



September 25, 2015

Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K St NW
Washington, DC 20005-4026

Re: RIN 1212-AB30—Annual Financial and Actuarial Information Reporting; Changes to Waivers

To Whom It May Concern:

The undersigned organizations, representing employers who voluntarily provide retirement benefits to millions of Americans, submit this letter in response to a request for comments on the proposal to amend the current regulation on annual financial and actuarial and information reporting under section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) that was issued by the Pension Benefit Guaranty Corporation (PBGC) on August 27, 2015.¹

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

As *advocates for a strong financial future*TM, FSR represents the largest integrated financial services companies providing banking, insurance, payment, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees.

¹80 Fed. Reg. 44312 (July 27, 2015).

Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The proposal is intended to update the 4010 reporting requirements for changes made in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and Highway and Transportation Funding Act of 2014 (HATFA). Specifically, the proposal seeks to modify the existing reporting waiver for companies with total underfunding in all their plans of no more \$15 million and add two new reporting waivers and make other minor technical changes.

In 2009, the PBGC set the waiver threshold at \$15 million in aggregate underfunding based on its experience that underfunding below that amount was not a significant risk to the PBGC.² However, due to the impact of MAP-21 and HATFA, the PBGC believes that further refinement of the \$15 million aggregate underfunding waiver is necessary. When the PBGC issued the \$15 million underfunded threshold waiver, the assumption was that it would only affect small plans funded less than 80 percent. However, the pension smoothing that stabilized interest rates in the wake of MAP-21 and HATFA pushed about 200 controlled groups below the \$15 million underfunded threshold, allowing them to claim the Section 4010 waiver. According to the PBGC, the majority of the plans that have been able to take advantage of the waiver after the passage of MAP-21 and HATFA are plans with more than 1,000 participants that have large unfunded benefit liabilities on a termination basis. Consequently, the PBGC proposes to limit the availability of the \$15 million aggregate underfunding waiver to controlled groups where the aggregate number of participants in all defined benefit plans maintained by the controlled group is fewer than 500.

The undersigned groups appreciate the efforts of the PBGC in attempting to streamline compliance requirements for 4010 filings. Streamlining this process is extremely important in minimizing unnecessary burdens upon plan sponsors. While we support this effort, we suggest there may be an alternative ways to accomplish this same goal.

In the proposal, the PBGC asks for recommendations regarding using a different participant count threshold or tying the \$15 million aggregate underfunding waiver directly to non-stabilized rates. Rather than requiring one technique over the other, we recommend that the PBGC allow the option to use both. Specifically, if a plan has at least 500 participants, it should be permitted to use non-stabilized rates to determine it meets the dollar threshold. While this may create additional expense for the plan, it will generally be less expensive and onerous than complying with the reporting requirements.

In addition, the PBGC should consider increasing both the dollar threshold and the participant count. The \$15 million threshold was established in 2009 but has not been increased since then. As such, an increase in this amount seems reasonable. We recommend increasing this amount – perhaps to \$25 million, reflecting both an adjustment for inflation and an analogy to the threshold used for the Early Warning Program. Also, we recommend increasing the participant threshold. The PBGC states that there are significantly fewer controlled groups reporting and states that most of those plans have more than 1,000 participants.³ Therefore, we suggest that this number be increased to at least 1,000 participants.

² ERISA section 4010.11(a).

³ 80 Fed. Reg. 44312 at 44315 (July 27, 2015).

Furthermore, these recommendations could be combined so that a plan with at least 1,000 participants would have the option of using the waiver if it complies with a \$25 million aggregate underfunding waiver if non-stabilized rates are used.

Another issue we raise for your consideration concerns the liability calculations required for 4010 filing – we recommend that the PBGC provide “alternate methods of compliance” to lessen the burden of 4010 reporting for all filers. Currently, plans are required to calculate two liability measures that they do not otherwise calculate: the year-end plan termination liability and, for plans that are not at-risk, the at-risk funding target.⁴ These calculations substantially increase the costs of reporting the 4010 filing information. Instead of the year-end plan termination liability, we recommend that plans be allowed to use the year-end benefit liability reported in the plan’s annual funding notice (“AFN liability) and an expense load determined from the AFN liability in the same manner as the expense load included in the plan termination liability. This will provide PBGC access to this information many months before it would otherwise receive it. In lieu of the at-risk funding target, we recommend allowing plans that are not at risk to use the funding target determined using non-stabilized rates. If these alternatives are not acceptable to the PBGC, we are open to consideration of other simplified reporting options.

In conclusion, we support the efforts of the PBGC in attempting to maintain streamlined and simplified reporting requirements and offer the above recommendations to further the PBGC’s stated goals while still protecting the stability of the PBGC. We appreciate your consideration of these comments and are happy to participate in further discussions.

⁴ ERISA section 4010(d)(1).