



AMERICAN BENEFITS
COUNCIL

November 24, 2014

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

RE: Proposed Revisions to the 2015 PBGC Premium Filing Procedures

Dear Sir or Madam:

On behalf of the American Benefit Council (the “Council”), I am writing with respect to the proposed revision to the 2015 PBGC premium filing procedure to “require reporting of certain undertakings to cash out or annuitize benefits for a specified group of employees.” This proposal was published in the Federal Register on September 23, 2014.

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 are generally supportive of the proposed revision, as we believe that the private retirement plan system will benefit from greater transparency regarding trends and developments in the market.¹

¹ There are many reasons that plan sponsors choose to de-risk their retirement plans including the regulatory environment that has become increasingly negative for these plans. For a more thorough discussion of these issues, please see the Council’s [testimony to the ERISA Advisory Council](#) on de-risking.

We do, however, have certain technical comments regarding the details of the proposed reporting requirements. These comments are premised on our understanding that the new reporting would be required with respect to transactions that have previously occurred. This is appropriate. It would be strikingly inappropriate to require reporting with respect to possible future transactions or with respect to transactions still underway.

First, we understand that PBGC is contemplating requiring reporting of all transactions that closed at least 30 days prior to the premium filing. A period longer than 30 days is needed. Some of these transactions relate to thousands of participants spread across the country. A 30-day period is insufficient to collect, review, and confirm that amount of data. We suggest a period of at least 120 days.

Second, we strongly believe that company-specific data, such as the number of participants electing a lump sum, should be kept strictly confidential by PBGC. The purpose of data collection should be to identify important trends in the aggregate, not to publicize or otherwise disclose company-specific data. Our voluntary private system is dependent on the confidence of private employers in the system. Disclosing company-specific data would undermine that confidence.

Finally, it would be helpful to clarify with precision the types of transactions that must be reported:

- We assume that plan terminations are not covered, as reflected in the draft language instructing plans to omit the reporting for the plan's last filing; it would be helpful for this to be clarified. Having the reporting apply to new types of transactions rather than plan terminations is appropriate since the focus of the reporting is on the new types of transactions, not on plan terminations that have always occurred.
- More clarity regarding the nature of the transactions covered would be helpful. For example, subject to small exceptions, all individuals eligible for a lump sum are former employees. So would reporting be required with respect to all lump sums for which there are any applicable time limits? Or should reporting be limited to lump sum windows established by plan amendments? We believe that the latter would be the appropriate universe for reporting in order to avoid inflated numbers that do not reflect the issues for which the PBGC is seeking information.
- In addition, we have concerns about the terms used in the proposed request regarding lump sum distributions. The proposal asks for information on "offered lump sum" and "elected lump sum." We would suggest replacing those terms with "eligible for lump sum" and "received lump sum," respectively, to reduce confusion and increase reporting consistency. For example, if a missing partici-

pant was eligible for the window but never received election materials because the administrator could not locate the participant before the window closed, was the participant "offered a lump sum" or not? Also, plans that do not ordinarily provide for mandatory cash-outs up to \$5,000 might make mandatory cash-outs as part of the window, so that affected participants receive lump sums without actually electing them.

- With respect to annuity purchases, it should be clarified, for example, that the reporting is only being sought with respect to the purchase of annuities that are to be used to satisfy a plan's obligations to participants, not, for example, annuities that are to be held by the plan as a plan asset. Moreover, there should be coordination between the information requested by the PBGC and the annuity purchase information requested with respect to the Form 5500 to avoid duplicative or confusing reporting requirements.

We support the PBGC's efforts to collect data in furtherance of its mission to "encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants." We look forward to working with you to further that mission. In that regard, we would ask the PBGC to consider our testimony on June 5, 2013 before the Department of Labor's ERISA Advisory Council. In that testimony, we provide an in-depth analysis of why and how companies de-risk.

* * * * *

Thank you for the opportunity to present our views.

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

cc: Constance Donovan
Participant and Plan Sponsor Advocate