



AMERICAN BENEFITS
COUNCIL

September 5, 2014

Submitted electronically

Alice C. Maroni
Acting Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Dear Acting Director Maroni:

On behalf of the American Benefits Council (the "Council"), I am writing to request guidance regarding the funding stabilization provision contained in the recently enacted "Highway and Transportation Funding Act of 2014" (the "Act").

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.

The Act raises the following issues with respect to which PBGC guidance is needed.

SECTION 4010

Following the enactment of MAP-21 in 2012, PBGC issued Technical Update 12-2, which provided very helpful guidance regarding the application of the MAP-21 funding stabilization provision to ERISA section 4010. We assume that the same rules set forth in Technical Update 12-2 would apply with respect to the funding stabilization provision in the Act. It would be helpful for that to be confirmed.

It would also be helpful for it to be confirmed that if a plan sponsor was determined to be required to file under section 4010 for the 2013 plan year, but is no longer required

to file for 2013 due to the Act, no further information should be required from such plan sponsor.

2013 VARIABLE RATE PREMIUM

Plan sponsors have made contributions for the 2013 plan year based on the funding rules in effect prior to the Act. Under the Act, those contributions may have exceeded the amount required to be contributed for 2013. In such a case, a plan sponsor may want to redesignate a portion of the 2013 contributions as attributable to 2012, provided that the contributions were made by the due date for 2012 contributions.

We have asked Treasury and the IRS for permission to make such a redesignation. Such a redesignation could enable the plan sponsor to reduce its 2013 variable rate premiums. We ask that such a reduction be permitted even if 2013 premium filings have already been made.

A contrary position would be inconsistent with the retroactive effective date of the Act. If the Act had been enacted on January 1, 2013, plan sponsors would have been able to allocate contributions between 2012 and 2013 pursuant to the Act. Thus, not allowing such flexibility now would be inconsistent with a clear statutory provision making the Act effective for the 2013 plan year.

FULL RETROACTIVITY FOR ALL APPLICABLE PURPOSES

It would also be helpful for the PBGC to confirm, consistent with the retroactivity point discussed above, that the Act is fully retroactive to the 2013 plan year for purposes of all PBGC issues (except as specifically excepted under the Act). For example, under the pre-Act law, a plan sponsor may have failed to make a sufficient quarterly contribution for 2013 triggering a lien and/or a penalty for not providing notice of such failure. If the plan sponsor's failure would not exist under the Act, any adverse consequences attributable to such "failure" should be reversed, including, for example, a refund of any penalty paid.

DELAY OF PREMIUM FILING DATE

We are hearing increasing input that the upcoming IRS and Treasury deadlines of September 15th for contributions for 2013, September 30th for AFTAP certifications, and October 15th for Schedule SBs (for calendar year plans) may be very difficult to meet in light of the work required by the Act. Accordingly, we have asked Treasury and the IRS to delay the September 30th and October 15th deadlines.

Correspondingly, the October 15 deadline for premium filings poses similar challenges. For example, until an employer decides whether to apply the Act for 2013, the employer will not know how to discount back contributions made for 2013, as required by Regulation § 4006.4(c). So we ask that a uniform delay be adopted that would apply to the premium filing date as well as the due date for the Schedule SB.

We thank you for your consideration of the issues addressed in this letter. We look forward to discussing these issues with you.

Sincerely,

A handwritten signature in black ink that reads "Lynn Dudley". The signature is written in a cursive, flowing style.

Lynn Dudley
Senior Vice President, Policy

cc:

Christopher Bone
Constance Donovan
David Gustafson
Leslie Kramerich
Ann Orr
Jioni Palmer
Amy Viener