



January 22, 2010

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

Re: Comment on Proposed rule regarding reportable events under ERISA Section 4043 (RIN 1212-AB06)

Dear Sir or Madam:

The American Benefits Council ("Council") appreciates the opportunity to comment on the proposed rule which would make a number of changes to the Pension Benefit Guaranty Corporation's (PBGC's) reportable event regulations published in the Federal Register on November 23, 2009. 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. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We appreciate the PBGC's need for timely and relevant information. We are also acutely aware that the PBGC reportable event requirements have become woven into the very fabric of the American financial system. In particular, and as described more fully below, most loan covenants and credit agreements contain special provisions that are triggered whenever a plan sponsor is required to file a reportable event with the PBGC. As a result, the Council believes it is incumbent on the PBGC to balance its need for additional information against the potential harm such a requirement might have on the financial well-being of the plan sponsor community.

In particular, the PBGC has proposed a wholesale elimination of reportable event waivers and extensions, along with the creation of two additional reportable events. In its proposal, the PBGC states that it might consider reinstating some waivers and

extensions if, over time, the facts warrant such waiver or extension. Because of the potentially disruptive financial consequences of this approach, the Council strongly urges the PBGC to exercise extreme caution before modifying any automatic waivers or extension. Rather than a sweeping elimination of waivers and extensions, it is the Council's position that the PBGC should only modify automatic waivers and extensions in the least harmful ways that are supported by the facts.

The Council asks that the PBGC withdraw its proposed rulemaking and consider creative, targeted modifications to the automatic waivers and extensions that respond to the PBGC's observed issues. The Council further asks the PBGC to carefully balance its need for information against the potential harm that might result from overreaching requirements, and explore alternate ways of obtaining information without expanding reportable event requirements.

The Council is primarily concerned that these proposed changes will have unintended consequences which will result in massive numbers of filings that could trigger debt and credit covenants. Lending institutions certainly retain the right to renegotiate loan covenants. However, at this point it is unclear how those negotiations might proceed. In addition, it is unclear how credit rating agencies might respond to the expanded scope of reportable events. As a minimum, this proposal would generate significant uncertainty regarding plan sponsor access to credit markets, which could increase plan sponsor cost of debt. In the end, it could result in greater liability for the PBGC.

The existing reportable events system, which was set up following a negotiated rulemaking process, has been operating for many years. As mentioned, these loan agreements referenced above and other documents often include covenants triggered by a PBGC reportable event. Under the current system, events that require filing despite the exemptions and extensions can signal significant changes in the company which create more risk for the lender. Hence, many lenders inserted restrictions and default provisions triggered by reportable events. By eliminating the exemptions and extensions, the proposed rule would greatly increase reportable events and the need for companies to, at the very least, renegotiate loan and other credit agreements. A reportable event might trigger an immediate loan repayment or cause the loss of a line of credit. In the extreme, it is possible the finding of a reportable event may trigger a default. This constrained access to credit may also result in more underfunding of defined benefit plans. The impact on any individual company would depend on the results of renegotiations of loan covenants and the perspective of the credit rating agencies.

The Council understands that the PBGC is seeking more filings so that the agency can potentially spot troubled companies before the plan is in trouble but the Council believes the proposal is too extensive and is concerned the new requirements could actually cause harm to some companies. The Council would recommend that existing automatic waivers and extensions be continued. However, the PBGC could require a

simple letter or information filing notifying PBGC that the company would be required to file under the reportable event regulations but for the following exemption or extension. The PBGC could then request additional information it believes is necessary from some companies (as is the case with the current system). In addition, the PBGC could consider tiered requirements where the automatic waivers and extensions continue to apply at the current base level of event, but would expire if the severity of the situation reached some secondary level. Although this likely would not resolve every situation, creating a new information request requirement would not cause the problems which could ensue from eliminating all of these exemptions from the reportable event regulations. One of the goals of the PBGC is to promote defined benefit plans and the blanket elimination of so many exemptions would hardly assist this promotion.

Council members are especially concerned about the elimination of waivers for well-funded plans and events involving related foreign corporations. Large, multi-national companies may have related foreign corporations with no reporting obligations to their U.S. counterparts. Some companies with frequent mergers and acquisitions may have multiple reportable events per year under the proposed regulations. Complying with the new requirements will involve significant costs even if credit arrangements are not effected.

The proposed regulations will also shorten the filing period for many reportable events, some by eliminating extension periods. This may also have unintended consequences. For example, some errors in contributions are discovered a few weeks or months after the mistake. The current deadline for a reportable event for missing contributions may encourage employers to replace those contributions (and earnings) before the report must be filed but the new 30-day filing requirement may result in later corrections when the filing is required regardless of when it is corrected. The active participants' reduction reportable events will require companies to more closely track their daily counts of employees instead of relying on calculations already necessary for other PBGC and agency filings, resulting in increased costs.

The Council also has concerns about one of the two new reportable events. The Council understands the rationale for requiring a report when the funding status of the plan decreases below 60 percent (one of two new reportable events) but is perplexed about the rationale behind reportable event filings in connection with a transfer of assets to fund retiree health care accounts under Internal Revenue Code Section 420. Before such a transfer occurs, many requirements must be met that ensures that the underlying plan is healthy. As noted by the PBGC, the underlying plan must be at least 120 percent funded after the transfer and remain so during the transfer period. Although the final regulations indicate that the 120 percent valuation is not done on a termination basis, many other valuations are not done on a termination basis. Employers should not be penalized for funding retiree health care accounts with some of the excess assets from overfunded defined benefit plans. Moreover, because the proposal to make a Section

420 transfer a reportable event could also trigger breaches of loan covenants and potential loss of credit lines, the proposed rule making could severely hamper the ability of plan sponsors to make such transfers even when there is no reasonable threat to the well-being of the PBGC. Even in situations where the lending institutions might be willing to renegotiate loan covenants, the proposal imposes generally unnecessary new burdens on plan sponsors.

Thank you again for the opportunity to provide comments on these new proposals. We believe the Council is uniquely situated to provide useful feedback to the PBGC. If we can assist further, please contact Jan Jacobson, senior counsel, retirement policy, of the American Benefits Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson
Senior Counsel, Retirement Policy
American Benefits Council