



AMERICAN ACADEMY *of* ACTUARIES

October 14, 2011

Elizabeth A. Goodman
Senior Employee Benefits Law Specialist
Employee Benefits Security
Administration
U.S. Department of Labor
200 Constitution Avenue, Room N5655
Washington, DC 20210

Ann E. Junkins
Management and Program Analyst
Internal Revenue Service
8100 Corporate Drive
Hyattsville, MD 20785-2231

Re: Reporting of PBGC Premium Payments on Form 5500, Schedule H

Dear Ms. Goodman and Ms. Junkins:

The American Academy of Actuaries¹ Pension Committee would like to express its concern regarding what we believe to be an error in the instructions for Form 5500, Schedule H on the reporting of premium payments made to the Pension Benefit Guaranty Corporation (PBGC) from qualified defined benefit plan assets. The committee understands that efforts already may be underway to address this error and respectfully requests guidance from the Department of Labor (DOL) and/or the Internal Revenue Service (IRS) for the public regarding this issue.

The Pension Committee appreciates the efforts of the DOL and the IRS to improve the reporting of information on Form 5500 and to provide clear instructions to plan administrators and their service providers that assist in the preparation of these filings. In recent years prior to 2009, the Form 5500 instructions were silent as to the appropriate place to report PBGC premium payments made from plan assets. The prevailing practice was to report PBGC premiums paid from plan assets as “other” administrative expenses. Beginning with the 2009 plan year (and continuing with the 2010 plan year), the Schedule H instructions were modified to include, among other things, an explicit instruction that PBGC premium payments should be reported on Line 21 as a transfer of assets from the plan. The committee believes this is not an appropriate place for reporting PBGC premium payments on Schedule H, that a more appropriate line exists for such purpose, and that the instruction regarding PBGC premium reporting was placed inadvertently in the wrong location in the instructions.

¹ The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and 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

Furthermore, members of the accounting profession have begun requesting that actuaries and other service providers assisting clients with preparation of Form 5500 change their entries on Schedule H to comply with the current instructions. This creates a conflict for those service providers and plan administrators who believe that the instructions do not represent an appropriate reporting of this permissible use of plan assets.

We encourage the DOL and the IRS to review the Schedule H instructions in light of the comments provided in this letter and amend accordingly the Schedule H instructions for the 2011 plan year. In addition, given the close proximity of the extended filing due date for Form 5500 for the calendar 2010 plan year, we encourage the DOL and the IRS to issue informal guidance to the benefits community advising that the instructions for Schedule H will change and that they will accept reporting of PBGC premiums on either Line 2l or Line 2(i)(4), as discussed below. This clarification must be made to resolve potential conflicts between plan administrators, their auditors, and other service providers that could delay the issuance of audited financial statements or require paid preparers of Form 5500, Schedule H to prepare this schedule in a manner they believe could generate additional questions to plan administrators and sponsors from the DOL and the IRS.

Changes to the Schedule H Instructions in 2009

In 2009, the instructions for Line 2l of Schedule H (“Transfers of assets”) were modified to read as follows:

“Include in these reconciliation figures all transfers of assets into or out of the plan resulting from, among others things, mergers and consolidations. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or assumption of these liabilities by another plan. A transfer is not a shifting of one plan’s assets or liabilities from one investment to another. A transfer is not a distribution of all or a part of an individual participant’s account balance that is reportable on IRS **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., (see the instructions for line 2e). Transfers out at the end of the plan year should be reported as occurring during the year. **Include premium payments to the PBGC when paid from plan assets [emphasis added].**”

The last sentence was newly added for the 2009 reporting instructions. Other than that, the instructions for Line 2l were unchanged from 2008.

PBGC premiums paid from the trust do not meet the definition of a transfer of plan assets contained within the Line 2l instructions, as they do not in any way relate to the shifting of benefit liabilities from one plan to another. They also do not represent the direct shifting of benefit liabilities from the plan sponsor to the PBGC.

The committee believes PBGC premiums paid from plan assets most appropriately are reported on Line 2i(4) as “Other” administrative expenses. Given that the instructions for Line 2i(4) appear immediately prior to those for Line 2l, the committee believes it is a simple placement error that the instructions for reporting PBGC premium payments were included in the Line 2l instructions. The committee further believes it is likely the intention of the DOL and the IRS that PBGC premiums be reported on Line 2i(4) as administrative expenses rather than as an asset transfer.

Issues for Plan Administrators, Paid Preparers, and Auditors

Independent qualified public accountants frequently ask to review a draft of the Form 5500 filing prior to issuance of their audit opinion on a plan’s financial statements. Some accounting firms recently have been requesting that PBGC premiums be reported on Line 2l of Schedule H, as indicated in the published instructions. It is understandable that accountants expect to see entries on Schedule H that are in compliance with the published instructions, and plan administrators and paid preparers want to comply with the published instructions as well. In this instance, however, it appears to many that the published instructions are clearly inappropriate, raising issues for plan administrators and paid preparers who may feel compelled to comply with a reporting requirement they believe to misrepresent the actual operations of the plan.

In addition, Line 5b of Schedule H requires the reporting of identifying information for plans receiving a transfer of assets or liabilities from the plan for which Schedule H is being filed. The committee is concerned that reporting the PBGC premium payments in Line 2l, as instructed, will trigger an inquiry when the Form 5500 submission is reviewed regarding why a receiving plan is not reported on Line 5b. There is also concern that the IRS will infer that an entry for PBGC premiums on Line 2l is an indication that Form 5310-A may have been due and, as a result, trigger an inquiry into the reasons why no such filing was made.

Each of the matters addressed above adds to the administrative burden facing plan administrators and potentially causes the DOL and the IRS to devote valuable time and resources to resolving issues that do not, in fact, exist.

Request for Correction and Guidance

If, upon review of this matter, the DOL and the IRS find that the 2009 and 2010 Schedule H instructions do indeed contain a placement error and PBGC premiums should correctly be reported on Line 2i(4), the committee encourages every effort to make this correction when the 2011 Form 5500 instructions are issued. The committee further recommends that the DOL and the IRS issue immediate guidance to the retirement plans community indicating that for 2009 and 2010 plan year filings (and for 2011 if the instructions cannot be corrected before issuance), the agencies will accept the reporting of PBGC premium payments from plan assets on either Line 2l (per the official instructions) or Line 2i(4).

Given the nearness of the October 17, 2011, extended filing due date for 2010 calendar plan year Form 5500 returns, we encourage the DOL and the IRS to explore means of providing informal guidance, such as a special edition of the IRS's *Employee Plans News*, that allows plan administrators, paid preparers, and accountants with relief to report PBGC premiums on either line until further instructions are issued.

We appreciate the DOL and the IRS giving consideration to these requests. Please contact Jessica M. Thomas, the Academy's senior pension policy analyst (202-785-7868, thomas@actuary.org) if you have any questions or would like to discuss these items further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. H. Moore', with a long horizontal flourish extending to the right.

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

Cc: David Gustafson
Chief Policy Actuary
Pension Benefit Guaranty Corporation