

PBGC Provides "Box 5" Relief to Certain Premium Filers- Immediate Action May Be Required

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On June 16, 2010, the Pension Benefit Guaranty Corporation (PBGC) issued Technical Update 2010-2. If certain conditions are met, the Technical Update provides relief to plans that intended to elect to use the alternative premium funding target (APFT) method to calculate the variable rate premium (VRP) but did not check Box 5 in Part II of the comprehensive premium filing. Immediate action may be required to take advantage of this relief.

Background

The APFT method, as described in PBGC regulations implementing provisions of the Pension Protection Act of 2006 that changed the way VRPs are determined, allows plans to calculate the VRP for plan years beginning after 2007 using a method that is simpler and less burdensome than the "standard" method currently prescribed by statute. For 2009 it was particularly advantageous to use the APFT method because related pension funding relief provided by the Internal Revenue Service may have eliminated or significantly reduced VRP liability under the APFT method. An election to use the APFT method must remain in effect for at least five years, starting with the first plan year to which the election applies.

The PBGC previously took the position that the only way for a plan administrator to make an election to use the APFT method for a plan year was by checking Box 5 in Part II of the comprehensive premium filing for that plan year. However, on June 8, 2010, the PBGC announced both a change in its position and its intent to issue a formal Technical Update setting forth the scope of the relief and the process for obtaining it. To that end, the PBGC issued the Technical Update on June 16, 2010.

The Scope and Process of Obtaining Relief Under the Technical Update

A plan that intended to elect to use the APFT method, but did not check Box 5 in Part II of the comprehensive premium filing for an "applicable plan year" (*i.e.*, a plan year commencing in 2008, or a plan year commencing in 2009 but only a plan whose comprehensive premium filing for that plan year is due on or before July 15, 2010), will be deemed to have made a valid election to use the APFT method for that plan year if the following conditions are met:

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- The comprehensive premium filing was made on time for the applicable plan year.
- The APFT method was used to determine the plan's VRP for the applicable year, including the use of acceptable alternative discount rates as reported in line 7d(2) of Part III of the comprehensive premium filing for the applicable year.
- The "Alternative" box was checked in line 7d(1) of Part III (where the actuary reports the method that was used to determine the VRP) of the comprehensive premium filing for the applicable plan year.
- The plan administrator, and only the plan administrator, timely and properly notifies the PBGC in writing as described below.

This relief is available even if the plan has amended its comprehensive premium filing for the applicable plan year to use the standard method; if relief is provided in such case, the PBGC will simply disregard the amended filing.

To obtain relief under the Technical Update, the plan administrator must send the PBGC Financial Operations Department written notice *within 30 days* of the later of June 16, 2010, or the date the comprehensive premium filing for the applicable year is due, stating:

- "Technical Update 10-2 Relief" in the subject line of the notice
- The name of the plan and the Employer Identification Number and Plan Number most recently reported for the plan in a PBGC premium filing
 - The name, telephone number and e-mail address of the plan administrator
 - That the conditions for relief in the Technical Update (as listed above) are met
 - That the plan intended to elect the APFT method, including the first day of the applicable plan year on which the APFT method was first effective
 - The filing date for the last timely comprehensive premium filing for the applicable plan year, as shown in the filing receipt generated by the PBGC's premium e-filing application, My Pension Administration Account
 - That the plan administrator understands the election will remain in effect unless and until it is subsequently revoked and that it must remain in effect for at least five years starting with the first plan year to which the election applies
 - Whether the plan wants the overpayment to be refunded or applied against future premiums (if the amount of premium already paid for the applicable plan year exceeds the amount of premium owed as determined using the APFT method)

Upon receipt of written notice from the plan administrator, the PBGC will review the plan's comprehensive premium filing for the applicable plan year and will confirm whether or not the conditions for relief are met. If a plan takes advantage of the relief in the Technical Update for the 2008 plan year, the election must remain in effect for five years from the first plan year to which the election is in effect. If a plan in this situation used the standard method for the 2009 plan year, the 2009 comprehensive premium filing will need to be amended to use the APFT method. If a plan in this situation used the APFT method for the 2009 plan year, no further action is required with respect to the election.

If you are a plan administrator of a defined benefit plan, you should contact your legal counsel or actuary to determine if you are affected by the Technical Update.

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