These comments are related to Proposed Rule 70 FR 9258

Comments on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

Comments:

1- Comments submitted by United States Steel Corporation on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

2- Comments submitted by American Benefits Council on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

3- Comments submitted by ASPPA on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

4- Comments submitted by Mellon on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

5- Comments submitted by Laura Rosenberg on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

6- Comments submitted by WorldatWork on Proposed Rule on Liability Pursuant to section 4062(e) of ERISA

[Comments submitted by United States Steel Corporation]

SUBJECT: FR Doc. 05-3702

Proposed Rule for computing liability under section 4063 (b) of the Employee Retirement Income Security Act of 1974 (ERISA) when there is a substantial cessation of operations by an employer as described by section 4062 (e) of ERISA

COMMENTS:

1. United States Steel Corporation opposes the proposed rule.

2. Historically, the PBGC has handled liability calculations required under section 4062 (e) of ERISA on a case-by-case basis. Given the many substantive and interpretive questions involved in determining facility shutdown liability for an employer plan sponsor, the current practice by the PBGC in the case of single employer plans in the context of 4062 (e) liabilities is unknown to us and should be communicated to the public in a forthcoming fashion prior to invoking a rule to revise the practice.

3. The stated intent of the proposal is to streamline regulation and improve administration of the pension insurance program. However, by imposing new liabilities and burdens on plan sponsors, the proposal would erode PBGC's ability to encourage establishment and maintenance of DB plans as required by charter.

4. This proposal would exacerbate incongruity between congressional intent, legislation, and regulation, since it would apply one form of withdrawal calculation to a company in a multiple employer plan, but a more expansive, restrictive, and costly termination liability calculation (in certain circumstances) to single employer plan sponsors.

The ERISA statute is confusing with regard to sections 4062 (e) and 4063 (b), because it ties liability for cessation of operations to the liability rules that apply when a substantial employer withdraws from a multi-employer plan. Congress' intent in the latter was to help ensure that participants and employers remaining in a plan after a substantial withdrawal by an employer would not be burdened by possible future funding shortfalls. This concern does not normally apply in the case of facility shutdowns by a single employer -- plan sponsors take such actions to help ensure the financial integrity of the going business concern and, hence their ability to continue to contribute to their plan. There are several concerns in this area that should be examined for public consideration before the proposed rule is implemented. For example: Since many plans have had their plans closed to new participants in recent years (including our own main plan), the proposal's continuation of a 20% rule on active participants in the plan as the trigger to a 4062(e) event could pose additional burdens on a company wanting to close minor parts of its business in the future (substantially less than the 20% rule if all active participants were counted). The proposal's trigger should be viewed in the context of the significance of the event to the ongoing concern (the plan sponsor) for all of its active domestic operations and in the context of the plan's overall financial health with liabilities calculated on a going concern basis before additional liabilities are imposed for the cessation event. Many questions need to be answered regarding the possible impact this proposal may have had, had it been put into effect decades earlier: How many facility closures would have triggered the proposed escrow payment had it been in effect since 1974? What is the nominal and relative value of such amounts? Realistically, would this proposal have significantly altered PBGC's current liability had it been in effect since 1974?

5. In addition, the proposal raises and leaves unanswered many interpretive questions that could undermine an employer's ability to analyze financial implications of potential business decisions. Although the underlying legislation is partly to blame for this uncertainty, the proposed rule could expose an employer to novel and unexpected interpretations that could involve substantial financial consequence. For example, how is a "facility in any location" defined or how is a date of cessation determined when an employer's actions occur in stages over a one or two year period? Under what circumstances would an asset sale qualify as a triggering event? The treatment of escrow monies also raises questions such as what investment choices or policies will be imposed on a single employer plan sponsor for benefits allocated to employees separated as a result of facility shutdown. If the escrow amounts are not needed during the five-year escrow period, will the sponsor be compensated for under-performing assets held in escrow?

6. The proposed rule likely would not effectively limit PBGC contingent liability, but could unnecessarily restrict business decisions aimed at companies attempting to downsize their business in response to marketplace pressures. In many manufacturing industries, labor contract provisions extending early retirement benefits to individuals in the event of plant shutdowns already prohibit many companies from pursuing "company-saving" plant shutdown actions. The up-front cash requirements associated with paying these costs are beyond the reach of most financially distressed companies, despite the fact that facility shutdowns could possibly prevent corporate bankruptcy and pension plan termination. For example, during the 1990s and early 2000s, companies like Bethlehem Steel, LTV, and National Steel were unable to raise the cash needed to pay termination benefits to pursue business strategies involving closure of certain unprofitable, high-cost, facilities that might have served to salvage each respective company. Consequently, the firms continued to operate their uneconomic facilities because it was cheaper and more practical to do so than to incur large cash costs associated with facility closures. This proposal, applied retroactively to the steel industry would have done nothing to prevent the calamity that hit the PBGC when these companies eventually liquidated.

7. Summary. The case-by-case method of calculating single employer liability in event of plant shutdown is a PBGC practice that is not fully predictable to companies today. However, until more serious consideration is put into this regulation aimed at

securing additional funds for the PBGC, the proposed rule raises more questions than it answers and leaves the answers to those questions to be handled on a case-by-case basis in the future. In light of the scope of the pending pension reform debate, the proposed rule constitutes a significant regulatory action that would be better left for Congress to clarify in the context of forthcoming PBGC reform legislation. Indeed for certain companies, the Bush Administration pension funding proposal attempts to cover for minimum funding purposes, the same liabilities the PBGC wants companies to hold escrow funds for under this proposal. At least until comprehensive PBGC reform legislation is enacted, current practice is preferred over the proposed regime.

AMERICAN BENEFITS COUNCIL

April 25, 2005

Filed Electronically

Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Re: Proposed rule concerning liability pursuant to ERISA Section 4062(e)

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the proposed regulations issued on February 25, 2005, relating to computing liability under Section 4063(b) of the Employee Retirement Income Security Act of 1974 (ERISA) when there is a substantial cessation of operations by an employer as described by ERISA Section 4062(e). The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We would like to start by applauding the Pension Benefit Guaranty Corporation (PBGC) for proposing rules intended to provide more certainty in an area traditionally handled on a case-by-case basis. However, the Council recommends that the PBGC address several areas that we believe need further clarification under the proposed regulation. The Council suggests that additional guidance would be helpful in the following areas discussed in more detail below: (1) cessation of operations, (2) formula modification and examples, (3) mergers and acquisitions, and (4) effective date.

Cessation of Operations

The proposed regulations require an employer that has a 20 percent or more reduction in a plan's active participants in connection with a cessation of operations at one or more facilities to make a liability payment that would be kept in escrow by the PBGC for five years and returned if the plan does not terminate. The payment would be equal to the termination liability (as if the plan terminated on the date of the cessation of operations) multiplied by a fraction of the number of participants separated from service over the total number of participants. In lieu of the escrow payments, employers could post bond in an amount not exceeding 150 percent of this calculation.

If security is to be required on a consistent basis, it is important to employers for the PBGC to provide guidance on what constitutes the cessation of operations of a facility and what employees are considered separated as a result of the "cessation". For example, if a cessation occurs over an extended period of time, employers need certainty in determining the time frame for measuring the decline in active participants. If more than one process is conducted on the same property, perhaps in multiple buildings, shutdown of one portion of the activities should not trigger the security requirement. However, the employer may have multiple locations within the same city or multiple facilities involved in producing a single product but different parts of a manufacturing process. Operations may be reduced because the employer will no longer take on new manufacturing but remain open for a period of time to complete pre-existing work. Employees may leave on their own when they anticipate a future cessation of operations. A fire or other disaster may destroy a facility. In many of these situations, it is not clear whether a "cessation" of operations has occurred and when it occurs.

It would also be helpful to clarify what constitutes active plan participation in the context of a cessation of operations. For example, a company that freezes its plan to further participation might also be moving business activities and affected employees from one facility to another. Some employees invited to make the transfer may decide not to move to the new location which could be in the same city or county. If the company has a strike at a location and plan participation stops for the strikers (or the employer locks out the workers during a labor dispute), it is not clear whether a bond would be necessary.

Formula Modification and Examples

The proposed rule would compute the required security payment by multiplying the total liability that would be imposed if the plan had terminated on the "date" of the "cessation" of operations at a "facility" by a fraction of the number of employees who are participants under the plan and are separated from employment because of the shutdown over the total number of employees who were participants in the plan prior to the cessation of operations. The Council recommends that the liability calculation use the lesser of this head-count calculation or the actual ERISA Section 4044 calculated liability for the affected participants.

Using the head-count calculation alone would provide some unreasonable results. For example, a large company might open or acquire a new facility with a substantial number of new employees but decide to close or sell that facility one or two years later for a bona fide business reason. The employer in this situation will likely be faced with liability far in excess of the potential liability for pension payments to the affected participants. This potential excessive liability could result in companies opening less new facilities when they weigh the risk.

In addition, the seeming straight-forward head count formula could be subject to interpretation that could result in widely varying calculations and specific examples would help to clarify these issues.

For example, assume a company sponsors a pension plan with 100,000 participants of which 80,000 are active employees (the remainder are retirees or deferred vested participants) and the plan is underfunded on a PBGC termination basis by $100 million. Assume further that the $100 million underfunding is attributable to the participant categories as follows: $20 million for retiree and deferred vested participants, and $80 million for active plan participants. The company shuts down a plant which results in the termination of 20,000 participants in the plan. A security payment would be required under ERISA Section 4062(e) because 20 percent of the total participants in the plan have been terminated (and 25 percent of active participants). The issue is whether to use the total number of participants or only the number of active participants in the formula.

Total number of participants (active and inactive) example:

- $\$100 \text{ million underfunding} \times \dfrac{20{,}000 \text{ terminated plan participants}}{100{,}000 \text{ total participants before cessation}}$

= liability of $20 million or surety bond of $30 million

Total of active participants example:

- $\$80 \text{ million underfunding} \times \dfrac{20{,}000 \text{ terminated plan participants}}{80{,}000 \text{ active participants before cessation}}$

= liability of $20 million or surety bond of $30 million

The second example appears to be the better approach because it reflects the amount of underfunding (at least on a per capita basis, see discussion above) represented by the active participants who will no longer be active. It does not seem appropriate to include the liabilities associated with the deferred vested and retiree participants in the calculation as they may have not been associated with the particular facility in question. In any event, an example or two would help clarify application of the formula.

Mergers and Acquisitions

The proposed rule does not clearly indicate whether the security payment is expected to apply to a sale of assets that includes a facility that the selling employer would cease to operate. The PBGC has long taken the position that mergers and acquisitions do not trigger a "cessation" and withdrawal where posting a bond would be necessary. The Council recommends that the PBGC clarify that the proposed rule is not a change in the PBGC's long-standing policy of not imposing the security requirements of ERISA Section 4062(e) for mergers and acquisitions.

Effective Date

The proposed rule does not include a proposed effective date. The Council recommends that the final rule clarify that it will not be applied retroactively. If an employer ceased operations at one or more facilities prior to the publication of the final rule, the rule would not apply.

While the Council appreciates the PBGC's efforts to provide uniform rules in this area, the Council strongly encourages the PBGC to carefully consider potential impacts of the proposed rule. The Council recommends that the PBGC move very slowly in this area to avoid any unanticipated consequences that might discourage healthy employers from maintaining defined benefit plans. Again, we appreciate the opportunity to comment on these proposed regulations. If additional information from us would be helpful, please do not hesitate to contact me.

Sincerely,

Jan Jacobson

Jan M. Jacobson
Director, Retirement Policy
American Benefits Council

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Comments on Proposed Rule on Liability Pursuant to Section 4062(e) of ERISA

April 20, 2005

Pension Benefit Guaranty Corporation

29 CFR Parts 4062 and 4063
RIN 1212-AB03

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to comment on the Pension Benefit Guaranty Corporation's (PBGC's) proposed rule relating to "Liability Pursuant to Section 4062(e) of ERISA."

ASPPA is a national society of retirement plan professionals. ASPPA's mission is to educate pension professionals and to preserve and enhance the private pension system. Its membership consists of more than 5,500 actuaries, plan administrators, attorneys, CPAs and other retirement plan experts who design, implement and maintain qualified retirement plans, especially for small to mid-size employers.

ASPPA recognizes and supports the PBGC's efforts to streamline its regulations and improve administration of the pension insurance program, specifically with respect to developing a workable mechanism for calculating the liability associated with a cessation of operations under ERISA §4062(e). However, ASPPA is concerned about the many interpretive issues the proposed rule does not address and the burdens small plans will face in dealing with the ERISA §4062(e) rules generally.

Summary of Issues

These comments address the following issues, which are described in greater detail below.

A. ASPPA recommends that the PBGC issue additional guidance on a variety of interpretive issues relating to ERISA §4062(e).

B. ASPPA recommends that the PBGC create a regulatory exemption from ERISA §4062(e) liability for small plans (generally, those with fewer than 500 participants).

Discussion

A. Need for Additional PBGC Guidance

The proposed rule addresses only one of many complex issues that may arise under ERISA §4062(e), leaving the other issues for case-by-case PBGC decision-making. These unresolved issues include fundamental questions going to whether and when an ERISA §4062(e) event has occurred.

For example, under what circumstances, if any, would ERISA §4062(e) liability arise as a result of an asset sale? How complete must a "cessation" be to trigger ERISA §4062(e) liability? Would a minimal level of continued "operations" prevent the liability from arising? What is meant by the term "operations"? If the employer happens to have two or more sets of "operations" (however that is defined), is it enough to trigger ERISA §4062(e) liability if only one of those sets of operations cease? What is meant by a "facility in any location" where the employer conducts its operations at two or more buildings near one another? Can a single building have two or more different "facilities" (*e.g.*, on separate floors)? What is the date of an ERISA §4062(e) event where the cessation occurs in two or more stages, or otherwise (perhaps gradually) over an extended time period? Is an employee considered to have been separated "as a result of" the cessation" [and therefore to count towards the 20% threshold that triggers ERISA §4062(e) liability]: (1) where the employee works at a different facility than the one that experienced the cessation (*e.g.*, where one facility serves as a warehouse that stocks parts for another facility); (2) where the separation occurred at or near the time of the cessation but would have occurred anyway due to normal attrition; or (3) where the employee was laid off but recall is possible?

Even where it is clear that an ERISA §4062(e) event has occurred, the amount of the resulting liability under the PBGC's proposed methodology may be difficult to determine because of the unanswered questions just discussed. For example, it may be unclear which employees would be treated as having been separated "as a result of" the cessation and therefore would count as part of the numerator of the proposed liability fraction. In addition, where the date of the cessation is unclear, there is uncertainty as to the date as of which the plan's termination liability would be determined.

And even where it is clear that an ERISA §4062(e) event has occurred on an easily determinable date, there is a need for guidance on whether the plan administrator is required to report the event within 60 days under ERISA §4063(a) and, if so, where the filing is sent, what it must contain, and what level of penalties would apply if there is a failure to report, including a failure involving an event that is arguably not an ERISA §4062(e) event.

These many open questions involve complex factual, legal, and actuarial issues that would benefit greatly from clear and definitive PBGC guidance.

ASPPA recommends that the PBGC provide clear and definitive guidance on all of these open questions. The PBGC may wish to consider using rules developed for other purposes [*e.g.*, determining whether a partial termination has occurred; determining notice requirements under the Worker Adjustment and Retraining Notification Act (WARN)], or a modified version of such rules, in developing its guidance under ERISA §4062(e).

B. Need for Small Plan Exemption

In the case of small plans (generally, those with fewer than 500 participants), the dollar amounts under ERISA §4062(e) are likely to be relatively small, and the burden that the small employers maintaining these plans would face in dealing with the many ambiguities raised by ERISA §4062(e) is likely to be significant. Even if the PBGC were to provide guidance on what constitutes an ERISA §4062(e) event and all of the other open questions, interpretive issues requiring the assistance of outside advisors would inevitably remain. The resulting costs would likely be disproportionately high in relation to the amounts at stake. Clearly, the burden that would be imposed on small employers in dealing with ERISA §4062(e) issues outweighs the benefit of subjecting them to liability under that section, particularly given the contingent nature of the liability.

ASPPA recommends that the PBGC, as a matter of enforcement discretion, create a regulatory exemption from 4062(e) liability for small plans. A small plan would be defined as a plan with fewer than 500 participants, on an aggregated controlled group basis, based on the last reported flat-rate premium participant count(s).

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These comments were prepared by the Defined Benefit Subcommittee of ASPPA's Government Affairs Committee, chaired by David Lipkin, MSPA, and primarily authored by Harold J. Ashner, Esq., APM. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/
Brian H. Graff, Esq. APM
Executive Director

/s/
Teresa T. Bloom, Esq., APM
Chief of Government Affairs

/s/
Ilene H. Ferenczy, Esq., CPC, Co-chair
Gov't Affairs Committee

/s/
George J. Taylor, MSPA, Co-chair
Gov't Affairs Committee

/s/
Sal L. Tripodi, Esq., APM, Co-chair
Gov't Affairs Committee

/s/
Robert M. Richter, Esq., APM, Chair
Administrative Relations Committee

From: pensions@bobklein.biz
Sent: Sunday, April 24, 2005 10:30 PM
To: Armbruster James; Beller James
Cc: Laura Rosenberg
Subject: Proposed regulation on Sec. 4062(e)

I think your definition of the fraction to be applied to determine liability needs to be clarified. The way I read it, both the numerator and denominator apply to active employees. This was how PBGC estimated this liability in the past when I worked there. However, Laura Rosenberg just published an article in the AIRA Journal that says otherwise. Laura cites the following example:

"Assume a company sponsors a pension plan with 50,000 participants of whom 20,000 are active and 30,000 are non-active (i.e., deferred vested and retirees), all of whom were employees of the company or its controlled group. Further assume that the pension plan is underfunded on a PBGC termination basis by $80 million.

The company decides to cease operations at a U.S. facility and move the operations offshore. This results in the loss of jobs for 5,000 people, all of whom are participants in the pension plan. Since the decline in active plan participants is 25%, an ERISA Sec. 4062(e) event has occurred.

Consequenty, the PBGC could require the company to post an escrow equal to $8 million: $80 million underfunding x 5,000 plan participants separated from employment/50,000 total plan participants before cessation of operations, or a surety bond in the amount of $12 million."

This is a narrow interpretation, but I'm not sure that it is what you intended. Did you mean for "employees who were participants under the plan" to include people who were not active employees at the time of the separation, including all retirees? A different interpretation of Laura's example would be that the escrow would be $20 million rather than $8 million, if one considers "employees" in the denominator to be only active employees. If the definition of the denominator simply said "total participants in the plan" rather than "employees who were participants in the plan", then Laura's interpretation would clearly be correct. As it is, it is ambiguous, particularly since plan participants could include spouses who never were employees.

I suggest that you clarify this. If you intended for the percentage in Laura's example to be 25% rather than 10%, you should simply say that liability is undefunding times the percentage decline in active participants. If you intended it to be as Laura described, I suggest changing the language to say "total participants in the plan" instead of "employees who were participants in the plan."

Mellon Human Resources & Investor Solutions

April 25, 2005
Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

Re: Proposed Regulation on Computing Liability under ERISA 4062(e) and 4063(b) upon the Substantial Cessation of Operations by an Employer

Dear Sir or Madam:

Mellon's Human Resources and Investor Solutions, a leading international employee benefits and human resources consulting firm, is pleased to be able to offer these comments on subject proposed regulation, as published in the Federal Register of February 25, 2005.

We believe that the proposed regulation could lead to an inequitable result in certain well-defined circumstances. We suggest a modification of the proposed rule that would avoid the inequitable result.

Background

Section 4062(e) of ERISA provides special rules that apply when "an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment" (a "section 4062(e) event"). In the case of a section 4062(e) event, the employer "shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of §§4063, 4064, and 4065 shall apply."

Section 4063(b) imposes a liability to the PBGC upon a substantial employer that withdraws from a multiple employer plan. This section 4063(b) liability represents the withdrawing employer's share of the total liability to the PBGC that would arise if the plan were to terminate without assets to pay all benefit liabilities.

Under the proposed regulation, an employer's liability after a 4062(e) event would be assessed by multiplying the total liability to the PBGC that would arise if the plan were to terminate ("the unfunded benefit liabilities") by a fraction. The numerator of the fraction is the number of the employer's employees who were participants under the plan and were separated from employment as a result of the cessation of operations, and the denominator is the total number of the employer's employees who were participants under the plan before taking into account the cessation of operations. Thus, the proposed regulation would allocate the unfunded benefit liabilities to the terminated group in proportion to headcount.
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Modification of Proposed Regulation Suggested

The proposed allocation rule appears to work well generally and is certainly simple to apply. However, in some circumstances it results in an unreasonable outcome.

Consider, for example, Company A which sponsors a plan with unfunded benefit liabilities, opens a new facility (or acquires a facility), hires a substantial number of employees at the new facility and brings these new employees into its plan. After a short period, such as one or two years, it finds that it does not wish to operate the facility for a bona fide business reason, perhaps because it is unprofitable or because the company otherwise wishes to rationalize its operations. It sells or closes the facility and terminates the employees.

When Company A opened its new facility, it hired and brought into the plan 225 employees who joined the 775 active participants already in the plan. Two years later, when the plan still has 1,000 active participants, Company A closes the facility and terminates the 225 active participants at the facility. At the time the facility closes, the plan has substantial unfunded benefit liabilities. Because the 225 terminated employees have relatively short service, the benefit liabilities directly attributable to the terminated group are much less than the benefit liabilities allocated to the terminated employees on the basis of headcount.

Under the proposed regulation, in the circumstances described, there would be created an immediate liability to the PBGC that is not justified by the 4062(e) event that is its trigger. Thus, the proposed allocation rule, by inequitably assessing a liability, can lead to inefficient results including continuation of a money losing operation or unreasonable conservatism in bringing new employees into an ongoing underfunded plan.

We suggest that the proposed rule be modified so that the 4062(e) liability to the PBGC is as stated in the proposed regulation, but not greater than the unvested benefit liabilities of the plan times a fraction. The numerator of the fraction would be the benefit liabilities attributable to the employer's employees who were participants under the plan and were separated from employment as a result of the cessation of operations, and the denominator would be the benefit liabilities attributable to the participants under the plan before taking into account the cessation of operations. This modification would add minimal additional calculations (the benefit liability for the terminated group would have to be calculated) but would avoid an inequitable result in some cases.

If you need any further clarification of our position, please feel free to call me at (212)330-1200, or e-mail me at rumack.f@mellon.com.

Very truly yours,

Frederick Rumack

Frederick W. Rumack
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April 26, 2005

Legislative and Regulatory Department
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VIA FACSIMILE
202/326-4112

This comment is in response to PBGC's proposal to amend regulations by providing a rule for computing liability under section 4063(b) of the Employee Retirement Income Security Act of 1974 (ERISA) when there is a substantial cessation of operations by an employer as described by section 4062(e) of ERISA.

WorldatWork is a leading association of compensation and benefits professionals, representing 25,000 members from North America's largest companies. These professionals are charged with, among other things, designing compensation and benefits plans to attract, retain and motivate employees. We wanted to make you aware of some potential consequences of the proposed regulations.

Without question, defined benefit pension plans have been a mainstay of employee rewards that encourage employee productivity and loyalty. Although many companies are moving away from defined benefit plans and into defined contribution plans, some industries find that defined benefit plans are more appropriate for their employees (add reasons). Within these industries, the PBGC's proposal to calculate and assess pension liability when a facility shuts down may have the unintended consequence of making defined benefit plans more difficult and costlier to maintain or continue.

In a company that is financially healthy, the mandate to post a bond upon an event such as a shutdown becomes an unnecessary burden. The shutdown may be motivated by a solid business purpose and does not change the risk profile of a company or the funding status of its pension plan. Further, the event in question, the facility shutdown, would result in an immediate financial impact that is completely unrelated to pension liability. Onerous new rules may cause healthy companies to reevaluate whether it is worth the time, effort and additional cost to continue to maintain their defined benefit plan.

For companies that are financially vulnerable, shutting down a facility may be a necessary step to preserve solvency. Imposing a huge financial burden because of a facility shutdown may only exacerbate the problem, ultimately resulting in bankruptcy.

Finally, we are concerned about how the PBGC intends to define “facility.” There already exists a definition of “facility” under the Worker Adjustment and Retraining Notification (WARN) Act, and there is another definition of “facility” under the California WARN Act. Clarification on the definition of “facility” for the purposes of this proposal would be helpful.

Please feel free to contact me if you have any questions regarding our submission. Thank you.

Sincerely,

Jeffrey J. Kros, J.D.
Government Relations Manager
WorldatWork