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PBGC PROPOSAL MAY AFFECT ASSET VALUATION METHODOLOGY

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Proposed PBGC regulations issued Sept. 30 address valuing and paying benefits from terminated single-employer pension plans. The proposal primarily serves to codify long-standing agency administrative practices regarding benefit payments from trusteed plans, so it should have little or no impact on ongoing pension plans. However, some changes may affect how employers perform asset valuations in various circumstances. Comments are due Nov. 29.

FAIR MARKET VALUE AND FAIR VALUE

PBGC values assets for several purposes:

- Allocating assets among participants' benefits under ERISA Section 4044 when a plan terminates
- Calculating a terminating plan's unfunded benefit liabilities to collect from the plan sponsor or its controlled group
- Determining the net worth of a terminating plan's sponsor and its controlled group

Current regulations generally require these valuations to use fair market value — defined as "the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts." When PBGC can't obtain the necessary data to establish fair market value (for example, for hedge funds, private equity funds or other hard-to-value assets), the agency applies a fair value methodology consistent with US generally accepted accounting principles (US GAAP). PBGC's proposal would codify this practice.

POTENTIAL IMPACT ON EMPLOYERS

Although PBGC's primary intent is to conform the regulations to its existing practice, the asset valuation changes may affect how plan sponsors perform certain calculations. For example, sponsors perform valuations on a Section 4044 (plan termination) basis in several contexts, including:

- ***Plan mergers, consolidations and spinoffs.*** These transactions cannot result in a reduction of participants' benefits on a termination basis.
- ***Reportable event waivers.*** Waivers for certain otherwise reportable transactions are available for employers whose plans are fully funded on a termination basis.
- ***Partial plan terminations.*** Affected participants' nonvested benefits must vest to the extent funded on a termination basis.

For ongoing plans not involved in transactions requiring an asset allocation, the new valuation rules won't have any impact. Plans without hard-to-value assets won't see a change either, even if they are involved in any of these transactions: Such plans probably already use a fair market value of assets. But some sponsors with hard-to-value assets may need to start using US GAAP methodology for asset valuations in these contexts.

OTHER ADMINISTRATIVE CLARIFICATIONS

PBGC proposes several other changes to reflect its practice for paying benefits from trusteed plans, including clarifications on payments of lump sums, death benefits and mandatory employee contributions. The proposal also clarifies that forms of payment may not be changed for trusteed plans, and partial lump sums paid before plan termination are considered in determining a participant's post-termination maximum guaranteed benefit. These changes will only affect PBGC's own administration of terminated plans and will have no impact on ongoing plans or an employer's responsibilities when a plan terminates.

COMPANION PROPOSAL

A companion proposal would end publication of the old PBGC tiered interest rate assumptions that some plans still use for lump sum calculations and other purposes (see PBGC Proposal Would End Publication of Old Lump Sum Rates (Sept. 4, 2018)). Comments on that proposal are also due on Nov. 29.

RELATED RESOURCES

Non-Mercer Resources

- Proposed Regulations on Benefit Payments and Allocations of Assets (Federal Register, Sept. 30, 2019)

Mercer Law & Policy Resources

- PBGC Proposal Would End Publication of Old Lump Sum Rates (Sept. 30, 2019)

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