

Filing of Certain Forms 5500

Announcement 2001-103

The Internal Revenue Service (IRS), the Department of Labor's Pension and Welfare Benefits Administration (PWBA), and the Pension Benefit Guaranty Corporation (PBGC) provide relief from certain penalties relating to Forms 5500 for defined benefit and money purchase pension plans that are required to be filed on or before October 15, 2001. This announcement also includes PBGC's statement of relief from penalties relating to premiums, reporting and disclosure, and certifications.

Background

Section 412(a) of the Internal Revenue Code (Code) and § 302(a) of the Employee Retirement Income Security Act of 1974 (ERISA) provide that a plan meets the minimum funding standards of the Code and ERISA for a plan year if the plan does not have an accumulated funding deficiency as of the end of the plan year. Section 412(c)(10) of the Code and § 302(c)(10) of ERISA provide that, for purposes of satisfying the minimum funding requirements of the Code and ERISA, any con-

tributions for a plan year made by an employer by the end of the 8 1/2 month period following the end of such plan year are deemed to have been made on the last day of the plan year.

Section 6058 of the Code and § 104 of ERISA require plan administrators to file an annual return/report of employee benefit plan within a specified period of time after the end of the plan year. The annual return/report of employee benefit plan is Form 5500 and Form 5500-EZ (hereinafter Form 5500). For defined benefit pension plans subject to the minimum funding standard, § 6059 of the Code requires that a periodic report of the actuary be filed with the annual return. Under § 301.6059-1 of the Procedure and Administration Regulations, the periodic report is the Schedule B, which must be signed by an enrolled actuary. In order to properly complete the Schedule B, the enrolled actuary must know whether a contribution for a plan year was made within the period specified by § 412(c)(10) of the Code and § 302(c)(10) of ERISA.

Under section 502(c)(2) of ERISA, a penalty of up to \$1,100 a day may be assessed for each day a plan administrator fails or refuses to file a complete and accurate annual report and accompanying schedules. Similarly, § 6652(e) of the Code imposes a penalty of \$25 a day (up to \$15,000) for not filing returns for certain deferred compensation plans. Section 6692 of the Code imposes a penalty of \$1,000 for not filing an actuarial report described in § 6059. Under § 301.6692-1(a) of the regulations, a failure to provide a material item of information is considered as a failure to file an actuarial report.

Because of the disruption of the financial markets caused by the events of September 11, 2001, many employers have stated they were not able to make required contributions to their pension plans on or before September 15, 2001, to satisfy the minimum funding standards.

Grant of Relief

The IRS, the PWBA, and the PBGC provide the following relief. In the case of a defined benefit or money purchase pension plan with a plan year ending on or after December 27, 2000, and on or

before January 8, 2001, for which a Form 5500 is required to be filed on or before October 15, 2001, plan administrators and plan sponsors will not be treated as failing to file a complete and accurate return/report under § 6058 of the Code or § 104 of ERISA, nor will enrolled actuaries be treated as failing to file an actuarial report that satisfies the requirements of § 6059(b) of the Code, solely because contributions made on or before September 24, 2001, are included on line 3 of Schedule B of Form 5500 (showing the actual date of payment of the contribution) and line 6(b) of Schedule R of Form 5500.

In addition, the PBGC provides the following relief with respect to any plan with a plan year ending on or after December 27, 2000, and on or before January 8, 2001. The PBGC will not assess any penalties for a failure to pay PBGC premiums in a timely manner or a failure to meet a PBGC reporting or disclosure requirement, nor will it treat a certification as failing to be a valid and correct certification, solely because contributions made on or before September 24, 2001, are included in the plan's assets for purposes of PBGC premiums or are counted for purposes of determining whether any PBGC reporting or disclosure requirement applies.

Drafting Information

The principal author of this announcement is James E. Holland, Jr. of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday (toll-free number). Mr. Holland may be reached at (202) 283-9699 (not a toll-free number).