

Publications

PBGC Update: 4010 Reporting Waivers & Benefit Payment Regulations

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The Pension Benefit Guaranty Corporation (“PBGC”) recently issued [Technical Update Number 23-1](#) to provide for certain underfunded pension plans a limited waiver from the reporting requirements under ERISA section 4010 due to 2022/2023 market conditions. The agency also issued its final regulations regarding the benefits payable when a single-employer plan is taken over by the PBGC in a distress or involuntary termination. Each of these new rules is discussed below.

I. 4010 Reporting Waivers

ERISA section 4010 generally requires certain underfunded plans to file a report with PBGC. The report is generally due on or before the 105th day after the close of the information year (April 14, 2024 for fiscal years ending December 31, 2023), though some actuarial information may be provided at a later time.

On August 7, 2023, PBGC published Technical Update Number 23-1, providing a limited waiver for the reporting requirement. In the Update, PBGC noted that late 2022 and early 2023 had “atypical and almost unprecedented” market conditions that may trigger ERISA section 4010 reporting for many plans that otherwise would not have been required to report. Recognizing those market conditions may produce unusually low funding results in the actuarial valuations, PBGC is providing a waiver if certain conditions are satisfied:

- **No 4010 Reporting for the Last Five Years.** The 4010 reporting requirement did not apply for the last five consecutive years.
- **Funding Level.** Either (1) all of the plans in a controlled group have a “Market-based 4010 FTAP” of 85% or above, or (2) the “Market-based aggregate funding shortfall” does not exceed \$15 million. For this purpose, the 4010 FTAP and shortfall are calculated by (i) disregarding asset smoothing and (ii) using spot segment rates for the month preceding the month in which the plan year begins (*i.e.*, the rates defined in Code section 417(e)(3)(C)).
- **Valuation Date.** The waiver applies to every plan in the controlled group with a 4010 FTAP below 80%, that uses a valuation date on or after October 1, 2022 and on

or before March 1, 2023. This requirement can affect sponsors who have plans with valuation dates outside of those specific months (even if other sponsored plans in the controlled group fall within the October-March window).

To use the waiver, PBGC must be notified no later than 15 days before the 4010 reporting deadline (if the waiver was not applied). Notice is provided by sending an email to ERISA.4010@pbgc.gov, with the subject line “Technical Update 23-1 Waiver”, and including in the body of the email, the name of the ultimate parent entity identified along with the date the applicable information year ends.

For sponsors who find their most recent actuarial valuations may otherwise require 4010 reporting and have not needed to do this type of reporting in the last five years, it may be helpful to have the “Market-based 4010 FTAP” and “Market-based aggregate funding shortfall” calculated above to see if this relief may apply.

II. Final Regulations on Single-Employer Benefits Payable by PBGC

On July 11, 2023, PBGC issued final regulations (the “Final Regulations”) regarding the benefits payable when a single-employer plan is taken over by the PBGC in a distress or involuntary termination. 88 Fed. Reg. 44045. The general changes in the Final Regulations are as follows:

- **No Lump Sums Once PBGC is Trustee.** As a longstanding rule, when the PBGC takes over a plan in a distress or involuntary plan termination, the PBGC generally will not pay lump sums, even if they are permitted by the plan document. The Final Regulations retain the general prohibition on lump sums and clarifies that PBGC will not pay a lump sum even when the participant elected the lump sum prior to PBGC’s trusteeship of the plan.
- **Increased Limit for Small Lump Sum Distributions.** The Final Regulations increased the threshold for the PBGC’s payment of lump sums for small benefits. Although PBGC generally prohibits the payment of lump sums, there are exceptions for certain small benefits. The PBGC originally set the amount of the benefit eligible for a lump sum at \$5,000, which reflected the statutory limit on amounts eligible for involuntary distribution under section 203(e)(1) of ERISA, and section 411(a)(11)(A) of the Internal Revenue Code of 1986, as amended. The SECURE 2.0 Act of 2022 increased the ceiling on involuntary distributions to \$7,000 effective in 2024. As such, the Final Regulations amend the PBGC’s rules to replace the dollar amount with a citation to the involuntary distribution rules under ERISA.
- **Clarification to QPSA Payments.** The Final Regulations clarify that if a participant has a benefit in excess of the de minimis minimum upon a plan’s termination, but the qualified preretirement survivor annuity (“QPSA”) payments do not have a present value in excess of the de minimis level when the participant dies, the surviving spouse can elect a lump sum or an annuity (if available).
- **Lump Sums Required for Estates.** Historically, the PBGC has allowed, but not required, estates to receive a lump sum benefit. The PBGC has determined that annuities are “inappropriate” for an estate, and the Final Regulations now require that the PBGC pay benefits owed to estates as lump sums.
- **Withdrawal of Mandatory Employee Contributions.** The Final Regulation clarifies that a participant may withdraw any accumulated mandatory employee contributions in a single lump sum at any time before going into pay status, provided the plan permits such a withdrawal. The PBGC generally permitted participants to choose to receive a lump sum within 61-days of being notified, but the Final Regulations eliminate this 61-day period. This means contributions can be withdrawn by participants at any time before commencing their benefit.
- **Payment Corrections.** The PBGC generally does not allow participants to change their benefit elections after benefit payments have commenced. However, under the Final Regulations, participants are allowed to change their benefit elections if the PBGC miscalculated their benefit estimate or early retirement factor by 10 percent or more.
- **Method for Valuation of Assets.** The Final Regulations clarify that the PBGC will use the same asset valuation methodology for purposes of both allocating assets among participants in a terminated plan and determining the amount of unfunded liabilities. Prior regulations did not require the PBGC to use the same valuation methodology for both purposes, but the PBGC determined that it is “fair and reasonable” to do so. The clarification means that assets will be valued for both purposes at their “fair value” in accordance with Generally Accepted Accounting Principles in the United States.

These changes in the Final Regulations are effective on August 10, 2023, and will apply to plan terminations initiated on or after August 10, 2023.