AMERICAN RETIREMENT ASSOCIATION
Working for America's Retirement

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August 26, 2019

Ms. Hilary Duke
Assistant General Counsel for Regulatory Affairs
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, DC 20005-4026

Subject: Response to PBGC's Request for Comments on Miscellaneous Corrections, Clarifications, and Improvements Proposed Regulations, RIN 1212-AB34, *84 Fed. Reg. 30666* (June 27, 2019)

Dear Ms. Duke,

The American Retirement Association ("ARA") is writing in response to the request for comments on proposed regulations that make miscellaneous technical corrections, clarifications, and improvements to its regulations on Reportable Events and Certain Other Notification Requirements, Annual Financial and Actuarial Information Reporting, Termination of Single-Employer Plans, and Premium Rates. ARA thanks the PBGC for the opportunity to provide comments on these proposed changes.

ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the ASPPA College of Pension Actuaries ("ACOPA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement savings plans and are dedicated to expanding on the success of employer provided plans. In addition, ARA has more than 26,000 individual members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of American's private retirement system.

1. Section 4041.29 Post-distribution certification. ARA appreciates the additional flexibility in proposed section 4041.29(a)(2) to allow up to 60 days to provide the post-distribution certification. However, in proposed section 4041.29(b), the PBGC proposes to assess a penalty for late filing "under paragraph (a) of the section *only to the extent* the completed PBGC Form 501 is filed more than 90 days after the distribution deadline (including extensions) under section 4041.28(a)." (emphasis added). From the use of the term "only to the extent", it is unclear whether PBGC intends to apply penalties in the case of a Form 501 that is submitted within the 90-day period but which has some

missing information. For clarity, ***ARA recommends*** replacing the words “only to the extent” with “only if”.

2. Section 4043.23(a)(2) of the proposed regulations defines an attrition event as the “…sum of the number of active participants covered by the plan at the end of such plan year, plus the number of individuals who ceased to be active participants during the same plan year that are reported to PBGC under paragraph (a)(1) of this section.”. ARA agrees this rule will prevent duplicative reporting so that an attrition event notice at a later date will not be required due to the same active participant reduction. However, under the rule as written the reportable event attrition notice could still be triggered if there was a <u>failure</u> to report the single-cause event to the PBGC earlier in the year. We did not think this was the PBGC’s intention. For further clarity, ***ARA recommends*** replacing the words “reported to the PBGC under paragraph (a)(1)” with the words “required to be reported to the PBGC under paragraph (a)(1)”. In Example 2 at 4043.23(f)(2)(i), Example 3 at 4043.23(f)(3)(ii), and Example 4 at 4043.23(f)(4), it is assumed that the (single-cause) event was timely reported to PBGC, so some conforming changes to the language in these examples may be necessary if this recommendation is implemented.

3. PBGC has proposed additional flexibility in allowing more time for plan administrators to submit PBGC Form 501, by submitting the form within 60 days after the last distribution date for any affected party if the plan administrator certifies to PBGC that all assets have been distributed in accordance with section 4044 of ERISA within 30 days after the last distribution date for any affected party. ARA believes this is a positive change that gives the plan administrator more time to collect necessary information, and ***ARA recommends*** finalizing this rule as proposed.

4. Section 4010.8 Plan Actuarial Information. In Table 1 to paragraph (d)(2)(ii), we assume that it is still possible to ignore pre-retirement mortality (e.g., in a smaller plan, or possibly in a cash balance plan) but this is not completely clear. If an actuary for a plan does not use a pre-retirement mortality decrement in the normal course, is the plan allowed to disregard pre-retirement mortality decrement under Table 1? ***ARA recommends*** an actuary for a plan be allowed to disregard pre-retirement mortality for purposes of Table 1 to paragraph (d)(2)(ii) to the extent the plan actuary does not use an assumption of pre-retirement mortality.

If you have any questions regarding the matters discussed herein, please contact Martin Pippins, ACOPA Executive Director and Director of Regulatory Policy at (703) 516-9300 ext. 146. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Martin L. Pippins, MSPA
Executive Director, ACOPA