



March 31, 2010

Director Vincent K. Snowbarger
Acting Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
12th Floor
Washington, DC 20005-4026

Dear Mr. Snowbarger:

I am writing today on behalf of the American Benefits Council with respect to variable-rate premium issues that may affect hundreds of plans across the country.

Background

In determining a plan's Premium Funding Target, the plan administrator generally has two choices: the Standard Premium Funding Target ("Standard Method") or the Alternative Premium Funding Target ("Alternative Method"). Under the Standard Method, a plan's Premium Funding Target is determined in the same manner as the funding target is determined for minimum funding purposes, except that (1) only vested benefits are taken into account, and (2) the plan must use the segment rates for the month before the month in which the Premium Payment Year begins. For example, in the case of a calendar year plan, the December segment rates must be used.

Under the Alternative Method, a plan's Premium Funding Target is determined in the same way except that the plan must use the same discount rate that it uses for minimum funding purposes. Once the Alternative Method is elected, the plan must use the Alternative Method for five years.

For 2009, it was very advantageous for plans to use the Alternative Method. This was the case because for plan years beginning in 2009, the Internal Revenue Service permitted plans to use, for minimum funding purposes, the "full yield curve" for any "applicable month". This enabled calendar year plans to use the very high interest rates in effect for October of 2008 in determining their funding target for 2009. Under the Alternative Method, the same high interest rates would be used for determining a plan's Premium Funding Target. This would substantially reduce the plan's Premium Funding Target, thus eliminating or materially reducing any liability for variable-rate premiums.

Accordingly, many plans elected the Alternative Method for 2009. However, it is our understanding that the Pension Benefit Guaranty Corporation (the "PBGC") has begun to reject hundreds of such elections on certain grounds discussed below.

First Issue—Line 5 Versus Line 7

Some plans did not check the box on line 5 of the 2009 PBGC Comprehensive Premium Filing form, but rather checked the Alternative Method box next to the words "Premium Funding Target Method" on Line 7(d)(1), clearly indicating that they were using the Alternative Method. Such plans intended to make the Alternative Method election by checking the box on Line 7(d)(1) and then proceeded to show their interest rate and the related unfunded vested benefit calculation on this basis. Apparently, the PBGC is taking the position that the exclusive means of electing the Alternative Method is by checking the box on Line 5. Thus, the PBGC's reported position is that these plans have not validly elected the Alternative Method, and it is now too late to do so.

If this is in fact the PBGC position, we urge you to reconsider. There is no documentation or other support for this position. Neither the form nor the instructions contain any statement that Line 5 is the exclusive means of electing the Alternative Method. That is, nothing seems to preclude the check on Line 7(d)(1) from being construed as a valid election. We certainly agree that Line 5 provides an opportunity to make an election, but so does Line 7. If Line 5 is to be treated as the exclusive means of electing the Alternative Method, one would have expected that to be stated on the form or in the instructions. It is not so stated anywhere. One would also expect the on-line form to provide an on-line prompt to a plan that uses the Alternative Method on Line 7, but has not made an election on Line 5. The prompt could ask, for example, if Line 5 was checked in a prior year or if Line 5 should be checked this year. There is no such prompt. In fact, on the screen where the actuary provides his or her password, the information on Line 7 is shown, but not the information on Line 5.

We understand that PBGC may have concerns about enforcing the 5-year rule with respect to a plan that does not make the election on Line 5. We believe that concern is well addressed by the instructions and the form, which are very clear that a plan electing the Alternative Method is bound to that method for five years. A plan administrator that checks the Alternative Method box on Line 7 and uses the Alternative Method would have great difficulty arguing that he or she is not bound for five years.

Second Issue—Late Elections

The second problem arose for the following reason. Many companies wanted to use the October 2008 full yield curve for purposes of determining their 2009 minimum funding obligations. But until the fall of 2009, there was a large obstacle to such use. There was a very good chance that if the company used the full yield curve for 2009, the company would be required to continue using the full yield curve for minimum funding purposes indefinitely. This possibility was of great concern to companies in light of the volatility of the full yield curve and the downward trend in interest rates.

Then on September 25, 2009, the IRS announced, in a special edition of Employee Plans News, that a plan could use the full yield curve for 2009 without being bound to continue using

it in future years. The formal confirmation of this position, however, did not occur until October 7, 2009—a mere six working days before the due date for PBGC premium filings—when the IRS issued final regulations. In fact, those final regulations were not published in the Federal Register until October 15, 2009, the deadline for PBGC premium filings.

In order to make fully informed decisions regarding the Alternative Method, companies needed to, within six working days, access the final regulations before they were officially published, review the voluminous and complicated regulations, understand them, ensure that there were no other impediments to electing the full yield curve with respect to 2009, make the decision to use the full yield curve for 2009, elect the Alternative Method, and have their actuary re-compute their premium amount. It is a tribute to the plan community that so many companies were able to do all of this in such a short time. But as can be expected, many could not get this done in time. Those plans needed more time. Such plans submitted amended filings with the PBGC electing the Alternative Method.

It is our understanding that such late elections are being rejected based on the position that the Alternative Method may not be elected after the premium due date. We strongly question whether this is the right year to take such a hard position. Plans had, at most, a mere six working days to do a significant amount of work. It seems strikingly unfair to hold them to a six working-day deadline when millions of dollars are at stake, compliance requires understanding and applying a complicated and lengthy regulation, and the necessary guidance was revised at such a late date. We also note that the PBGC instruction on “Amended Filings” does not say anything about the inability to elect the Alternative Method in an amended filing.

Interaction of First and Second Issues

The timing problems described above with respect to the late election issue also affected the Line5/Line 7 issue. For example, when the IRS issued its guidance, many plans had already completed their filings but had not yet submitted them. The IRS guidance caused a large number of such plans to decide to modify their filings to use the Alternative Method. Naturally, many such plans went straight to the “Calculate Variable-Rate Premium” area of the filing and modified that section to reflect the Alternative Method, but did not modify Line 5. And, as noted, such plans were not prompted to modify Line 5. Thus, the extremely compressed time schedule resulted in a large number of inconsistencies, which could easily have been prevented by on-line instructions that highlighted inconsistencies or omissions, as on-line instructions often do.

In short, 2009 should be viewed as a type of transition year. The IRS did not provide critical guidance until the “eve” of the deadline. The variable-rate premium on-line instructions were not clear, nor did they take normal steps to prevent inconsistencies. In this context, it would be very unfair and inappropriate to penalize plans severely for understandable inconsistencies and late elections.

Overall Solution

Hundreds of plans may have one of the above issues. Other plans may have different issues, such as inadvertent Line 5 elections that are inconsistent with the rest of the filing. These issues are, to a large extent, attributable to the newness of the premium filing form and

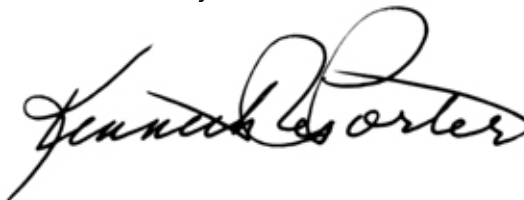
structure, which were first introduced in 2008 and not heavily used with respect to the Alternative Method until 2009.

We strongly urge you to consider a different approach to these issues, at least for 2008 and 2009. Where there is an internal inconsistency with respect to a filing (e.g., the Line 7/Line 5 inconsistency in either direction), why not permit the plan to resolve the inconsistency within 30 days of receipt of a notice of the inconsistency from the PBGC? One of the PBGC's missions is to "encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants". Enforcement of unwritten rigid rules that penalize plans millions of dollars for small and clearly unintended glitches in their filings does not help participants, does not promote voluntary plans, and is unfair. We urge you to adopt a more flexible approach that helps plans do what is best for them and their participants, and does not create a multi-million dollar trap for a small unintended glitch, especially in the middle of a recession, when dollars are desperately needed to revive the economy and retain jobs.

Similarly, it is strikingly unfair to hold plans to a six working-day deadline with respect to an issue as important and complicated as election of the Alternative Method. At a minimum, timing relief is clearly appropriate for 2009 elections of the Alternative Method.

We would very much like the opportunity to discuss these issues with you in person. We appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Porter". The signature is fluid and cursive, with a large, stylized initial "K".

Kenneth Porter
Senior Vice President, International Benefits
& Chief Actuary
American Benefits Council