September 25, 2015

Submitted via email to reg.comments@pbgc.gov and via the Federal eRulemaking Portal: www.regulations.gov

Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Dear Sir or Madam,

Subject: RIN 1212–AB30—Comments on proposed regulations under ERISA Section 4010 Annual Financial and Actuarial Information Reporting

Aon Hewitt welcomes the opportunity to submit comments on the proposed rules regarding employer reporting under ERISA Section 4010. The proposed regulations were published in the *Federal Register* on July 27, 2015.

Who We Are

Aon plc (NYSE: AON) is the leading global provider of risk management, insurance and reinsurance brokerage, and human resource solutions and outsourcing services. We have 66,000 colleagues worldwide. Aon unites to empower results for clients in over 120 countries via innovative and effective risk and people solutions and through industry-leading global resources and technical experience.

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 30,000 professionals in 90 countries serving more than 20,000 clients worldwide.

Summary Comments

As part of updating existing regulations regarding Annual Financial and Actuarial Information Reporting to reflect guidance associated with the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Highway and Transportation Funding Act of 2014 (HATFA), the Pension Benefit Guaranty Corporation (PBGC) proposes limiting the existing $15 million waiver of reporting to those controlled groups with fewer than 500 plan participants in all plans of the controlled group. Aon Hewitt believes this added participant threshold would significantly increase the number of filings required by employers, adding burdensome reporting in many situations where the plans do not pose a significant risk to the PBGC. This participant count threshold should not be included in final regulations.

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As an alternative to the participant count restriction, we believe that the $15 million waiver could instead be based on the use of non-stabilized rates (the same as used for the 80% threshold) without a substantial burden to plan sponsors. Alternatively, the waiver could be based on the amounts used for purposes of the variable-rate premium. Finally, the participant count threshold could be increased or modified.

The PBGC also proposes eliminating the ability to use the form-of-payment assumptions used for minimum funding purposes for calculating reported benefit liabilities. We suggest that this alternative assumption should be maintained to allow plan sponsors the flexibility to continue with existing calculations. We see little value in requiring plan sponsors to reprogram valuation software to use different form-of-payment assumptions in calculating benefit liabilities to be reported when the difference in value is admittedly immaterial.

Finally, the PBGC proposes to provide waivers of reporting for controlled groups required to file due to a plan having missed contributions over $1 million or a plan having an outstanding funding waiver in excess of $1 million. We agree that these waivers are appropriate given that the PBGC currently receives information in these situations based on other reporting requirements, and we thank the PBGC for including this relief from duplicative reporting.

A 500 Participant Controlled Group Threshold Is Unnecessary and Burdensome

Controlled groups may have multiple plans of various sizes, funded at varying levels. Controlled groups with one or more large plans that are not at least 80% funded (disregarding stabilized interest rates as a result of MAP-21 and HATFA) frequently cannot meet the $15 million waiver criteria. Those controlled groups are thus currently subject to reporting, providing the PBGC with information on large plans with significant underfunding.

However, we are aware of a number of large controlled groups that do not pose a significant risk to the PBGC but would need to report under the proposal because a member of the controlled group maintains a small plan that is underfunded. These small plans may be the result of recent acquisitions where additional funding to bring the acquired plans up to 80% funded may not yet have occurred. Eliminating the availability of the $15 million waiver by restricting it to controlled groups with fewer than 500 participants creates an unnecessary reporting burden in these low-risk situations. Also, some multiple employer plans may have over 500 participants but individual employers may not have control over plan funding.

For example, a controlled group may have: (1) Plan A with a funding target of $500 million, a value of plan assets of $490 million, and 5,000 participants; and (2) Plan B with a funding target of $10 million, a value of plan assets of $7 million, and 300 participants (assuming each plan uses the full yield curve rates, for simplification). Because Plan B is not 80% funded, reporting would be required. But, the total underfunding of all plans in the controlled group is only $13 million. This would be true even if Plan A had excess assets or were fully funded on a plan termination basis. The existence of one small underfunded plan in a controlled group with more than 500 participants unnecessarily requires reporting.

Moreover, a controlled group may have one or more plans that have sufficient assets as compared to the plan's funding target. But when assets are reduced by any outstanding funding balances (as required for the 80% threshold test), the plan is essentially deemed not to be at least 80% funded. The existing calculation of underfunding for the $15 million waiver provides a better measure of the "true" funded status of plans by determining the underfunded amount without reduction for existing funding balances (even if it is based on non-stabilized rates). If this $15 million waiver is limited only to controlled groups with fewer than 500 plan participants, some controlled groups may need to waive plan funding balances unnecessarily simply to avoid the burdensome reporting under ERISA Section 4010, or may forego additional funding to the plan since they would no longer have a dollar threshold to potentially reach to eliminate reporting.

For example, suppose a controlled group has only one plan with a funding target of $500 million, a value of plan assets of $486 million, and outstanding funding balances of $91 million. The plan assets cover 97% of the funding target. However, for purposes of the 80% threshold test, assets are reduced by the $91 million funding balance resulting in the plan being considered only 79% funded. Because the plan is only $14 million underfunded before subtracting funding balances from the value of plan assets, reporting is currently waived. If the number of plan participants were more than 500, the proposed changes would eliminate the waiver for a well-funded plan that poses no significant risk to the PBGC. It is worth noting that the proposed rules would require reporting in this example even if the value of plan assets were much higher, unless the plan sponsor was willing to waive funding balances.

Thus, as proposed, the restriction to allow the use of the $15 million waiver in situations where there are fewer than 500 plan participants across the controlled group is unnecessarily restrictive and burdensome for controlled groups with well-funded plans, and could actually result in lower funding contributions by some plan sponsors.

$15 Million Threshold on Stabilized Basis Is Reasonable Without Adjustment

The PBGC has provided guidance, which it proposes to codify, that the calculation of the $15 million waiver is determined reflecting stabilized interest rates as a result of MAP-21 and HATFA. Use of these stabilized rates results in a lower funding target for a temporary period of time. The PBGC believes this lower funding target calculation results in hundreds of plans not being reported to the PBGC and proposes to correct this situation by restricting the availability of the waiver. However, this approach assumes the stabilized rates are inappropriate and does not anticipate the lessened impact of the stabilized rates over time.

MAP-21 and HATFA provided for stabilized interest rates due to a historically low interest rate environment and its consequent impact on pension funding requirements. These changes in required funding assumptions were implemented to more accurately reflect the long-term nature of pension plan liabilities. The $15 million waiver to reporting under ERISA Section 4010 was also established as a more accurate measure of true pension plan funding by using assets that are not reduced by any existing funding balances. Thus, using a realistic measure of underfunding for waiving reporting for low levels of underfunding is a reasonable approach to applying the requirements to report to the PBGC and is consistent with the original intent of the waiver. The PBGC should not determine whether plans are exempt from reporting as measured against artificially low rates (i.e., rates that do not reflect interest rate stabilization).

In addition, the stabilized interest rates are currently anticipated to converge with the non-stabilized rates over the next five to eight years, and will have little impact on funding target liabilities from that point forward. Yet, if the proposed rule restricting the $15 million waiver to plans with fewer than 500 participants is finalized, the 500 participant count requirement will remain in effect even after the stabilized rates no longer have a material impact on liabilities. Therefore, the original intent of the $15 million waiver (to eliminate reporting for situations that “presented a level of risk and exposure to PBGC that was sufficiently low”) will be made void due to a short-term perceived need for additional reporting to the PBGC. We believe the burden of reporting over 200 plans (as anticipated by the PBGC) should not continue indefinitely into the future and the 500 participant restriction should not be implemented.

Alternative Solutions to Address PBGC Concerns of Under-Reporting

We believe the PBGC should not change the application of the $15 million waiver in any way. However, we offer the following as alternatives to the proposed changes.

Determine the Waiver Without Stabilized Rates

Rather than add a participant head-count restriction, the PBGC could provide that the $15 million waiver be determined without reflecting stabilized rates. While this measure would not reflect the long-term view of pension plan funded status under MAP-21 and HATFA, it would allow many controlled groups to maintain a waiver from reporting.

Calculating the waiver using non-stabilized interest rates is much less burdensome and costly to plan sponsors than reporting to the PBGC. Also, the funding target without reflecting stabilized rates is needed for any plans that calculate the variable-rate premium using the alternative premium funding target. Many plans also need to calculate the funding target without reflecting stabilized rates for the Annual Funding Notice disclosures required under MAP-21 and HATFA. Finally, some plans determine the funding target based on yield curve rates, in which case the funding target already does not reflect interest rate stabilization. Calculating the wavier on this basis will result in greater funding targets for some plans and increase the number of controlled groups that need to report to the PBGC as compared to the current calculation (which reflects stabilized rates), but will provide for a waiver for controlled groups with better funded plans.

Use Variable-Rate Premium Calculations

Alternatively, the unfunded vested benefits for purposes of the variable-rate premium could be used. This measurement does not reflect stabilized rates and is based on the market value of assets without reducing for outstanding funding balances. This calculation is readily available; however, it does not mirror the calculation for the current $15 million waiver.

Modify the Determination of the 500 Participant Count

On the other hand, the PBGC could modify the proposed determination of the 500 participant threshold to be determined based only on plans which are not 80% funded. This would allow the waiver to apply in situations where the underfunding is truly due to small plans which pose minimal risk to the PBGC. Or, the PBGC could use a significantly higher threshold for the participant count which would help eliminate the burden of reporting for plans which pose little risk to the PBGC.

Include a Phase-Out of the 500 Participant Count Requirement

Finally, if the PBGC proceeds without changes to the measurement of the $15 million waiver or the application of the 500 participant requirement, Aon Hewitt strongly encourages including a transition or phase-out of the 500 participant requirement to eventually reflect the original intent of the waiver when stabilized interest rates no longer impact the funding target by more than a *de minimis* amount.

Elimination of Form-of-Payment Assumption Used to Determine Minimum Funding

Some plans of controlled groups that are currently subject to reporting to the PBGC determine the reported benefit liabilities using the existing rules requiring the use of the same form-of-payment assumption as used for calculating minimum required contributions. Other plans “opt out” of this assumption and determine benefit liabilities using the form-of-payment assumption as prescribed under ERISA Section 4044.51. Because the difference in benefit liabilities is small and the amounts provided are not used for any actual purposes under ERISA Section 4044, we suggest the PBGC maintain the ability to use the assumption used for minimum funding purposes. This would reduce the need to change calculations that already exist. We suggest the PBGC specify both as acceptable assumptions, which would correct the omission of use of the ERISA Section 4044.51 form-of-payment assumption.

Additional Waivers of Reporting

We agree that additional waivers of reporting for controlled groups required to file due to a plan having missed contributions over $1 million or a plan having an outstanding funding waiver in excess of $1 million will reduce the burden of filing with the PBGC for a small number of controlled groups and will not result in the PBGC lacking information on plans that pose a risk to the PBGC. We thank the PBGC for including this relief from duplicate reporting for plan sponsors.

In addition, the PBGC should consider providing an additional waiver of reporting under ERISA Section 4010 for controlled groups that meet the “Low-Default-Risk Standard” provided in recently issued final regulations under ERISA Section 4043. Beginning in 2016, many controlled groups will want to annually monitor these criteria for reportable event situations. Thus, there would likely be no additional burden for these plan sponsors to review such a waiver. The PBGC has already determined that controlled groups that meet these criteria have a low level of risk for the PBGC. As with reportable events, a waiver of ERISA Section 4010 reporting based on this criteria would avoid unnecessary reporting to the PBGC without additional burden to plan sponsors.

Closing

While Aon Hewitt understands the PBGC’s concern that certain plan information may go unreported under ERISA Section 4010 due to the impact of MAP-21 and HATFA in the current interest rate environment, there are alternative options to address underreporting that would not create an undue reporting burden on plan sponsors that do not pose significant additional risk to the PBGC.

We recommend the PBGC consider other calculations which are readily available, modify the participant count threshold to apply to less well-funded plans or increase the threshold, and to provide a phase-out of the participant count threshold altogether.

Aon Hewitt appreciates the opportunity to submit our comments regarding the proposed changes and provide additional recommendations for considerations. Please contact the undersigned at the telephone number or email address provided below with any questions.

Sincerely,

Hewitt Associates LLC, an Aon Hewitt company

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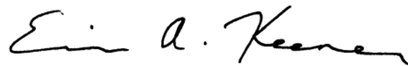

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