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Comments on Proposed Rule on Electronic Premium Filing

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Pension Benefit Guaranty Corporation

29 CFR Parts 4000 and 4007
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The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to comment on the proposed rule on "Electronic Premium Filing" published by the Pension Benefit Guaranty Corporation (PBGC) on March 9, 2005.

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 improving the PBGC's processing of premium filings. However, ASPPA is concerned about the effect that mandatory e-filing will have on plans generally, and on smaller plans in particular.

Summary of Recommendations

The following is a summary of ASPPA's recommendations. These are described in greater detail in the Discussion of Issues section.

A. ASPPA recommends that the PBGC, rather than *requiring* e-filing, develop incentives that will result in the majority of filers *voluntarily* submitting their premium information electronically.

B. If the PBGC decides to move forward with mandatory e-filing, ASPPA recommends that the PBGC take steps designed to minimize any adverse effects of the new requirement on plans and plan professionals, including an exemption for small plans.

Discussion of Issues

A. Encourage *Voluntary* E-filing

Plan administrators and the professionals who assist them have procedures in place to ensure timely and accurate filing of premium information. These procedures, which vary significantly, include mechanisms for coordinating the efforts of the multiple individuals and firms that are typically involved in preparing and submitting a premium filing.

In the vast majority of cases, the premium filing is prepared by the plan's enrolled actuary. This is so even where the PBGC's premium regulations do not require an actuarial certification (e.g., a small plan filing using the Alternative Calculation Method). Under existing procedures, the actuary's involvement ends once the filing has been prepared (and, if required, signed by the actuary) and forwarded to another person or organization (e.g., the plan administrator or a third party administrator who will then coordinate with the plan administrator to complete the actual filing process).

The PBGC's proposal for mandatory e-filing would allow filers to use either of two methods for filing premium information: (1) the existing e-filing application, My Plan Administration Account (MyPAA); or (2) a new method, under development, that is to be integrated with the various private-sector software programs commonly used by actuaries to prepare premium filings. Both of these methods pose problems if e-filing is mandatory.

- *MyPAA e-filings.* For premium e-filings done using MyPAA, data that have been entered into private-sector software would have to be reentered into MyPAA, thereby increasing the cost of the filing. In addition, the filing would need to be electronically approved by the plan administrator, who, especially in the case of a smaller plan, might not have adequate Internet access or be comfortable with technology generally.
- *Private-sector software e-filings.* For e-filings done using private-sector software, the responsibility for submitting the e-filing would, as a practical matter, become that of the actuary using the software. However, the actuary, prior to e-filing, would need to ensure that the plan administrator has reviewed and approved the submission. Although the PBGC plans to permit the plan's actuary (or any other "responsible person") to submit a filing on behalf of the plan administrator based on a paper certification and authorization, the process for obtaining those paper certifications and authorizations would in many cases be time-consuming and raise logistical issues. This is a problem in particular for the many actuaries who service large numbers of premium-paying clients. The resulting costs would ultimately be borne by sponsors maintaining covered plans and, in some cases, by the plans and the participants.

ASPPA recommends that the PBGC, rather than *requiring* e-filing, develop incentives that will result in the majority of filers *voluntarily* submitting their premium information electronically. A good first step—one that the PBGC is in the process of implementing—is to develop a method of e-filing that will be integrated with the private-sector software used by most filers. Other potentially useful incentives include more automated calculations and edit checks; the ability, under the new method of e-filing that will be integrated with private-sector software, to route the filing among the various members of the filing team; and limited relief from penalties and/or interest for late filings done electronically.

B. Take Steps to Lessen the Adverse Effects of Any Requirement For E-Filing

If the PBGC nonetheless decides to require e-filing of premium information, there are several ways in which the PBGC can lessen the adverse effects of the new requirement. ASPPA commends the PBGC for its announced plans to take several such steps, but suggests that additional measures can be taken to reduce the potentially negative impact of mandatory e-filing. For example:

- The PBGC proposal would phase in the requirement over a two-year period, with larger plans (generally, those with 500 or more participants) subject to the requirement starting in 2006 and smaller plans starting in 2007. This schedule may not afford enough time to ensure that the system is operating efficiently. ASPPA is particularly concerned because the premiums from smaller plans are far less significant to the PBGC than those from larger plans, yet the relative costs of complying with the new requirement would be greater for the smaller plans.
- The PBGC expects that the new method to be integrated with private-sector software will be operational in mid-2005. It is important that e-filing not become mandatory unless this new method is operational and field-tested, so as to avoid the need to reenter data manually from private-sector software into MyPAA. The final implementation date of mandatory e-filing should be delayed if the new integrated e-filing method has not been fully operational and adequately tested by such date.
- The PBGC proposal would allow exemptions on a case-by-case basis "for good cause in appropriate circumstances." However, there is no guidance on what would and would not constitute a valid basis for an

exemption. Such guidance would assist those who may be eligible for an exemption in preparing timely and effective requests, and would therefore serve to minimize the PBGC's workload in evaluating exemption requests.

- The PBGC proposal would permit the plan's actuary (or any other "responsible person") to submit a filing on behalf of the plan administrator based on a paper certification and authorization where the responsible person uses the new method that will be integrated with private-sector software. However, no similar procedure has been proposed for MyPAA filings. Not all premium filings are prepared using private-sector software and this would mean that those using MyPAA would be at a disadvantage.
- The PBGC proposal would to give filers both e-payment and paper payment options. It is important that, regardless of the e-filing method used for the submission, the ability to make paper payments be continued, as the plan administrator, rather than the outside consultant, may be responsible for submitting the payment.

ASPPA recommends that the PBGC:

1. Provide for a longer transition to mandatory e-filing by applying the new requirement to plans with 500 or more participants starting in 2007, and to smaller plans with more than 25 participants starting in 2008. However, these dates should be adjusted if the new integrated method of e-filing has not been field-tested and is not fully operational by such dates.
2. Exempt plans with 25 or fewer participants from any mandatory e-filing requirement.
3. Provide guidance on what constitutes a valid basis for an exemption from mandatory e-filing.
4. Permit a "responsible person" to submit a filing on behalf of the plan administrator based on a paper certification and authorization (as the PBGC plans to do under the new method that will be integrated with private-sector software) where a "responsible person" is complying with the e-filing requirement using MyPAA.
5. Structure the system so that where the filer is an outside consultant, the plan administrator, can continue to be responsible for submitting payment, regardless of the e-filing method used.

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,

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