

December 16, 2011

Mr. Joshua Gotbaum
Director
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
12th Floor
Washington, DC 20005-4026

Dear Director Gotbaum:

The undersigned organizations are writing to express concerns regarding the Pension Benefit Guaranty Corporation's ("PBGC") enforcement actions with respect to ERISA section 4062(e). Very briefly, the PBGC is actively enforcing very controversial proposed regulations that are being reconsidered pursuant to Executive Order 13563 on Improving Regulation and Regulatory review.

In the summer of 2010, the PBGC issued proposed regulations under section 4062(e). The proposed regulations are not consistent with the statute, nor are they consistent with published PBGC guidance and many years of historical enforcement practices. Under the statute, liability is triggered if "an employer ceases operations at a facility in any location". The statute was clearly intended to apply to situations where operations at a facility are shut down. Instead, under the proposed regulations, liability can be triggered where no operations are shut down, but rather operations are, for example, (1) transferred to another stable employer, (2) moved to another location, or (3) temporarily suspended for a few weeks to repair or improve a facility.

Moreover, the liability created by the proposed regulations can be vastly out of proportion with the transactions that give rise to the liability. For example, in many cases, a *de minimis* routine business transaction affecting far less than 1% of an employer's employees can trigger hundreds of millions of dollars of liability, even in situations where a plan poses no meaningful risk to the PBGC.

The PBGC correctly identified the proposed section 4062(e) regulations as needing review pursuant to Executive Order 13563 on Improving Regulation and Regulatory Review. The PBGC stated:

In light of industry comments, PBGC will also reconsider its 2010 proposed rule that would provide guidance on the applicability and enforcement of ERISA section 4062(e).

However, we are very concerned to learn from numerous companies that PBGC personnel, in communications with plan sponsors, are referring to the proposed regulations as current law, and enforcing them as such. It is inconsistent with the President's Executive Order to announce a reconsideration of troublesome proposed regulations, while at the same time actively enforcing them as current law.

We ask you to address this situation by suspending all enforcement actions based on the proposed regulations and by voiding all agreements entered into based on the proposed regulations. Any other course of action would be (1) contrary to the President's Executive Order, which in the PBGC's own view requires the proposed regulations to be reconsidered, and (2) inconsistent with a sound governmental process.

Thank you for your consideration of our views.

American Benefits Council
ASPPA College of Pension Actuaries
Committee on Investment of Employee Benefit Assets ("CIEBA")
The ERISA Industry Committee
Financial Services Roundtable
National Association of Manufacturers
U.S. Chamber of Commerce

cc: The Honorable Max Baucus, Chairman, Senate Finance Committee
The Honorable Tom Harkin, Chairman, Senate Health, Education, Labor and Pensions Committee
The Honorable Dave Camp, Chairman, House Ways and Means Committee
The Honorable John Kline, Chairman, House Education and the Workforce Committee
The Honorable Orrin Hatch, Ranking Minority Member, Senate Finance Committee
The Honorable Mike Enzi, Ranking Minority Member, Senate Health Education, Labor and Pensions Committee
The Honorable Sander Levin, Ranking Minority Member, House Ways and Means Committee
The Honorable George Miller, Ranking Minority Member, House Education and the Workforce Committee
The Honorable Jacob J. Lew, Director, Office of Management and Budget
The Honorable Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget