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SPECIAL REPORT

PBGC Issues Final Rule Mandating E-Filing of Premium Information

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On June 1, 2006, the Pension Benefit Guaranty Corporation issued a final rule that is “part of the on-going implementation of the Government Paperwork Elimination Act by the [PBGC] and is consistent with the Office of Management and Budget’s directive to remove regulatory impediments to electronic transactions.”¹ The final rule goes beyond simply “remov[ing] regulatory impediments” to e-filing with PBGC, focusing instead on *requiring* e-filing of premium information under ERISA Section 4007. This article briefly summarizes the final rule, which is available at <http://edocket.access.gpo.gov/2006/pdf/E6-8433.pdf>.

¹ 71 Fed. Reg. 31077.

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Under ERISA Sections 4006 and 4007 and PBGC’s implementing regulations,² the plan administrator of each plan covered by PBGC’s insurance program is required to file certain premium information and to submit the required premium payment. Under PBGC’s existing regulations and policies, the premium information is generally submitted in paper form along with a paper check, although an optional electronic application has been available beginning with filings for the 2004 plan year.

PBGC stated in the preamble to the final rule that it “expects electronic premium filing to be no more burdensome than paper filings for filers generally and will grant exemptions from the electronic filing requirement for good cause in appropriate circumstances.”³

Reason for Change

PBGC explained that the change to mandatory e-filing is needed to improve processing of premium filings, noting that “the capture of data from paper premium forms and the translation of the data into electronic data files is an imperfect process that inevitably gives rise to errors that can be difficult and burdensome to detect and correct. These errors cause problems for both the PBGC and premium filers, because they can lead to the issuance of improper bills for premiums that

² 29 C.F.R. Parts 4006 and 4007.

³ 71 Fed. Reg. 31077, 31080.

have in fact been paid, to delays in the processing of refund requests, to erroneous filing histories, etc.”⁴ PBGC noted that its web-based premium e-filing application, My Plan Administration Account (“My PAA”), which it had introduced for plan years beginning in 2004, “streamlines the premium filing process for users and contributes to making the processing of premium filings faster and more accurate,” concluding that “it has the potential to help reduce the number of erroneous bills, to speed up refund processing, and in general to improve premium collection functions while enhancing service to premium payers.”⁵

Timing of Change

In its March 2005 proposal to require e-filing,⁶ PBGC targeted implementation starting with the 2006 plan year for large plans (those with 500 or more participants, as determined for premium purposes for the prior plan year), with all plans subject to the requirement starting with the 2007 plan year. Thus, large calendar-year plans would have been subject to the new e-filing requirement starting with their Form 1-ES filings due Feb. 28, 2006.

PBGC decided to delay implementation for large plans, subjecting them to the e-filing requirement for the 2006 plan year only for those filings made on or after July 1, 2006.⁷ For example, if a large plan’s plan year begins on May 1, 2006, its estimated flat-rate filing, due June 30, 2006, need not be made electronically if filed on time, but otherwise is subject to the e-filing requirement. A large calendar-year plan would be subject to the e-filing requirement if its final premium filing for the 2006 plan year, due Oct. 16, 2006, is made on or after July 1, 2006, but not if it is made before then (e.g., where the plan owes no variable-rate premium and has overpaid its flat-rate premium through its estimated filing, and seeks to obtain a prompt refund by filing as soon as possible). PBGC explained that this delay in implementation for large plans was in response to several comments expressing concerns about start-up difficulties, concluding that “for large plans, some delay in the proposed January 1, 2006, effective date seems appropriate to provide additional time to make software changes and become familiar with My PAA and the electronic filing process.”⁸

The applicability of mandatory premium e-filing to small plans has not changed from the proposed rule. Thus, for small plans—which make up the majority of PBGC-covered plans—the e-filing requirement will apply, at the earliest, to the filing due (for calendar-year plans) on Oct. 15, 2007.

E-Filing Methods—Integration with Private-Sector Software

The vast majority of premium filings are currently prepared—typically by an outside actuary or other pension practitioner—using private-sector vendor or proprietary software. Fortunately, PBGC integrated My PAA with private-sector software before mandating

e-filing, and is thus able to offer filers a variety of e-filing options.

There are three methods that may be used to meet the new e-filing requirement:⁹

- *My PAA data entry method.* A filer may make a premium filing by entering premium data directly into PBGC’s e-filing application, My PAA. The members of a plan’s premium e-filing “team” (e.g., the plan administrator and the enrolled actuary) would “log[] onto a secure account on the [PBGC’s] Web site . . . , enter[] information in on-line data entry screens, route those premium filings among themselves electronically for editing and for electronic certification, and submit completed filings with the click of a mouse.”

- *Upload method.* To “accommodate[] pension practitioners who may prefer to continue using private-sector software . . . for preparing premium filings,” PBGC introduced an “upload” method in late summer 2005. By incorporating PBGC standards for structuring a computer file containing premium filing information, developers of private-sector software can give software users the ability to create premium data files to be uploaded to PBGC through My PAA. Filers using the upload method, however, would be able to take advantage of My PAA’s certification capabilities only to a limited extent, and would not be able to take advantage of its routing and other capabilities.

- *Import method.* In early 2006, PBGC introduced a third method, the “import” method, to combine features of the first two methods. Under the import method, a filing prepared using private-sector software can be imported (provided that the software meets certain requirements specified by PBGC) into My PAA’s data entry and editing screens so that users can take full advantage of My PAA’s routing, certification, and other capabilities.

Certification Options—Paper and Electronic

The procedure for certifying premium e-filings depends on the e-filing method being used. Under the My PAA data entry method, there is an electronic certification procedure that PBGC describes as “similar to that used historically for paper premium filings.”¹⁰ This certification procedure calls for each individual who is required to certify a premium filing, i.e., the plan administrator and, in many cases, the enrolled actuary, to provide an electronic certification using an authentication process that establishes the identity of the person making the certification. This same certification procedure is used under the import method after the filing has been imported. In either case, all certifications must be provided before the filing can be submitted. The certification procedure under the upload method, however, is very different. Each individual who is required to certify a filing provides a certification that must be preserved for six years, but that need not be transmitted to PBGC at the time of the upload. (However, if one of those individuals is the person who uploads the filing, that individual’s certification is made as part of the upload subject to authentication similar to that used under the other two methods.) It is important to retain these cer-

⁴ *Id.* at 31078.

⁵ *Id.*

⁶ 70 Fed. Reg. 11592 (3/9/05).

⁷ 71 Fed. Reg. 31077, 31079-80.

⁸ *Id.* at 31079.

⁹ *Id.* at 31078.

¹⁰ *Id.*

tifications for the full six years, as PBGC may require their submission as part of an audit.¹¹

Payment Options—Paper and Electronic

PBGC's new e-filing requirement applies to premium information, but not—at least not yet—to premium payments. Filers using any of the three e-filing methods may make their premium payments either through or outside of My PAA.¹² There are three methods that may be used through My PAA: payment by credit card, electronic check, or Automated Clearing House (ACH) transfer. The methods available outside My PAA are payment with a traditional paper check or by wire transfer.

Although there is currently no e-payment requirement, PBGC noted that the final rule “clarifies that filing methods for payments (as well as for information) are governed by the premium filing instructions,” and added that, “[w]hile not anticipated, it is possible that at some future date, as e-filing becomes more prevalent, the electronic payment of premiums (via My PAA) may be required.”¹³

Logistical Concerns

Several commenters raised logistical concerns about the new e-filing requirement. These comments were submitted shortly after PBGC proposed mandatory e-filing in March 2005, when the only e-filing method in place was the My PAA data entry method. Since then, My PAA has been enhanced in a number of ways, including by its integration with the private-sector software commonly used and the related implementation of two additional e-filing methods. PBGC responded to many of the logistical concerns by noting that they have been adequately addressed through these enhancements. (For example, PBGC responded to a request from a “volume preparer” of premium filings that a method be devised to accept “batch” filings, i.e., multiple filings prepared with private-sector software and transmitted to PBGC in a single computer file, by noting that the recent enhancements permit both batch uploads and batch imports.¹⁴)

Some of the expressed logistical concerns, however, were targeted for possible future action or else dismissed by PBGC.

■ *Certification procedures.* A number of comments addressed the procedures for certifying filings under the three permitted e-filing methods. For example, one commenter objected to the logistical burden of obtaining and retaining plan administrator and enrolled actuary certifications of uploaded filings prepared with private-sector software. Although PBGC stated that “[t]he upload certification process is no more burdensome than the certification process for paper filings, especially if the plan administrator makes the upload,” and noted that “the import filing method permits electronic certification of filings prepared with private-sector software,” it went on to state that, “[n]onetheless, consideration is being given to how the certification process (and indeed the whole premium fil-

ing process) can be further streamlined through future enhancements to My PAA.”¹⁵ And in response to another comment urging that the certification procedure available under the upload method be made available to those who create their filings within My PAA, PBGC stated that the “suggestion is also worthwhile and is being considered for a future My PAA enhancement.”

■ *Coordination of VRP and flat-rate information.* One commenter pointed out that many pension service providers prepare only variable-rate premium information for their clients, and that this information would need to be combined with flat-rate premium and other information for submission to PBGC. The commenter expressed concern that transcription errors could occur in the process of combining these two sets of data into a single uploadable file, and recommended that there be a way to merge the two data sets after upload. Although PBGC noted that “this data-merging problem can be avoided by having the service provider and the plan administrator enter their data into My PAA’s data entry screens to produce a single filing that both parties can review,” PBGC also stated that “the commenter’s suggestion has merit and will be considered for a possible future enhancement to My PAA.”¹⁶

■ *Assistance with actuarial calculations and Participant Notice requirements.* Another commenter noted that My PAA neither performs actuarial calculations for determining the variable-rate premium nor produces Participant Notices required under ERISA section 4011 and PBGC’s implementing regulations. PBGC noted in response that “[n]either of these functions has been performed in the past by the paper filing system, and the information required for Participant Notices (e.g., the plan’s current funded liability percentage and the guarantee limits under the pension insurance system) is different from the information required for premium filings,”¹⁷ and pointed out that “[t]he 2005 enhancements to My PAA do, however, automate many of the calculations that filers have heretofore done themselves.”¹⁸

Transition-Related Concerns

Commenters also expressed concerns about the move to mandatory e-filing, particularly in the case of plan administrators of smaller plans who may not be comfortable with or have confidence in electronic transactions. For example, one commenter catalogued a number of difficulties in beginning to use My PAA (the need to educate clients, get authority to act as filing coordinator, determine filing team members, get them to register in My PAA, identify errors in information displayed in My PAA, correct the errors, etc.). PBGC described these burdens as “one-time burdens associated with the shift to e-filing,” noting that “some of those mentioned by this commenter can be avoided by using the upload process” and that “errors in a plan’s information displayed in My PAA can generally be corrected while creating the plan’s e-filings, and the PBGC stands ready to work with service providers who want to correct errors outside the e-filing process.”¹⁹ PBGC con-

¹¹ See 29 CFR § 4007.10.

¹² 71 Fed. Reg. 31077, 31078.

¹³ *Id.*

¹⁴ *Id.* at 31079.

¹⁵ *Id.* at 31078-79.

¹⁶ *Id.* at 31079.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

cluded that “these start-up burdens are far outweighed by the benefits of electronic filing.”²⁰

Commenters suggested that PBGC, rather than mandating e-filing, encourage it through the use of incentives; that PBGC’s e-filing methodology include more edit checks; that there be limited relief from penalties and/or interest for late e-filings; and that PBGC be lenient in granting exemptions for the first year of mandatory e-filing. PBGC noted that its 2005 enhancements to My PAA’s data entry and editing screens include more edit checks; that ERISA does not provide for relief from interest on late premium payments; and that PBGC’s policy on penalties for the late submission of premium information “is sufficiently flexible to permit penalty relief where there is reasonable cause for delay in filing (although e-filing should make it easier, rather than harder, to file on time).”²¹ PBGC also stated that “filers can expect that exemptions from the e-filing requirement will be granted wherever there is good cause in appropriate circumstances to do so.”²²

More generally, PBGC stated that “[c]onducting business electronically is becoming commonplace. As it continues to increase in popularity, individual reluctance to e-file is expected to diminish.”²³ And for those plan administrators who may not be ready for mandatory e-filing, PBGC noted that “the upload process offers a filing alternative for plan administrators who are uncomfortable about working in an electronic environment: They may choose to have their consultants do the electronic part of the filing process.”²⁴

Exemptions

Under the final rule (as under the proposed rule), plans may apply for exemptions from the e-filing requirement on a case-by-case basis under a “good cause in appropriate circumstances” standard. One commenter suggested that plans with 25 or fewer participants be automatically exempted from mandatory

e-filing. PBGC did not adopt this suggestion, noting that plans in this size range “have until October 2007 to prepare to file electronically,” and “would inevitably move above and below the 25-participant cutoff from year to year, introducing the opportunity for confusion and administrative complexity.”²⁵

The commenter also requested that guidance be provided on what constitutes “good cause in appropriate circumstances” for granting an exemption from the e-filing requirement. PBGC declined to provide such guidance, noting that “[e]ach case must be judged on the basis of its own facts and circumstances,” and that, “[b]ecause the nature and scope of exemption requests cannot be anticipated, it is difficult at this time to provide much guidance on what might be appropriate grounds for granting an exemption.”²⁶ However, PBGC did state that, “[a]s experience with exemption requests is gained, it may be possible to provide more guidance in this area.”²⁷

Conclusion

Paper e-filing of premium information will soon be a thing of the past for all plans, both large and small. Indeed, PBGC noted in the preamble that “[t]he adoption of this final rule also provides an opportunity to remove from the premium regulations references to the ‘Premium Payment Package,’ the paper premium filing booklet, which is expected to change function or be phased out as the need for paper forms diminishes.”²⁸

As mandatory e-filing goes into effect this year for large plans and next year for small plans, there will inevitably be some start-up problems. This will be particularly so for those who wait until the last minute to familiarize themselves with the e-filing requirements and options. Everyone involved in the premium filing process should “study up” on e-filing early on to avoid these problems. A detailed description of e-filing is available through the “Practitioners” page of PBGC’s website at <http://www.pbgc.gov>.

²⁰ *Id.*

²¹ *Id.* at 31080.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*