

LAW & POLICY GROUP

GRIST

PBGC KILLS PREMIUM-REDUCTION TACTIC FOR MERGERS, REQUIRES MORE E-FILINGS

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Nov. 6, 2019

PBGC continues its busy streak with two new proposals recently submitted to the Office of Management and Budget (OMB). Draft 2020 premium payment forms and instructions feature a significant change from earlier drafts that signals the agency's opposition to a popular premium-reduction strategy involving *de minimis* mergers. A second proposal would require additional information when reporting missed contributions on Forms 10 and 200 and the use of PBGC's 4043 e-filing system for those forms.

PREMIUM-REDUCTION STRATEGY FOR DE MINIMIS MERGERS CURBED

The 2020 premium package reflects PBGC's position that the merger of a large plan into a smaller one is not *de minimis*. Regulations proposed in June 2019 would formalize this position; however, the preamble to that proposal indicates PBGC views this change as a clarification of existing rules, rather than a new position. These revisions to the 2020 filing package suggest the agency intends to finalize regulations with this clarification in time for 2020 premium filings — generally due Oct. 15, 2020, for calendar-year plans.

In the past, sponsors undertaking this type of merger took advantage of a *de minimis* exception to a special rule that applies when two plans merge at the beginning of the year. When the mergers (or spinoffs) aren't *de minimis*, the special rule transfers the participant count date to the first day of the surviving plan's premium year rather than the last day of the prior year. But if the merger is *de minimis*, the surviving plan's participant count date doesn't change. If the merger of a large plan into a much smaller plan counted as *de minimis*, the merged plan would only pay flat-rate premiums on the surviving (small) plan's participants, thereby saving one year's worth of premiums on the disappearing (larger) plan's participants. The proposed regulations and draft 2020 filing package would prevent this result.

Other changes. The updated forms reflect a few other organizational and clarifying changes. The revisions also include PBGC's August proposal to require additional information about lump sum windows and certain annuity purchases in the current and prior plan year. Plan sponsors will also need to file a coverage-determination request when making a final premium filing after PBGC coverage ceases.

Comment deadline. Comments on the updated forms and instructions are due Nov. 29.

UPDATES TO MISSED CONTRIBUTION REPORTING

On Nov. 5, PBGC gave [notice](#) to OMB that it intends to modify the event-reporting forms for missed contributions. PBGC is proposing changes to both forms for reporting a missed contribution:

- **Form 10.** Filers report missed contributions on Form 10 when the aggregate unpaid balance with interest doesn't exceed \$1 million. The revised Form 10 would require filers to submit the form with documentation of any payment made to satisfy a missed contribution (for example, a copy of the cancelled check or wire transfer).
- **Form 200.** Filers report missed contributions on Form 200 when the aggregate unpaid balance with interest exceeds \$1 million. PBGC currently requires Form 200 filers to report the due date of the missed payment and the cumulative unpaid balances. The updated form would include a separate field for filers to report the amount of the missed payment that triggered the reporting requirement.

Current rules allow these forms to be filed electronically by email or using the 4043 module in PBGC's e-filing portal. The updated forms would eliminate the email option for filings due after Sept. 30, 2021.

Comment deadline. Comments on the proposal are due Jan. 6, 2020.

RELATED RESOURCES

Non-Mercer Resources

- [Proposed PBGC Information Collection on Failure to Make Required Contributions](#) (Federal Register, Nov. 5, 2019)
- [Proposed PBGC Information Collection on Payment of Premiums](#) (Federal Register, Oct. 30, 2019)
- [Draft Premium Filing Instructions for 2020 Plan Years](#) (PBGC, Oct. 29, 2019)
- [Screenshots of My PAA Premium Filing Pages for 2020 Plan Years](#) (PBGC, Oct. 29, 2019)

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- [PBGC Drafts Updated Premium Package for Risk Transfers, Final Filings](#) (Aug. 2, 2019)
- [PBGC Proposal Squashes Spin-Terms, Includes Grab Bag of Other Changes](#) (July 2, 2019)
- [PBGC Coverage Determinations Could Become Easier With New Form](#) (May 10, 2019)

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