



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

April 13, 2010

Mr. Kenneth Porter
Senior Vice President, International Benefits & Chief Actuary
American Benefits Council
1501 M St., NW - Suite 600
Washington, DC 20005

Dear Mr. Porter:

Thank you for your March 31, 2010 letter regarding variable rate premium issues you believe may affect hundreds of plans across the country.

On March 21, 2008, PBGC issued a final rule to implement provisions of the Pension Protection Act of 2006 that changed the way the variable-rate premium is calculated. On that same date, PBGC issued Comprehensive Premium Payment Instructions ("Instructions"). The regulation and Instructions prescribe the manner and deadline for electing to use the Alternative Premium Target. Your letter expresses concerns about PBGC's enforcement of these requirements.

The Instructions were issued over one and one-half years before the October 15, 2009 premium filing due date you refer to in your letter. Part II of the Comprehensive Premium Payment Forms is titled **Alternative Premium Target Election**. In addition, Box 5 further states: "Check box to indicate that the plan is electing to use the alternative premium funding target instead of the standard premium funding target, effective beginning with this premium payment year and for all subsequent premium years unless and until it is subsequently revoked. Note that an election cannot be revoked for any premium payment year that begins less than five calendar years after the date the premium payment year reported in this filing begins." PBGC believes it is clear that Box 5 is the place where the election is made and that line 7, d, 1 in the "Premium Information" part reflects how the premium is being calculated.

The Comprehensive Premium Payment Instructions also clearly explain that "The election . . . must be made by the date the Variable-rate Premium is due. An election to use (or revoke) the Alternative Premium Funding Target is made as part of the comprehensive premium filing."

We believe it is appropriate to enforce these requirements, particularly when they are challenged only after-the-fact. We are requiring that filings be amended to use the standard rates if a timely election to use the alternative method was not made. If this results in a penalty assessment, the plan may request a waiver of late payment penalty charges under 29 CFR § 4007.8.

Consistent with § 21(b)(5) of PBGC's policy guidelines on premium penalties (29 CFR part 4007, Appendix), PBGC generally would waive a premium penalty for the 2008 or 2009 plan year to the extent a late variable rate premium payment resulted from the plan administrator's failure to check box 5 on the premium filing to indicate that the plan was electing to use the alternative premium funding target. Any other situations would be dealt with on a case-by-case basis under the policy guidelines. Amended filings should be submitted promptly.

Thank you again for bringing your concerns to my attention.

Sincerely,

A handwritten signature in cursive script that reads "Vincent K. Snowbarger". The signature is written in black ink and is positioned above the printed name and title.

Vincent K. Snowbarger
Acting Director