IRS for Katrina/Rita

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PBGC Disaster Relief for Katrina/Rita (Cont.)

- Other PBGC deadlines extendable on case-by-case basis
 - Advance notices of reportable events (Form 10-A)
 - Annual employer reports (ERISA section 4010)
 - Notice of \$1M+ missed contribution (Form 200)
- For additional PBGC relief tied to IRS extension of contribution deadlines, see IRS Notices 2005-60, 2005-84

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ERISA Section 4010 Reporting Relief

- Ability to use PFEA 85% Corporate Rate for \$50 million 4010 Gateway Test expires 12/30/05
- Absent PBGC reporting relief, Snapback 85% Treasury Rate would be required starting 12/31/05
- PBGC Technical Update 06-1 effectively allows continued use of 85% Corporate Rate for Information Years ending 12/31/05 through 6/30/06

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On the Horizon

- Final rule versions of:
 - Liability for “cessation of operations”
 - E-filing of premium information
- Penalty policy
 - Information penalties
 - Premium underpayment penalties
- Reportable events
- Participant Notices (?)
- Multiemployer amendments
- Much more if pension reform legislation passes!

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For Further Information

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