



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

June 7, 2010

The Honorable Tom Harkin  
Chairman  
Committee on Health, Education,  
Labor and Pensions  
United States Senate

The Honorable Max Baucus  
Chairman  
Committee on Finance  
United States Senate

The Honorable Michael Enzi  
Ranking Member  
Committee on Health, Education,  
Labor and Pensions  
United States Senate

The Honorable Charles Grassley  
Ranking Member  
Committee on Finance  
United States Senate

Dear Senators:

Thank you for your May 20, 2010 letter regarding your concern over PBGC's enforcement effort with respect to certain premium filings.

After carefully reviewing this matter, PBGC has decided to offer relief, outlined below, in the specific situation where a plan calculated its variable-rate premium ("VRP") using the alternative premium funding target ("APFT") but did not indicate in its premium filing that it was electing to do so (i.e., by checking Box 5<sup>1</sup>).

### **Background**

The APFT was included in a final rule issued by PBGC on March 21, 2008. This regulation implemented provisions of the Pension Protection Act of 2006 that changed the way VRPs are computed. The APFT allows plans to calculate the VRP using a method that is simpler and less burdensome than the statutorily prescribed method (i.e., the "standard" method). If a plan chooses to use this method, it must do so for at least five years. In some cases, the APFT may incidentally result in a lower VRP. This incidental effect was especially present after the Treasury Department issued "funding relief" guidance in fall 2009 which resulted in some plans paying much lower premiums under the APFT than they would have under the standard method.

PBGC's regulation and premium filing instructions prescribe the manner and deadline for electing to use the APFT. In the vast majority of situations, plans followed these instructions and

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<sup>1</sup> Although premium information must be submitted electronically (29 CFR § 4007.3), PBGC provides on its Web site, [www.pbgc.gov](http://www.pbgc.gov), filing instructions including an illustrative form with a line number for each data element. For convenience, this letter refers to those line numbers.

checked Box 5 to indicate that they were electing to use the APFT. However, in approximately 5% of the cases where the APFT was used to compute the VRP, Box 5 was not checked. Because these practitioners were using the new election procedures for the first time, we recognize that mistakes, including clerical errors, could have been made. PBGC has therefore decided to offer relief as specified below.

**Proposed relief**

Pending OMB approval, PBGC plans to issue a Technical Update announcing that relief will be provided to any plan that intended to make the election to use the APFT but did not check Box 5 if—

- The plan filed on time,
- The plan used the APFT to determine the VRP, and
- The “Alternative” box was checked in line 7d (1), where the actuary reports the method that was used to determine the VRP.

To take advantage of the relief, the plan administrator will be required to notify PBGC in writing by a specified date (e.g., 30 days) to say the plan intended to make the election. No other documentary evidence will be required. A plan in this situation will be deemed to have made a valid election, which will be locked in for five years. Similarly situated plans that have already amended their filings to use the standard method will also be eligible for the relief.

In accordance with PBGC’s administrative review regulation (29 CFR Part 4003), plan administrators who made other errors (e.g., late elections, invalid discount rates, etc.) will soon be receiving initial determination letters instructing them to amend their filings to correct the error. Like all initial determination letters, these letters will inform plan administrators that they have the right to submit a request for reconsideration. Such requests will be reviewed based on the facts and circumstances presented.

Thank you again for bringing your concerns to my attention.

Sincerely,



Vincent K. Snowbarger  
Acting Director

cc: The Honorable Hilda L. Solis  
Secretary of Labor

The Honorable Timothy F. Geithner  
Secretary of the Treasury

The Honorable Gary Locke  
Secretary of Commerce