Willis Towers Watson

August 26, 2019

Pension Benefit Guaranty Corporation
Regulatory Affairs Division, Office of the General Counsel
1200 K Street NW
Washington DC 20005-4026
reg.comments@pbgc.gov
RIN 1212-AB34

RE: PBGC Proposed Regulations RIN 1212-AB34

Willis Towers Watson US LLC ("WTW") respectfully submits comments on PBGC's proposed regulations entitled *Reportable Events and Certain Other Notification Requirements, Annual Financial and Actuarial Information Reporting, Termination of Single-Employer Plans, and Premium Rates*.

WTW is a leading global professional services company that employs approximately 45,000 associates worldwide, over 1,100 of whom are members of U.S. actuarial bodies and approximately 600 of whom are enrolled actuaries. We provide actuarial and consulting services to more than 1,700 defined benefit plans in the U.S. The undersigned have prepared our company's response with input from others in the company.

* * * * * * * * * * * * * *

WTW applauds the PBGC's efforts to periodically examine regulations and processes and update them to facilitate compliance and eliminate unnecessary reporting. We welcome the changes and clarifications in the proposed regulations, and encourage the PBGC to continue their efforts to provide clear, workable rules.

Following are our comments on the proposed regulations, categorized by topic.

Premiums

We believe that the proposed rule governing plans that terminate during a plan year after experiencing a spin-off is clear and workable. Similarly, we appreciate the clarification of the rules regarding when the Participant Count Date changes to the first day of the current plan year, and when it remains the last day of the preceding plan year, when spin-offs and/or mergers occur on the first day of a plan year. However, we also believe both of these represent changes to the rules in the current regulations, and ask that the final regulation make clear that the new rules are applicable only to plan years that begin after the regulations are finalized.

In addition, we believe that this rule making process is a good opportunity to clear up confusion about mergers and spin-offs that occur on the last day of a plan year as well. Several interpretations are possible (using calendar year plans as examples), including the following:

1. A January 1 and a December 31 event are the same – the event essentially occurs "at the stroke of midnight" as one plan year ends and the next plan year begins, and thus (a) the effect on premiums is the same whether the event occurs on December 31 or January 1 and (b) in the case of a spin-off to a "new plan", there is no one day plan year on December 31 that would trigger a premium filing with 1/12 of the annual premium owed.

Stamford Square
3001 Summer Street
Stamford, CT 06905
P 203.326.5400
F 203.326.5499
Willis Towers Watson US LLC

2. December 31 is different from January 1; all transactions on December 31 occur **before** participants are counted for purposes of the following year's premium. Thus:
   - For mergers, all participants of the merged plan are counted on the December 31 Participant Count Date
   - For plan to plan transfers, all participants are treated for premium purposes as being in the plan they are actually in post transaction.
   - For spin-offs to a standalone plan, the Participant Count Date remains December 31 and each of the resulting plans pays premiums for the following year on the participants who are in that plan post spin-off. We do not believe there should be a one day plan year and one month premium for the "new plan" under this interpretation and request that the regulation clearly state this.
3. December 31 is different from January 1; all transactions on December 31 occur **after** participants are counted, and thus:
   - For mergers, participants from the disappearing plan are not counted
   - For plan to plan transfers, all participants are treated for premium purposes for the next plan year as being in the plan they were in before the transaction.
   - For spin-offs to a "new plan", the spun-off participants are double counted. The Participant Count Date for the spun-off "new plan" is January 1. There is no short plan year for the spun-off "new plan".

We recommend Interpretation 1, as we believe that in reality there is no functional difference between a January 1 and a December 31 event. We believe that interpretation 3 is clearly problematic and we include it here only to stress the importance of providing clarity on the issue. We suggest that this clarity would best be provided through simple examples.

ERISA §4010 Calculations for Benefit Liabilities or Filing Triggers

Calculating Benefit Liabilities

Cash Balance Plans

We believe the approach specified for calculating annuities under cash balance plans (i.e., the annuities that would be provided if the plan had terminated as of the end of the plan year ending within the information year would be valued) is reasonable; however, as this represents a change from the most recent informal guidance provided (in 2017 Blue Book Q&A 17), we ask that the final regulations make clear that this change in approach applies only for plan years beginning after the regulations are finalized.

In addition, we note that §1.411(b)(5)-1(e)(2)(iii)(2) provides that, in a case where a mortality table that is regularly updated for mortality improvement (e.g., the §417(e) applicable mortality table, or AMT) is used, upon plan termination the table used to calculate benefits at an annuity starting date (ASD) after plan termination must reflect mortality improvement through that ASD. The proposed regulations do not address whether mortality improvement must be projected to the ASD (i.e., the expected retirement age, or XRA) for §4010 purposes, or how such improvement would be projected. The approach that first comes to mind would be to use the improvement scale that was used to develop the current table, however other reasonable approaches should be permitted. In addition, since projecting no improvement would be conservative (i.e., would produce larger annuities to be valued) and would be simplest, we ask that PBGC make clear that such an approach would also be acceptable.

At-Risk Plans

We believe that the proposed regulations should be clarified as to how the §4010 funding shortfall is calculated for plans that are at risk (i.e., for purposes of the "less than $15 million §4010 funding shortfall" waiver). The proposed regulation refers only to §430(i)(1). IRC §430(i)(1) provides the at-risk assumptions, including loads if the plan was in at risk status for 2 of the preceding 4 years. However, the phase-in between the at-risk and not at-risk funding targets (FTs), based on the number of consecutive years the plan has been at risk, is in §430(i)(5), thus leaving it unclear whether the phase-in can be applied for this purpose. The proposed regulation also does not refer to §430(i)(3), which prevents the at-risk FT from being smaller than the not at-risk FT. It seems likely that PBGC intends that the provisions of §430(i)(3) and (5) apply to the FT used for the "less than $15 million §4010 funding shortfall" waiver in the same manner as they do for IRC §430 funding requirements (i.e., the FT used for the §4010 funding shortfall is calculated in the same manner as the §430 FT, except for the use of non-stabilized interest rates), but we recommend the regulation be clearer on this point. Clarification (i) of the participant count (presumably beginning of year, not end of year) to use for the $700 per participant load, and (ii) that the 4% expense load on the not-at-risk funding target would apply to the not-at-risk FT determined without regard to interest rate stabilization would also be helpful.

§4010 Filing Triggers – Late Election to Reduce Funding Balance (§4010.11)

We note that the regulations under IRC §430 do not permit "late funding balance elections" and thus the reference in the proposed regulation to such late elections, including references to "had elections been timely made", may sow some confusion. We believe that the references mean that valid elections made before the §4010 filing due date to reduce funding balance for a later plan year are treated as elections to reduce the funding balance for the plan year ending in the information year for purposes of the 80% §4010 funding target attainment percentage (§4010 FTAP). If that is the case, we suggest that this be more clearly explained and that a term other than late funding balance election be used. Although a bit longer we suggest "subsequent funding balance election" or "later plan year funding balance election".

An example of the use of such elections to reduce funding balance for purposes of the §4010 FTAP reporting trigger would be very helpful. In particular, it would be helpful to clarify that the amount that would need to be elected to be reduced would be the amount needed to bring the §4010 FTAP for the plan year ending in the information year to 80%, increased by the rate of return on the market value of the plan's assets for the intervening years.

Using 2019 calendar year plan and information years as an example, IRC §430 funding regulations prescribe a December 31, 2019 deadline to reduce 2019 funding balance, but the §4010 filing potentially triggered by the 2019 §4010 FTAP is not due until April 15, 2020. Presumably, if a $1,000,000 reduction in funding balance is needed to bring the 2019 §4010 FTAP to 80%, an election is made to reduce 2020 funding balance between January 1, 2020 and April 15, 2020, and the market rate of return on trust assets during 2019 was 6%, an election to reduce 2020 funding balance of $1,060,000 would be needed. It would be helpful if that were confirmed. In addition it would be helpful to confirm whether this election is effective in obtaining the waiver if no funding balance actually existed for 2019 (i.e., was not created until 2020 due to excess contributions for the 2019 plan year) and was not used already against minimum required contributions (MRC).

Information Required for ERISA §4010 Filing

We appreciate the (a) elimination of the requirement to determine and submit individual financial information for each controlled group member and (b) streamlining of the requirements to report relationships among controlled group members. We ask that PBGC permit these changes to be reflected in 2019 information year filings, even if the regulations are otherwise not yet effective.

Reportable Events

We agree with the elimination of the "75% of active participants at the beginning of the prior year" trigger for active participant reduction reportable events, as we believe that will eliminate certain duplicate reporting that now occurs that is related to the same reduction in participants.

We believe that the other proposed changes to the reportable event regulations are reasonable and helpful and are grateful for the PBGC's efforts to improve the regulations.

We appreciate the opportunity to comment and would be pleased to provide any additional information that might be helpful. Please contact either of the undersigned if you have any questions or would like to discuss our comments in more detail.

Michael F. Pollack, FSA, EA, MAAA, FCA
Senior Director, Retirement
mike.pollack@willistowerswatson.com
(203) 326-5469

Maria M. Sarli, FCA, FSA, EA, MAAA
Senior Director, U.S. Retirement Resource Actuary
maria.sarli@willistowerswatson.com
(678) 684-0782