ERIC

The
ERISA
Industry
Committee

September 23, 2013

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, DC 20005-4026

RE: RIN 1212–AB26 (Premium Rates; Payment of Premiums; Reducing Regulatory Burden)

Ladies and Gentlemen:

The ERISA Industry Committee ("ERIC") is pleased to respond to the request of the Pension Benefit Guaranty Corporation ("PBGC") for feedback on the proposed regulations relating to Premium Rates; Payment of Premiums; and Reducing Regulatory Burden (the "proposed regulations").[1]

ERIC's Interest in Retirement Plans

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, incentive, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, incentive, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that would affect its members' ability to provide secure pension benefits in a cost-effective manner.

Summary of Comments

ERIC appreciates the efforts of the PBGC in the proposed regulations and response to the concerns of plan sponsors. The following is a summary of ERIC's comments, which are described in greater detail below:

- ERIC supports the PBGC's proposal to change the premium due date for large plans.

- ERIC supports the PBGC's proposal to lower the self-correction penalty cap.

- ERIC believes that the PBGC should not apply loading factors to premiums for plans that are at-risk.

[1] Pension Benefit Guaranty Corporation, *Premium Rates; Payment of Premiums; Reducing Regulatory Burden*, 78 Fed. Reg. 44056 (Jul. 23, 2013).

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DETAILED COMMENTS

I. The PBGC should finalize its changes to the premium due dates.

Currently, large plans must pay the flat-rate premium early in the year and the variable-rate premium later in the year. The proposed regulations would simplify these rules by providing that the annual premiums for plans of all sizes would be due on the 15th day of the tenth calendar month after the premium payment year (i.e., October 15th for calendar year plans).ERIC applauds the PBGC for the proposed changes to the due dates for premiums, which would create efficiencies consistent with Executive Order 12866 "Regulatory Planning and Review" and Executive Order 13563 "Improving Regulation and Regulatory Review." These Executive Orders direct agencies to maximize net benefits, promote flexibility, and reduce regulatory burdens on companies.

Establishing a uniform due date for premiums (the "uniform due date") would significantly benefit companies and their plans. As noted by the PBGC, the uniform due date would eliminate the need for the complex penalty safe harbor rules. [2] As a result, companies would no longer need to expend valuable resources to determine whether they satisfy the penalty safe harbor rules. Additionally, it would reduce the time and money that large companies have to spend on filings for their plans. It would eliminate interest payments on shortfalls in premium estimates. The proposed changes would also allow plan consultants to perform all premium and Form 5500 filings at the same time.

ERIC supports the PBGC's proposal to establish a uniform due date for premiums as described in the proposed regulations.

II. The PBGC should lower the self-correction penalty cap as proposed.

Currently, the PBGC assesses late premium payment penalties of 1% per month for filers that self-correct and 5% per month for those that do not. These penalties are currently capped at 100% of the underpayment amount. The proposed regulations provide that the cap for late premium payment penalties that are self-corrected would be reduced from 100% to 50%.

ERIC applauds the PBGC for proposing to cap the self-correction penalty for underpayments at 50%. We support the PBGC's efforts to provide greater incentives for companies to identify and self-correct underpayments – both recent underpayments and those that have existed for some time.

III. Loading factors should not apply to premiums for plans that are at-risk.

The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), contains separate provisions relating to the funding of pension plans and PBGC's premiums.

ERISA § 303(d) provides the funding rules for plans that are not in at-risk status. It states "Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year". ERISA section 303(i)(1) requires a plan that has been in at-risk status in two of the past four plan years to add a loading factor when calculating its funding target.

[2] 78 Fed. Reg. at 44058.

ERISA § 4006 generally calculates the PBGC's annual premium rate for single-employer plans based on: (1) an amount for each participant in the plan; plus (2) an additional premium. The "additional premium" is essentially equal to a dollar amount for each $1,000 of unfunded vested benefits divided by the number of participants. The amount of the "unfunded vested benefits" is equal to "the funding target of the plan as determined under section [303(d)] of this title for the plan year by only taking into account vested benefits…" over the fair market value of the plan's assets.

The proposed regulations appear to include the loading factor contained in ERISA § 303(i)(1) when calculating the premium amount for plans in at-risk status. The proposed regulations state that the variable rate premium is based on the plan's unfunded vested benefits as determined under PBGC proposed regulation § 4006.4.[3] PBGC proposed regulation § 4006.4 states that if a plan is in at-risk status and it has been in at-risk status in two of the last four plan years, the funding target will include the loading factor provided by ERISA § 303(i).

ERIC believes that the premiums for at-risk plans should not include the loading factor. ERISA is not ambiguous on this issue: ERISA § 4006 could have referenced both 303(d) and (i), but instead specifically references only section 303(d). Furthermore, it is important to recognize that these two sections of ERISA serve different purposes and calculate their amounts in different ways. Section 303 is focused on providing adequate funding for plans at a reasonable pace and uses all vested and unvested benefits in its calculations. By contrast, section 4006 provides revenue for the PBGC and only includes vested benefits. Reading the loading factors from the funding rules into the premium calculation would blend these provisions together in a manner that is inconsistent with both the language of ERISA and the differing purposes of the two provisions. Participants in at-risk plans would be better served if the plan sponsors were able to use their assets to increase the funding of their plans rather than for higher premiums.

As a result, ERIC recommends that the PBGC not include ERISA § 303(i)'s loading factors for plans that are at-risk for purposes of the PBGC's premiums.

ERIC appreciates the opportunity to provide comments on the proposed regulations. If you have any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,

Kathryn Ricard

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[3] PBGC Prop. Reg. § 4006.3(b)(1), 78 Fed. Reg. at 44067.

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