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EBEC Law Update

May 7, 2009

**2009 Waiver of PBGC Reportable Event Notice Where
Quarterly Minimum Funding Obligations are Not Met**

The Pension Benefit Guaranty Corporation on April 30, 2009 issued Technical Update 09-3 waiving for a small pension plan sponsors the PBGC “reportable event” notification under ERISA § 4043 for failure to timely make quarterly funding contributions to the plan with respect to the 2009 plan year, providing the failure is not motivated by financial inability.

By way of background, ERISA § 4043 provides that certain events require notice to the PBGC by the plan administrator of a pension plan subject to Title IV of ERISA within 30 days after he or she knows or has reason to know that the reportable event has occurred. Four additional reportable events were added by GATT 1994, which, for public companies with significantly underfunded plans, require 30-day advance notice.

Under ERISA § 4043(c)(5) and PBGC Reg. § 4043.25, there is a requirement to notify the PBGC (a reportable event) within 30 days after failure to make a required minimum funding installment or payment.

In prior technical updates (97-6, 06-4 and 08-2) the PBGC waived the reportable event requirements for small plan sponsors that failed to make quarterly contributions. In February of 2009, however, the PBGC indicated that it would no longer waive the reportable event requirement for failure to make quarterly contributions, since many of the plans that failed to give such notice later terminated with underfunded liabilities. Practitioners argued, however, that many plan sponsors fail to make quarterly contributions for reasons other than financial distress, and small plans have funding valuation schedules that make it difficult to determine the amount of the quarterly contribution by the quarterly due date.

PBGC Technical Update 09-3, in response to these concerns, provides that sponsors of plans that have fewer than 25 participants and do not have underfunding necessitating variable rate premiums, will be exempt from reporting to the PBGC a

failure to make required quarterly funding contributions for the 2009 plan year, provided such failure is not due to financial inability.

The Technical Update also provides that where a plan has fewer than 100 participants and does not have underfunding necessitating variable rate premiums, the plan sponsor can file a simplified reportable event notice (with a model set forth in the Technical Update) for failure to make required quarterly contributions for the 2009 plan year, provided such failure is not due to financial inability.

If these provisions do not significantly hurt the PGBC, the waiver and alternative procedure may be extended to future plan years.

Technical Update 09-3 is available at <http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16725.html> .