2007 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Their Responses

March 2007

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on January 22 and February 12, 2007

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on January 22 and February 12, 2007, with representatives of the Enrolled Actuaries Program Committee. Included also are summaries of the responses to those questions. The summary responses to the questions are intended to reflect as accurately as possible the statements made by the government representatives. However, those responses are merely the current views of the individuals and do not represent the positions of the Pension Benefit Guaranty Corporation or of any other governmental agency and cannot be relied upon by any person for any purpose. Moreover, PBGC has not in any way approved this booklet or reviewed it to determine whether the statements herein are accurate or complete.

The following representatives of the Enrolled Actuaries Program Committee took part in the discussions:

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The Program Committee would like to thank the practitioners who submitted questions for this booklet.

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INDEX

	Subject Matter	Questions
1.	Premiums	1 - 5
2.	Standard Terminations	6 – 9 (see also 5)
3.	Valuations	10 - 12
4.	Participant Notices	13
5.	Reportable Events	14 – 16 (see also 3)
6.	Employer Reporting	17 (see also 3)
7.	Other Reporting	18 - 22

QUESTION 1

Premiums: Termination Premium

The Deficit Reduction Act of 2005 created a new "termination premium" (generally, $1,250 per participant per year for three years), which applies where certain distress and involuntary terminations occur. Assume that a plan terminates in a distress or involuntary termination that is subject to the termination premium. Assume also that the value (as of the termination date) of the PBGC's recoveries on its claim for unfunded benefit liabilities (UBL claim) plus the value (as of the termination date) of the 3-year termination premium exceeds 100% of the amount of PBGC's UBL claim. In such circumstances, would PBGC require payment of the full termination premium or would it limit the termination premium so that the value of the termination premium plus the value of the PBGC's recoveries on its UBL claim would not exceed the amount of the PBGC's UBL claim?

RESPONSE:

The PBGC would require payment of the full amount of the termination premium. The termination premium is calculated based on the number of participants in the plan immediately before the termination date. It is unaffected by the size of the PBGC's UBL claim or the value of PBGC's recoveries on its UBL claim.

QUESTION 2

Premiums: Variable-rate premium cap for small employers

The Pension Protection Act of 2006 (PPA) established a per-participant cap on the variable-rate premium (VRP) for plan years beginning after 2006 equal to $5 multiplied by the number of participants. The cap applies only if the aggregate number of employees of all contributing sponsors and all members of the sponsors' controlled groups is 25 or fewer.

The following questions relate to this new provision:

(a) If an eligible plan has 20 participants, what is the maximum VRP due?

(b) Do all single-employer plans with 25 or fewer participants qualify for the cap?

(c) Might a single-employer plan with more than 25 participants qualify for the cap?

(d) On what date are employees counted for purposes of the 25-employee eligibility rule?

RESPONSE:

(a) The per-participant cap is $100 ($5 x 20), so the maximum total VRP for the plan is $2,000 ($100 x 20). In other words, the maximum VRP for the plan is $5 multiplied by the square of the participant count.

(b) No. The eligibility criterion is based on employees, not the participant count. If there are more than 25 employees, taking into account all employees of all contributing sponsors of the plan and all members of their controlled groups, the plan is ineligible for the cap.

(c) Yes. Consider a contributing sponsor with 25 employees, all of whom are participants in a plan. If the plan also retains benefits for 10 former employees who are either terminated vested or retired, there would be 35 participants. This plan would qualify for the cap (assuming there are no other contributing sponsors and no controlled group members).

(d) The eligibility rule is based on the number of employees on the first day of the premium payment year. Note that the cap itself ($5 times the square of the participant count) is based on the participant count on the premium snapshot date (generally the last day of the prior plan year).

QUESTION 3

Premiums, Reportable Events, and Employer Reporting: Impact of new current liability mortality tables

Treasury recently issued new mortality tables to be used to determine current liability for plan years beginning in 2007. ERISA section 4006(a)(3)(E) provides that when the new tables take effect, the assumptions and methods used to determine unfunded vested benefits (UVBs) for purposes of the variable-rate premium also change as described below:

(a) The required interest rate underlying the UVB calculation increases from 85% of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds (the "corporate bond rate") to 100% of that rate (See ERISA section 4006(a)(3)(E)(iii)(II)); and

(b) Market value of assets is used instead of actuarial value (See ERISA section 4006(a)(3)(E)(iii)(III)).

How do these changes impact the calculation of UVBs for variable rate premiums and for other PBGC requirements such as reporting under ERISA section 4010 and 4043? When are the new mortality tables first reflected in the calculation of UVBs?

RESPONSE:

See Technical Update 07-1, Effect of Treasury Mortality Tables on PBGC Requirements (http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu15995.html), which explains how the establishment by the Secretary of the Treasury of new mortality tables for determining current liability affects premium calculations and PBGC requirements under ERISA sections 4010 and 4043.

QUESTION 4

Premiums: Electronic Filing

Is electronic filing mandatory for an amendment to a filing to which the electronic filing requirement did not apply?

RESPONSE:

Electronic filing is required for flat- and variable-rate premium filings for plan years beginning after 2006. For plans that had 500 or more participants for the prior plan year, e-filing is also required for any filing made after June 2006 for a plan year beginning in 2006. The e-filing requirement applies to estimated and final filings and to both original and amended filings. (PBGC may grant exemptions to the e-filing requirement for good cause in appropriate circumstances.) Whether an amended filing must be made electronically is determined according to these rules rather than by reference to whether the original filing being amended was subject to the e-filing requirement.

Since the rules governing applicability of the e-filing requirement to amended filings are the same as for original filings, in most cases an amended filing will have to be e-filed if the original filing was required to be e-filed, and vice versa. But this need not be the case. For example, if a plan with 500 or more participants for the prior year made its final 2006 filing before July 2006 but amended it in 2007, the original filing would not have been subject to the e-filing requirement, but the amended filing would be.

In summary, for an amended filing made in 2007 (or later), if the amended filing is for a plan year:

- Beginning in or before 2005, it need not be made electronically.

- Beginning in or after 2007, it must be made electronically (unless an exemption is granted).

- Beginning in 2006, it must be made electronically if the plan had 500 or more participants for the plan year preceding the plan year for which the amended filing is made (unless an exemption is granted), but it need not be made electronically if the plan had fewer that 500 participants for the plan year preceding the plan year for which the amended filing is made.

QUESTION 5

Premiums: Cessation of Coverage

Q&A 16 of the 2000 Blue Book provides information on premium and termination requirements when a plan, in the normal course of administration pays out all benefits of all participants except substantial owners of the sponsoring company. Does that information apply if the plan ceases to be covered by Title IV for any reason?

RESPONSE:

Yes. If a plan ceases to be covered by Title IV of ERISA, the plan administrator should notify PBGC of this occurrence so that PBGC will know that the plan should be removed from the premium database. If the plan subsequently ends after it has ceased being covered by Title IV, no termination filing with PBGC is required. (See section 403(d)(1) of ERISA, which generally provides that upon termination of a plan not covered by Title IV, the assets of the plan must be allocated in accordance with section 4044 of ERISA.) If the plan continues and becomes covered again, it must begin paying premiums again. To notify PBGC or to request a coverage determination, the plan administrator should write to:

Standard Termination Compliance Division
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 930
Washington, DC 20005-4026

E-mail: standard@PBGC.gov
Fax: (202) 326-4001

QUESTION 6

Standard Terminations: Notice of Plan Benefits

A plan is terminating in a standard termination. The plan properly provided the Notice of Intent to Terminate to all participants prior to the termination date. Prior to the date the Notice of Plan Benefits is issued, the plan provides benefits to a participant either through the purchase of an irrevocable commitment or in a form other than an annuity, in accordance with 29 CFR § 4041.22 (which sets forth the limited circumstances under which benefits may be provided during the pendency of the termination process) and all other applicable requirements under the Internal Revenue Code and ERISA. Must this participant receive a Notice of Plan Benefits?

RESPONSE:

Under 29 CFR § 4041.24(a), a Notice of Plan Benefits must be provided to every affected party as of the proposed termination date. However, PBGC staff interprets this regulation as not requiring a plan administrator to issue a Notice of Plan Benefits to a participant whose benefits are paid out in accordance with 29 CFR § 4041.22 on or before the due date for issuing the Notice of Plan Benefits.

QUESTION 7

Standard Terminations: Selection of Plans to Audit

In its response to Question 2 of the 2006 Blue Book, PBGC stated that it was considering making changes in how it selects plans for standard termination audits. (According to the response to Question 12 of the 2001 PBGC Blue Book, PBGC divides plans into two strata, selecting for audit all plans with 500 or more participants and a random sample from among the smaller plans.) Has PBGC made any such changes and, if so, what are they?

RESPONSE:

Shortly after the 2006 Blue Book was issued, PBGC decided to change the cutoff between strata. For terminating plans for which post-distribution certifications are filed on or after January 1, 2006, PBGC selects all plans with more than 300 participants for audit and a random sample of smaller plans. Plans may also be selected for audit when there is an indication of a problem (e.g., based on a complaint from a plan participant or practitioner).

In addition, PBGC now audits all plans that distribute plan assets in satisfaction of plan liabilities before or without filing a standard termination notice (Form 500) in accordance with PBGC's regulation (29 CFR part 4041). PBGC also reserves the right to take any other appropriate action in such circumstances. This initiative will not affect plans that in the normal course of administration pay out all benefits due all participants except substantial owners of the sponsoring company.

QUESTION 8

Standard Terminations: Determination of Majority Owner Status

PBGC's standard termination regulations provide that a majority owner (based on a 50% or more ownership interest taking into account the constructive ownership rules) may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits (29 CFR §§ 4041.2, .21(b)(2)). Assume that two or more participants are each substantial owners, but not majority owners, and together have a 50% greater ownership interest. Assume further that they agree among themselves that they will each elect such an alternative treatment under the majority owner rules. May they elect the alternative treatment?

RESPONSE:

No. To be eligible to elect an alternative treatment under the majority owner rules, a participant must be a majority owner (taking into account the constructive ownership rules). There is no aggregation of ownership interests among participants (except to the extent provided under the constructive ownership rules).

QUESTION 9

Standard Terminations: Post-Termination PPA Lump Sum Amendments

PPA changes the interest rate and mortality table used in calculating minimum lump sum values, with the change statutorily exempted from the anti-cutback rules of IRC section 411(d)(6). An implementing amendment need not be adopted until the end of the 2009 plan year (and perhaps even later if IRS extends the remedial amendment period).

Assume that a plan undergoes a standard termination and seeks a determination letter upon termination. After the plan's termination date, but by the end of the 2009 plan year (or by any later date during an extended remedial amendment period), the plan is amended to substitute the PPA interest and mortality assumptions for the GATT interest and mortality assumptions for purposes of calculating minimum lump sum values. The plan obtains a favorable determination letter from IRS and thereafter pays lump sums on the basis of the PPA assumptions (including the transition rule for distributions in the 2008 through 2011 plan years) during the permitted distribution period in the standard termination. These lump sums are lower than they would have been without taking the PPA lump sum amendment into account.

Would PBGC consider these lump sums to be correctly determined?

RESPONSE:

No. PBGC regulations (29 CFR § 4041.8) limit the effectiveness of amendments adopted after a plan's termination date when determining plan benefits in a standard termination. Under this regulation, amendments adopted after the plan's termination date generally may not be taken into account to the extent they decrease benefit values, as would be the case with the PPA lump sum amendment in the question. Although the regulation explicitly permits post-termination amendments to decrease benefit values "to the extent the decrease is necessary to meet a qualification requirement under section 401 of the Code", the plan here could have met qualification requirements by adopting the PPA lump sum assumptions for determining minimum lump sum values while preserving the GATT assumptions as an alternative basis for determining lump sums. Therefore, an amendment simply substituting the PPA lump sum assumptions for the GATT lump sum assumptions is not "necessary" to meet qualification requirements and, thus, the plan may not rely on the PPA lump sum amendment to decrease lump sum values. Also, as noted in PBGC's response to Q&A 14 of the 2001 Blue Book, PBGC is not bound by an IRS determination letter in determining benefit entitlements in a standard termination audit.

QUESTION 10

Valuations: Definition of “Normal Form” for XRA Purposes

Under 29 CFR § 4044.55(b)(1), the participant’s monthly benefit payable at unreduced retirement age is determined “in the normal form payable under the terms of the plan.” For this purpose, does “normal form” mean the automatic form of benefit payable under the terms of the plan absent an election otherwise, or the form of benefit in which the plan's formula expresses the benefit?

RESPONSE:

PBGC generally considers "normal form" for this purpose to be the form in which the plan's formula expresses the benefit.

QUESTION 11

Valuations: Social Security Supplement

A plan provides a benefit that is not protected under the anti-cutback rules of IRC section 411(d)(6), such as a social security supplement that is not a qualified social security supplement. Must that benefit be included in benefit liabilities for purposes of determining whether a plan may terminate in a standard termination under section 4041 of ERISA?

RESPONSE:

Yes. Unless the benefit is amended out of the plan on or before the termination date, the full benefit must be included in benefit liabilities for purposes of a standard termination under section 4041 of ERISA. (For information on post-termination amendments, see 29 CFR § 4041.8. See also Question 9 of this 2007 Blue Book.)

QUESTION 12

Valuations: 4044 Asset Allocation

When performing a valuation under Part 4044, how does PBGC allocate the expense load?

RESPONSE:

PBGC determines the expense load based on the total participant count and the total benefit liability (through Priority Category 6), and then allocates the entire expense load in proportion to the liabilities in each priority category.

QUESTION 13

Participant Notices: Elimination of Requirement under ERISA section 4011

PPA section 501(a) expands the annual funding notice requirement that applies under ERISA section 101(f) to multiemployer plans, so that it applies also (with modifications) to single-employer plans, effective for plan years beginning after December 31, 2007, with the notice required to be provided within 120 days after the end of the plan year to which it relates (subject to an exception for small plans). PPA section 501(b) repeals the requirement, under ERISA section 4011, that plan administrators of certain plans issue a Participant Notice, effective for plan years beginning after December 31, 2006. Do these effective dates mean that there will be more than a two-year period during which neither a Participant Notice under ERISA section 4011 nor an annual funding notice under ERISA section 101(f) will be required for a PBGC-covered single-employer plan?

RESPONSE:

Yes. In the case of a calendar-year PBGC-covered single-employer plan, a Participant Notice under ERISA section 4011 for the 2006 plan year was required to have been issued within two months after the deadline (or extended deadline) for the Form 5500 for the 2005 plan year, i.e., in the fall of 2006. (For most non-calendar year plans, a Participant Notice under ERISA section 4011 for the 2006 plan year will be due in the 2007 calendar year.) No Participant Notice under ERISA section 4011 will be required for the 2007 (or any later) plan year. The first annual funding notice for this plan under PPA section 501(a) will be the one for the 2008 plan year, which will be due within 120 days after December 31, 2008 (subject to an exception for small plans), i.e., in the spring of 2009.

Note that the Title IV Participant Notice "for" a plan year is generally issued "in" that plan year, whereas the Title I annual funding notice "for" a plan year will be required to be issued "in" the following plan year. Note also that while the Title IV Participant Notice is under the jurisdiction of the Pension Benefit Guaranty Corporation, the Title I annual funding notice is under the jurisdiction of the Department of Labor.

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QUESTION 14

Reportable Event Notices: Quarterly Contributions Due Before Merger

Plans A and B are calendar-year single-employer plans that merged effective May 10, 2007, with Plan A designated as the continuing plan. Quarterly contributions of $100,000 each would have been due for 2007 for Plan A. Quarterly contributions of $0 each would have been due for 2007 for Plan B. Plan B has a $5,000,000 credit balance in the Funding Standard Account (FSA) as of January 1, 2007 before reflecting any contributions for 2006. No contributions were made to either plan or the combined plan for 2007. Q-12 of IRS Notice 89-52 says that FSA credit balances can be used to meet/cure quarterly contributions required to the extent the contributions reflected in the FSA have been made. Since the FSA credit balance was available by the 30th day following the April 15, 2007 due date for the first 2007 quarterly contribution, does the plan need to report late quarterly contributions to PBGC under 29 CFR § 4043.25(c)?

RESPONSE:

Section 4043.25(c) provides that for the event of failure to make a required minimum funding contribution, notice is waived if the required minimum funding contribution is made by the 30th day after its due date. Provided that the merger was adopted and effective by the 30th day following the April 15, 2007 due date for the first quarterly contribution, then under the facts given above, PBGC would deem this waiver to apply.

(We note that there is no such waiver for PBGC Form 200, *Notice of Failure to Make Required Contributions*. Thus, had the missed contribution been such that a Form 200 would have been required, reporting would not be waived even if the merger had been adopted and effective by the 10th day after the missed contribution's due date.)

QUESTION 15

Reportable Events: Mortality Assumptions for "Optional" Reporting Waiver

In its response to Question 15(b) of the 2006 Blue Book, PBGC stated that its new mortality assumptions (a version of GAM-94), rather than its old mortality assumptions (a version of GAM-83), must be used as part of the 4010 Optional Assumptions under its reportable events regulation where the plan year that contains the "testing date" for the event year ends on or after January 1, 2006. However, PBGC's reportable events instructions, which were updated after PBGC's new mortality assumptions became effective, appear to require (at p. 14) the use of the old mortality assumptions regardless of when the plan year containing the "testing date" for the event year ends. Is the guidance in the 2006 Blue Book correct, or are the reportable events instructions correct?

RESPONSE:

The guidance in the 2006 Blue Book is correct. PBGC will revise its reportable events instructions to reflect this guidance. Also see Technical Update 07-1, Effect of Treasury Mortality Tables on PBGC Requirements (http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu15995.html), which explains how Treasury's issuance of new mortality tables for determining current liability affects the use of the 4010 Optional Assumptions for certain reportable events waivers.

QUESTION 16

Reportable Events: Effect of Pending Distress Termination

Assume that a plan has filed for a distress termination with PBGC with a proposed termination date of July 1, 2006; that PBGC has neither approved nor disapproved the distress termination; that all required installments and other contributions required under section 412 of the IRC have been made to the plan assuming that the plan terminates as of July 1, 2006; and that one or more such required contributions have not been made to the plan assuming that the plan remains ongoing. Is there a requirement to report (on Form 10 or Form 200, as applicable) that these contributions were not made? If so, and if a Form 200 is required, would PBGC consider a lien to have arisen and, if so, under what circumstances, if any, would PBGC perfect it?

RESPONSE:

PBGC will decide on a case-by-case basis what action, if any, to take in the circumstances described in the question. Until a pension plan is terminated in accordance with ERISA, it remains ongoing. Contributions are due for all periods up to a plan's termination date, and the pendency of a distress termination application with a proposed termination date does not serve to cut off the requirement to make contributions. Therefore, the person responsible for making a Form 10 or Form 200 filing should do so unless PBGC has advised that person that such a filing is not required under the circumstances of a particular case.

Although whether a lien has arisen in such circumstances is an issue within the jurisdiction of the IRS, PBGC also plays a role in connection with determinations regarding liens under IRC § 412(n). If the amount of the missed contributions exceeds $1 million, even if no such contributions would be owed if the plan terminated as of the date of plan termination proposed in the distress NOIT, a statutory lien under IRC § 412(n) arises by operation of law. PBGC can perfect that lien against all of the real and personal assets of the plan sponsor and its controlled group. Whether PBGC will perfect the 412(n) lien depends on the facts and circumstances of each case. If the distress termination is subsequently approved and based on the date of plan termination (whether it is the date proposed in the NOIT or some other date) no contributions are owed to the plan, any lien that had been perfected would be withdrawn and any excess contributions would be pro-rated to the date of plan termination.

QUESTION 17

Employer Reporting: Recognition of Future Service in Calculation of Benefit Liabilities

Under 29 CFR § 4010.8, benefit liabilities must be reported to PBGC for certain plans. For this calculation, benefit liabilities are to be determined using ERISA section 4044 assumptions, including the expected retirement age (XRA) assumption for each participant. As noted in Q&A 17 of the 2001 Blue Book and Q&A 19 of the 2002 Blue Book, future service is not reflected when determining a participant's "earliest retirement age" (ERA) and "unreduced retirement age" (URA) for looking up the XRA in the XRA tables. How, if at all, is future service reflected for determining whether a participant is expected to "grow into" eligibility for certain subsidies?

RESPONSE:

Future service is reflected to the extent a participant is expected to "grow into" eligibility for certain subsidies by continuing in covered employment until the XRA so determined.

For example, assume a plan has a normal retirement age of 65 and provides reduced early retirement benefits to participants age 55 with 10 years of vesting service. The plan also provides unreduced early retirement benefits to participants with 30 years of vesting service. For a participant age 45 with 20 years of vesting service, the ERA would be 55 and the URA would be 65. If the "medium" XRA table is applicable, the participant's XRA would be age 60. If the participant continues to work until his XRA of 60, he will have 35 years of vesting service. Thus, the benefit liability would reflect the unreduced benefit payable at 60 because the participant would have "grown into" the subsidy at that point.

QUESTION 18

Other Reporting: Terminated Plan

Plan A and several other plans are maintained by members of Controlled Group X. The Information Year (as defined in 29 CFR § 4010.5) for Controlled Group X is the calendar year. Plan A, which has a plan year beginning April 1 and ending March 31, is undergoing a standard termination with a proposed termination date of July 1, 2006. For purposes of the $50 Million Gateway Test and for purposes of reporting benefit liabilities to PBGC under ERISA section 4010, must Plan A be included? Does it matter whether the distribution of benefit liabilities was completed, or the post-distribution certification filed, on or before the gateway testing date (March 31, 2006), the end of the Information Year (December 31, 2006), or the 4010 reporting deadline (April 16, 2007)?

RESPONSE:

Plan A may be excluded for both purposes described above if all of the plan's assets (other than excess assets) are distributed pursuant to the termination on or before the last day of the Information Year, in this case December 31, 2006.

QUESTION 19

Other Reporting: Substantial Cessation of Operations

Section 4062(e) of ERISA provides special rules that apply when ''an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment'' (a ''section 4062(e) event''). Is the "more than 20%" test determined on a plan-by-plan basis or by considering all plans maintained by the controlled group in the aggregate?

RESPONSE:

For purposes of determining whether a section 4062(e) event has occurred, the "more than 20%" test is determined on a plan-by-plan basis.

QUESTION 20

Other Reporting: Substantial Cessation of Operations

In the response to Question 21(b) of the 2006 Blue Book, PBGC noted—in the context of an event that constitutes both an "active participant reduction" reportable event and a section 4062(e) event—that the reportable events filing requirement is separate from the filing requirement (under ERISA section 4063(a)) for a section 4062(e) event. May the two notices be combined by including the notice of the section 4062(e) event as part of the reportable events notice?

RESPONSE:

Yes, provided that: (1) the filing states that there has been a section 4062(e) event and includes a request for a liability determination; and (2) the filer alerts PBGC by clearly noting that the filing includes a notice of the section 4062(e) event (such as by indicating in a cover letter for the form that the filing also serves as notice of the section 4062(e) event).

Note that the due dates for the two types of notices will generally differ. Section 4043 reporting is due within 30 days after the plan administrator (or contributing sponsor) knows or has reason to know the event has occurred, while reporting under section 4063(a) is due within 60 days after the section 4062(e) event. Moreover, the section 4062(e) event and the active participant reduction event may not occur on the same date. Thus, in order to be timely, a combined notice will have to be submitted on or before the earlier of the two due dates.

Note also that the reportable events regulation provides a number of filing extensions for reporting an active participant reduction, none of which serves to extend the deadline for filing a notice of the section 4062(e) event. The filer, therefore, may have to submit the reportable events notice well before it is due to ensure the timeliness of a combined filing.

QUESTION 21

Other Reporting: Substantial Cessation of Operations

If a section 4062(e) event occurs, is reporting required under ERISA section 4063(a) regardless of the size of the plan?

RESPONSE:

Yes. Although PBGC has waived the requirement to report an active participant reduction under § 4043.23 for certain small plans, there is no such waiver of the requirement to report a section 4062(e) event under ERISA section 4063(a). In response to a comment asking for an exemption for small plans, PBGC, in the preamble to the section 4062(e) final rule published on June 16, 2006 (71 FR 34829), said that it would consider this request as it formulates additional guidance in this area.

QUESTION 22

Other Reporting: Spinoff to substantial employer (multiple-employer plan)

Assume a portion of a multiple-employer plan is spun off to a substantial employer of the multiple-employer plan under IRC section 414(l), and as a result, that employer ceases contributing to the multiple-employer plan. Has a withdrawal which needs to be reported under ERISA section 4063(a) occurred? If so, what actions might PBGC take? (In Q&A 19 of the 2005 Blue Book, which involved splitting a multiple employer plan between two employers, the answer stated that there "may have been a withdrawal of a substantial employer.")

RESPONSE:

Yes. This situation constitutes a withdrawal of a substantial employer (See Q&A 19 of the 2005 Blue Book). Therefore, the plan administrator must notify PBGC of the withdrawal pursuant to ERISA section 4063(a) (see Q&A 22 of the 2006 Blue Book for the manner of reporting).

In the event of such withdrawal, PBGC may seek a bond or escrow under ERISA section 4063(b) and (c); in unusual circumstances may pursue a partition of the plan under section 4063(d) and treat a portion of the plan as a terminated plan and the remainder as a separate plan (see Opinion Letter 81-14); may accept an appropriate indemnity agreement among employers under section 4063(e); or may reach a negotiated arrangement under section 4067. In an appropriate case, PBGC may also consider initiating termination under section 4042(a) and assessing liability under sections 4062 and 4064. PBGC's Department of Insurance Supervision and Compliance and Office of the Chief Counsel may be consulted for further guidance.

(The difference between this question and question 19 of the 2005 Blue Book is that in this case the employer is assumed to be a substantial employer. In the 2005 question, it was not stated whether either employer was a substantial employer and therefore the answer said that there "may have been a withdrawal of a substantial employer.")