AMERICAN ACADEMY of ACTUARIES

VIA EMAIL: reg.comments@pbgc.gov

January 22, 2010

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

RE: Request for Comment on Proposed Regulations on Reportable Events (RIN 1212–AB06)

To Whom It May Concern:

I am writing to you on behalf of the Pension Committee of the American Academy of Actuaries[1] in response to Pension Benefit Guaranty Corporation (PBGC) proposed regulations concerning reportable events under ERISA Section 4043. The Pension Committee appreciates the opportunity to comment on this proposal.

We realize that reportable events may, in some situations, be indicative of financial distress, and that timely reporting to the PBGC increases the opportunities for protecting participants and the pension insurance system. However, our concerns regarding the proposed regulations relate primarily to the balance between the value of the additional reporting (particularly given the existence of, for example, the annual funding notice and Section 4010 reporting) and the increased administrative burden placed on defined benefit plan sponsors (which we believe deters sponsorship of DB plans).

In short, we suggest that the PBGC reconsider providing reporting waivers when an otherwise reportable event poses minimal risk to the system. Below we offer several examples for consideration:

- Most notably, the information received with respect to a well-funded plan is not of sufficient value to require the sponsor to bear the administrative cost associated with ensuring compliance with the proposed reportable event rules. An exemption from those rules for well-funded plans should be provided. Certainly there should be some level of funding (measured by assets as a percentage of liabilities rather than a specific dollar amount) beyond which the occurrence of a reportable event creates little additional risk to plan participants and the pension insurance system.
- Similarly, a transfer, in accordance with Internal Revenue Code (IRC) Section 420(f), of excess pension assets to a health benefit account should not create a reportable event. A transfer is not specifically listed as a reportable event under ERISA Section 4043(c) and is not "indicative of a need to terminate the plan" as specified by ERISA Section 4043(c)(13). Congress, through the Pension Protection Act of 2006 (PPA), agreed that a funding level above 120 percent provided sufficient margin to allow for such transfers. Additional administrative costs and barriers to such transfers, which are only available to well-funded plans, are unnecessary. Further, reporting to the PBGC should not be necessary if post-transfer funding levels fall below 120 percent, as the sponsor would be statutorily required to restore plan funding levels. Instead, failure to restore funding levels to 120 percent could be treated as a reportable event associated with failure to make a required funding payment.
- In certain cases, a missed contribution would not be indicative of an increased risk to the PBGC. Waivers should be considered in cases where contributions are made up within a short period of time or in cases where sufficient credit balances existed at the time to cover the missed payment but the necessary credit

[1] The American Academy of Actuaries is a 16,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

balance elections were not made. For example, the waiver that applies under current regulations when payment is made within 30 days of the due date should still apply since there should be no reason to notify the PBGC of a missed payment if it has already been corrected by the time the notice is given.

- Transfers of benefit liabilities often do not create additional risk to the system. As noted above, at a minimum there should be an exemption for plans well-funded after such transfer. Further, *de minimis* transfers and transfers completed in accordance with the IRC Section 414(l) safe harbor should continue to be exempt.
- Even normal employee turnover could create an active participant reduction reportable event. Such an event could occur annually if the sponsor generally has a high rate of turnover (or due to the level of cyclicality in the sponsor's particular industry) or, in the case of a small plan, due to on the terminations of just a few (e.g., two employees out of nine terminating in a year). A reporting waiver for well-funded plans should be provided.

Further, the elimination of many of the extensions of the 30-day reporting deadline when waivers do not apply will create difficulties, particularly for events that are not necessarily planned. For example, some plan sponsors do not have a system for tracking participant counts on a monthly basis and generally only do a complete count in connection with preparing the Form 5500 and PBGC premium filings. Although plan sponsors will know the number of active participants who terminate employment in connection with a significant event, such as a workforce reduction, and would be able to estimate the impact of such an event shortly after the event, normal voluntary and involuntary terminations of employment could play a material role in certain companies. In other situations, a sponsor of numerous plans may know the impact of an active participant reduction across the workforce but not the impact with respect to each of the many plans. A 30-day reporting timeframe is unrealistic for a plan sponsor to determine changes in regular ongoing participant counts, particularly when reporting within that shorter timeframe instead of waiting until the pertinent Form 5500 or PBGC premium filing, and will be of limited value to the PBGC.

In closing, we believe that further increasing the administrative burdens of maintaining defined benefit plans will deter the sponsorship of those plans, and we are concerned that in many cases, such as with well-funded plans, the additional reporting under these proposed regulations does not provide sufficient value to the system to justify the added cost.

We would be happy to discuss any of these items with you at your convenience. Please contact Jessica M. Thomas, the Academy's pension policy analyst (202-785-7868, thomas@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

John H. Moore, FSA, MAAA, EA, FCA
Chairperson, Pension Committee
American Academy of Actuaries