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Description of document: Letters from Pension Benefit Guaranty Corporation (PBGC) to Congress, Congressional Committees or Congressional staff providing PBGC's input or opinions on proposed legislation or proposed legislative language, 2013-2016

Requested date: 05-July-2017

Release date: 26-September-2017

Posted date: 25-February-2019

Note: See release letter for list of released records

Source of document: FOIA Request
Disclosure Officer
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Suite 11123
Washington, D.C. 20005
Fax: (202) 326-4042 (Attn: Disclosure Officer)
Email: disclosure@pbgc.gov

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

PBGC 2017-001299

September 26, 2017

Re: Request for PBGC Input or Opinions

I am responding to your Freedom of Information Act (FOIA) request received by the Disclosure Division on July 5, 2017. You requested a copy of PBGC Views (or Views Letters), which are statements of the PBGC's position, thoughts and comments on specific issues or legislation being considered by Congress, but limited to "Views" produced during Fiscal Years 2015, 2016, and 2017 to date. You subsequently amended the scope of your request to letters from PBGC to Congress or Congressional Committees or Congressional staff providing PBGC's input or opinions on proposed legislation or proposed legislative language. You authorized fees in the amount of \$25.00 for the processing of this request. We processed your requests in accordance with the FOIA and PBGC's implementing regulation. Please accept my apology for the delay.

Pursuant to your request, the Office of Communications Outreach & Legislative Affairs (COLA) commenced a search of agency records to locate responsive documents. They located 32 pages¹ responsive to your request. I am enclosing the following:

- PBGC Letter to Honorable Orrin G. Hatch, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Ronald L. Wyden, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Lamar Alexander, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Patty Murray, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Paul Ryan, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Sander M. Levin, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable John Kline, dated July 10, 2015 (1 page);
- PBGC Letter to Honorable Robert C. Scott, dated July 10, 2015 (1 page);
- Attachment to above-captioned letters: 2013 4010 Summary Report (5 pages);
- PBGC Letter to Honorable Orrin G. Hatch, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Ronald L. Wyden, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Lamar Alexander, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Patty Murray, dated December 20, 2016 (1 page);

¹ The FOIA establishes that an agency record is a record that is in the possession and control of the agency upon receipt of a FOIA request. Congressional records are not considered agency records. Ascertaining whether records in an agency's possession are agency records or congressional records depends on whether Congress has "manifested an intent to exert control over those records." Congressional records may include records received by an agency from Congress, and may include records generated by an agency in response to a confidential congressional inquiry. Retrieved from <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf#p9>.

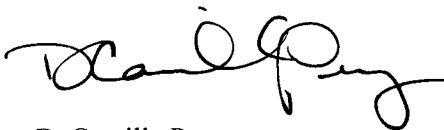
- PBGC Letter to Honorable John Kline, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Robert C. Scott, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Kevin Brady, dated December 20, 2016 (1 page);
- PBGC Letter to Honorable Sander M. Levin, dated December 20, 2016 (1 page);
- Attachment to above-captioned letters: 2014 4010 Summary Report (8 pages); and
- PBGC Letter to Honorable David B. McKinley, dated January 27, 2016 (3 pages).

Although this response does not constitute a denial of records request, I am providing you with your FOIA appeal rights should you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2015) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2017) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words "FOIA Appeal" should appear on the letter and prominently on the envelope.

In the alternative, you may contact the Disclosure Division's Public Liaison at 202-326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

This completes processing of your request. Since your fees² are below the nominal fee threshold of \$25.00, there is no cost for processing your request. You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at <https://foiaonline.regulations.gov>, or by email to Disclosure@pbgc.gov.

Sincerely,



D. Camilla Perry
Disclosure Officer

Enclosures

² The FOIA Improvement Act of 2016 precludes an agency from charging search fees to a FOIA requester if the agency does not meet the FOIA's twenty-day time limit. As such, we did not assess search fees for this request.



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

JUL 10 2015

The Honorable Orrin G. Hatch
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Re: 2013 ERISA Section 4010 Report

Dear Mr. Chairman:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Committee on Health, Education, Labor and Pensions and the Committee on Finance of the Senate and the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2013 report.

The enclosed report summarizes, in the aggregate, 4010 information submitted for the six years since the new PPA rules became effective. In addition, we've included a section recommending that the reporting requirements be better targeted and less burdensome. Our goal is to encourage voluntary private pension plans, and we are concerned that unnecessary reporting requirements discourage companies from maintaining them. Similarly, we are concerned because many plans at great risk of termination are exempt from filing under the current rules.

We welcome the opportunity to discuss with you this ERISA Section 4010 report and possible changes to improve the report and Section 4010.

Sincerely,

Alice C. Maroni
Acting Director

Attachment



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

JUL 10 2015

The Honorable Ronald L. Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Re: 2013 ERISA Section 4010 Report

Dear Ranking Member Wyden:

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Office of the Director

The Honorable Lamar Alexander
Chairman, Committee on Health, Education, Labor and Pensions
United States Senate
Washington, D.C. 20510

Re: 2013 ERISA Section 4010 Report

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Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, D.C. 20510

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1200 K Street, N.W., Washington, D.C. 20005-4026

JUL 10 2015

Office of the Director

The Honorable Paul Ryan
Chairman, Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515

Re: 2013 ERISA Section 4010 Report

Dear Mr. Chairman:

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JUL 10 2015

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515

Re: 2013 ERISA Section 4010 Report

Dear Ranking Member Levin:

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Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

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Chairman, Committee on Education and the Workforce
United States House of Representatives
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United States House of Representatives
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Attachment

4010 Summary Report

ERISA Section 4010 requires that sponsors of certain single-employer qualified defined benefit pension plans with significant underfunding provide specified financial and actuarial information about the plans and employers in the sponsors' controlled group to PBGC. ERISA Section 4010(e) requires PBGC to annually submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives, a summary report in the aggregate of the information submitted to PBGC under Section 4010. This report summarizes 4010 information submitted for information years ending in 2008 through 2013.¹

Due to the limitations on who files, the plans for which this information is reported are not representative of the defined benefit plan universe, nor are they representative of PBGC's insurance exposure. Readers are cautioned against extrapolating this information to the much broader population of companies and plans in the defined benefit plan system, or using this information to draw conclusions about historic trends.

Who Files 4010 Reports?

Reporting under ERISA Section 4010 is required if:

- Any plan sponsored by a member of the controlled group² had a funding target attainment percentage (FTAP), determined without regard to the MAP-21³ discount rate stabilization rules, below 80%;
- Any controlled group member failed to make a required contribution to a plan within 10 days after its due date and such failure met the conditions for imposition of a lien under ERISA Section 303(k) or Internal Revenue Code Section 430(k);⁴ or
- Any plan maintained by a controlled group member has been granted a minimum funding waiver totaling in excess of \$1 million, any portion of which is still outstanding.

PBGC waives reporting if aggregate underfunding is less than \$15 million, so small plans, in practice, are not required to report.⁵

The vast majority of filers are required to file because of the 80% FTAP gateway test. In general, only a handful of filers fall into the latter two categories.

¹ The "information year" is generally the employer's fiscal year. Plan related information is measured as of the last day of the plan year ending within the information year.

² The term "controlled group" is defined in ERISA Section 4001(14). In general, a controlled group is a group of two or more corporations or businesses that are under some sort of common control (e.g., parent-subsidary).

³ The term "MAP-21" refers to The Moving Ahead for Progress in the 21st Century Act under which the discount rate used to determine certain liabilities is adjusted to the extent it falls outside a specified corridor. However, MAP-21 explicitly excludes this, and other 4010 calculations, from the MAP-21 "discount rate stabilization" rules.

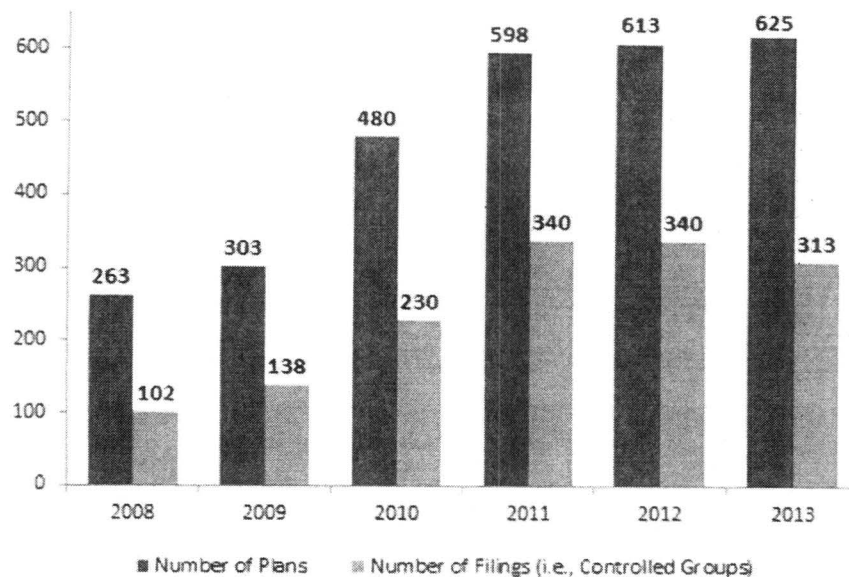
⁴ Generally, aggregate missed contributions in excess of \$1 million trigger this lien.

⁵ This waiver does not apply if the reason for filing is other than the 80% FTAP test.

Number of Filers

Exhibit 1 shows how many filings PBGC has received since 2008.⁶ Because filing is done on a controlled group basis, it is common for one filing to contain information on more than one plan. For that reason, Exhibit 1 also provides information on the number of plans reported in 4010 filings. These plans generally represent less than 3% of the plans in the PBGC-insured single-employer plan universe.

Exhibit 1
Number of 4010 Filers



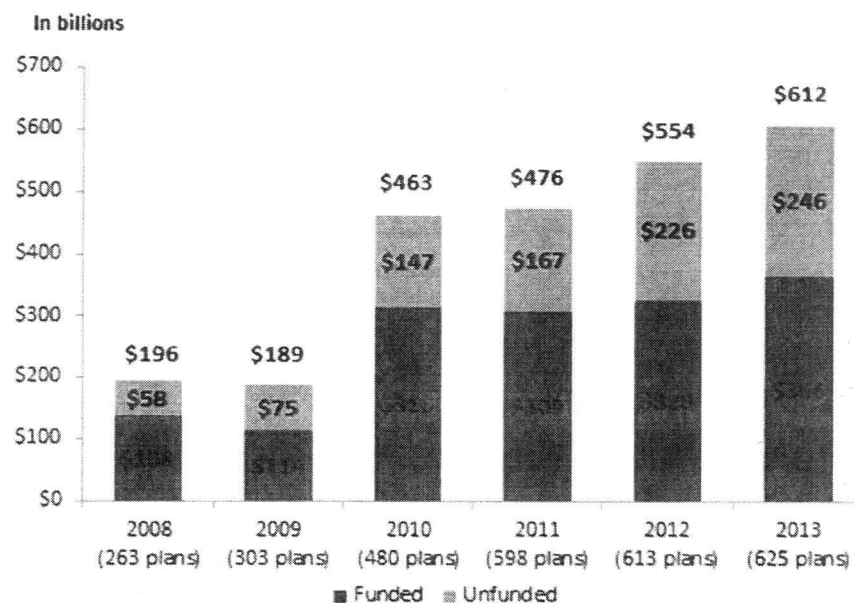
For 2008 and 2009, the median number of participants in these plans was just below 3,000. For 2010-2013, the median number of participants was about 2,400.

⁶ The Pension Protection Act of 2006 (PPA) made several changes to ERISA 4010, including adding a requirement to report summary information to Congress. These changes were first effective for 2008 which is why the report shows data starting with 2008.

Benefit Liabilities Determined using PBGC Assumptions and Methods

ERISA Section 4010 requires that, for each plan included in a 4010 filing, "the amount of benefit liabilities ... determined using the assumptions used by the corporation in determining liabilities" is reported. Exhibit 2 shows the total liability and funded liability reported (all plans combined) in each of the six post-PPA years. For this purpose, assets are valued at fair market value and liabilities are measured on a termination basis (i.e., using assumptions provided in PBGC's Section 4044 regulations) and therefore, this amount is commonly called "termination liability."

Exhibit 2
Aggregate Benefit Liabilities (Termination Basis) reported in 4010 Filings



Additional Required Actuarial Calculations

ERISA Section 4010(d)(1)(B), added to the statute by PPA, requires that plans report the funding target of the plan determined as if the plan has been in at-risk status for funding purposes, as defined in ERISA Section 303(i), for at least 5 plan years. Assumptions underlying this calculation are the standard ERISA Section 303 assumptions adjusted to anticipated changes in retirement age and form of payment selection. The resulting liability is then increased by a statutorily prescribed "loading factor."

4010 Summary Report

ERISA Section 4010(d)(1)(C), also added to the statute by PPA, requires that filers report the FTAP as defined in ERISA Section 303(d)(2). This is the ratio of actuarial (i.e., smoothed) assets to the funding target without regard to at-risk status. A summary of both required data elements is shown in Exhibit 3.

Exhibit 3
Additional Actuarial Information Reported in 4010 Filings⁷

Year	Aggregate At-Risk Funding Target (in billions)	Average Funding Target Attainment Percentage ⁸
2008	\$148.0	84% ⁹
2009	\$151.2	80%
2010	\$277.3	76%
2011	\$390.1	73%
2012	\$445.7	75%
2013	\$486.6	76%

Please note –The Highway and Transportation Funding Act of 2014 (HATFA), enacted August 8, 2014, retroactively changed the discount rates used to determine the data shown above with respect to plan years beginning in 2013. Much of the data shown above for 2013 relate to plan years beginning in 2013. Because HATFA was enacted after these 4010 reports were due, such data do not reflect the HATFA changes.

⁷ These amounts are determined without regard to the MAP-21 discount rate stabilization rules. They relate only to post-PPA years. PBGC's 4010 regulation waives reporting these measures with respect to pre-PPA plan years even if such plan year is included in a 4010 report for a 2008 information year (e.g., a July 1, 2007 – June 30, 2008 plan year for an employer with a calendar year fiscal year). 71 of the 263 reported plans from the 2008 information year fall into this category. The aggregate information shown in the table above for 2008 relates only to the other 192 plans. Almost all filers were required to report at-risk funding targets for the information years after 2008. A few plans were not required to report at-risk funding targets because of delayed implementation dates for PPA (e.g., plans sponsored by defense contractors).

⁸ These amounts represent the average FTAP (i.e., the sum of each plan's reported FTAP divided by the total number of plans).

⁹ The overall average FTAP can be above 80% for plans reporting information under section 4010 because all plans sponsored by the employer must file 4010 information with PBGC if the FTAP for any plan in the controlled group is below 80%.

Recommendations to Reduce Reporting Burdens & Make 4010 More Effective

4010 filings provide PBGC more current and more useful underfunding information than any other source. They are also the only way that sponsors report plan underfunding on a termination basis, as no other reporting requirement uses this measure, and they are one of the few sources of financial information for all members of a controlled group, not just the plan sponsor. In theory, the 4010 data greatly enhance PBGC's ability to identify and monitor potential risks to the pension insurance system, to focus PBGC resources on situations that pose the greatest risks to the system, to assert appropriate claims in bankruptcy against members of a controlled group of the plan sponsor of a terminated plan, and to prepare PBGC's financial statements.

However, in practice, the 4010 reporting criteria fail to properly target plans, resulting in both over- and under-inclusiveness. Companies whose financial soundness is widely recognized are forced to file 4010 reports while companies that are on the verge of bankruptcy (or even, in bankruptcy) are exempt from reporting simply because their plans were over 80% funded.¹⁰ **In fact, since the PPA changes took effect, PBGC has incurred more than \$3 billion in total claims arising from the termination of plans sponsored by companies that were not required to submit 4010 information.**

Historically, a plan's funding percentage has been a poor predictor of termination risk. PBGC has found the risk of termination of a plan depends most significantly on the plan sponsor's financial strength, not on its current funding level. Better targeting of reporting requirements could take a substantial and unnecessary reporting burden off some companies and help PBGC do its job better. Therefore, PBGC recommends that section 4010 be amended to revise reporting criteria in ways that minimize burden and improve the usefulness of the data.

PBGC also recommends eliminating the requirement to report the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years (ERISA Section 4010(d)(1)(B)). PBGC does not use this information because termination liability, which is also reported (see Exhibit 2 above), is the relevant amount. It is burdensome and costly for companies to calculate the 4010(d)(1)(B) amount and, unless a plan has actually been in at-risk status for at least 5 consecutive plan years,¹¹ that amount is not used for any purpose other than reporting under ERISA Section 4010.

¹⁰ Prior to PPA, reporting was required if aggregate underfunding exceeded \$50 million.

¹¹ It is very unlikely that a plan would be in at-risk status for five years. For example, of the 625 plans reported in 2013 4010 filings, only one has been in at-risk status for five consecutive years.



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 20, 2016

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
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Re: 2014 ERISA Section 4010 Report

Dear Mr. Chairman:

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The enclosed report summarizes, in the aggregate, 4010 information submitted for the seven years since the new PPA rules became effective.

We welcome the opportunity to discuss with you this ERISA Section 4010 report and possible changes to improve Section 4010.

Sincerely,

W. Thomas Reeder
Director

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Re: 2014 ERISA Section 4010 Report

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ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

The enclosed report summarizes, in the aggregate, 4010 information submitted for the seven years since the new PPA rules became effective.

We welcome the opportunity to discuss with you this ERISA Section 4010 report and possible changes to improve Section 4010.

Sincerely,

W. Thomas Reeder
Director

Attachment



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 20, 2016

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate
Washington, D.C. 20510

Re: 2014 ERISA Section 4010 Report

Dear Ranking Member Murray:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

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Sincerely,

W. Thomas Reeder
Director

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 20, 2016

The Honorable John Kline
Chairman
Committee on Education and the Workforce
United States House of Representatives
Washington, D.C. 20515

Re: 2014 ERISA Section 4010 Report

Dear Mr. Chairman:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

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Sincerely,

W. Thomas Reeder
Director

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 20, 2016

The Honorable Robert C. Scott
Ranking Member
Committee on Education and the Workforce
United States House of Representatives
Washington, D.C. 20515

Re: 2014 ERISA Section 4010 Report

Dear Ranking Member Scott:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

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Sincerely,

W. Thomas Reeder
Director

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 20, 2016

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515

Re: 2014 ERISA Section 4010 Report

Dear Mr. Chairman:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

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Sincerely,

W. Thomas Reeder
Director

Attachment



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

Office of the Director

December 2016

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
United States House of Representatives
Washington, D.C. 20515

Re: 2014 ERISA Section 4010 Report

Dear Ranking Member Levin:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

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2014 PBGC

4010 REPORT

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FREQUENTLY USED ABBREVIATIONS

ERISA	Employee Retirement Income Security Act of 1974 as amended
FTAP	Funding Target Attainment Percentage
MAP-21	The Moving Ahead for Progress in the 21st Century Act, PL. 112-141
PPA	The Pension Protection Act of 2006, PL. 109-280
PBGC	Pension Benefit Guaranty Corporation
80% FTAP gateway test	One of the tests for determining if a 4010 filing is required

2014 PBGC 4010 REPORT

OVERVIEW

Sponsors of certain single-employer qualified defined benefit pension plans with significant underfunding are required to provide specified financial and actuarial information about the plans and employers in the sponsors' controlled group to PBGC under the Employee Retirement Income Security Act (ERISA). ERISA Section 4010(e) requires PBGC to annually submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives, a summary report in the aggregate of the information submitted to PBGC under Section 4010. This report summarizes 4010 information submitted for information years ending in 2008 through 2014.¹ We refer to this report as the "2014 4010 report" because the most recent filings included relate to information years ending in 2014.

Due to the limitations on who files, the plans for which this information is reported are not representative of the defined benefit plan universe, nor are they representative of PBGC's insurance exposure. Readers are cautioned against extrapolating this information to the much broader population of companies and plans in the defined benefit plan system, or using this information to draw conclusions about historic trends.

WHO FILES 4010 REPORTS?

Reporting under ERISA Section 4010 is required if:

- Any plan sponsored by a member of the controlled group² had a funding target attainment percentage (FTAP), determined without regard to the interest rate stabilization rules,³ below 80% (i.e., the "80% FTAP gateway test");
- Any controlled group member failed to make a required contribution to a plan within 10 days after its due date and such failure met the conditions for imposition of a lien under ERISA Section 303(k) or Internal Revenue Code Section 430(k);⁴ or
- Any plan maintained by a controlled group member has been granted a minimum funding waiver totaling in excess of \$1 million, any portion of which is still outstanding.

The vast majority of filers are required to file because of the 80% FTAP gateway test. In general, only a handful of filers fall into the latter two categories.

¹ The "information year" is generally the employer's fiscal year. Plan related information is measured as of the last day of the plan year ending within the information year.

² The term "controlled group" is defined in ERISA Section 4001(a)(14). In general, a controlled group is a group of two or more corporations or businesses that are under some sort of common control (e.g., parent-subsidiary).

³ The "interest rate stabilization" rules, under which the discount rate used to determine certain liabilities is adjusted to the extent it falls outside a specified corridor, are provided in ERISA Section 303(h)(2)(C)(iv). ERISA Section 4010 provides that the stabilization rules are disregarded for this purpose.

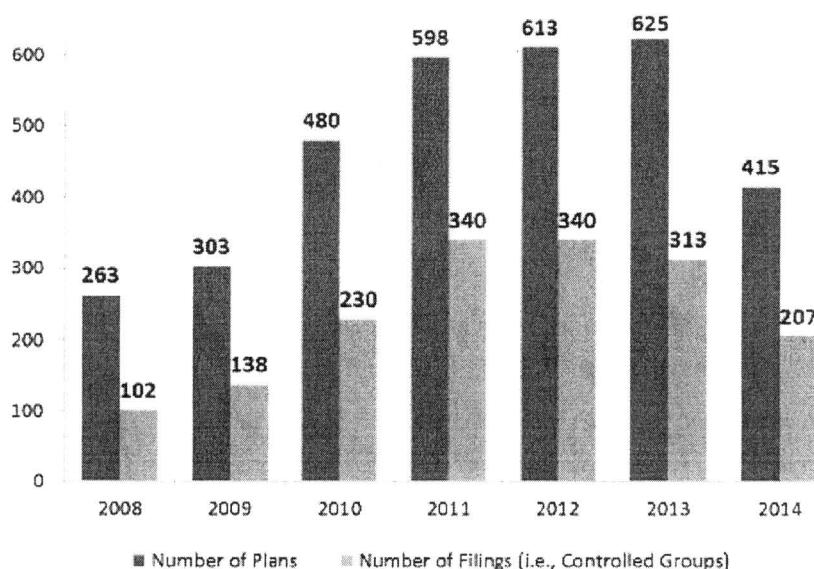
⁴ Generally, aggregate missed contributions in excess of \$1 million trigger this lien.

For the years covered by this report, PBGC waived reporting if aggregate underfunding, determined using stabilized interest rates, is less than \$15 million. The waiver rules have since changed. See section titled “Recent changes to 4010 regulation” for more information.⁵

NUMBER OF FILERS

Figure 1 shows how many filings PBGC has received since 2008.⁶ Because filing is done on a controlled group basis, it is common for one filing to contain information on more than one plan. For that reason, Figure 1 also provides information on the number of plans reported in 4010 filings. These plans generally represent less than 3% of the plans in the PBGC-insured single-employer plan universe.

Figure 1 – Number of 4010 Filers



Plans that are included in reports filed under 4010 tend to be larger than average. For 2008 and 2009, the median number of participants in these plans was just below 3,000. For 2010-2013, the median number of participants was about 2,400, and for 2014, the median number of participants was about 3,100. This contrasts with the universe of PBGC-insured single-employer plans where most plans are much smaller.⁷

⁵ The recent changes first apply to information years beginning on or after January 1, 2016 and thus, won't be reflected in the 4010 Summary Report until the 2016 Report is issued.

⁶ The Pension Protection Act of 2006 (PPA) made several changes to ERISA Section 4010, including adding a requirement to report summary information to Congress. These changes were first effective for 2008 which is why the report shows data starting with 2008.

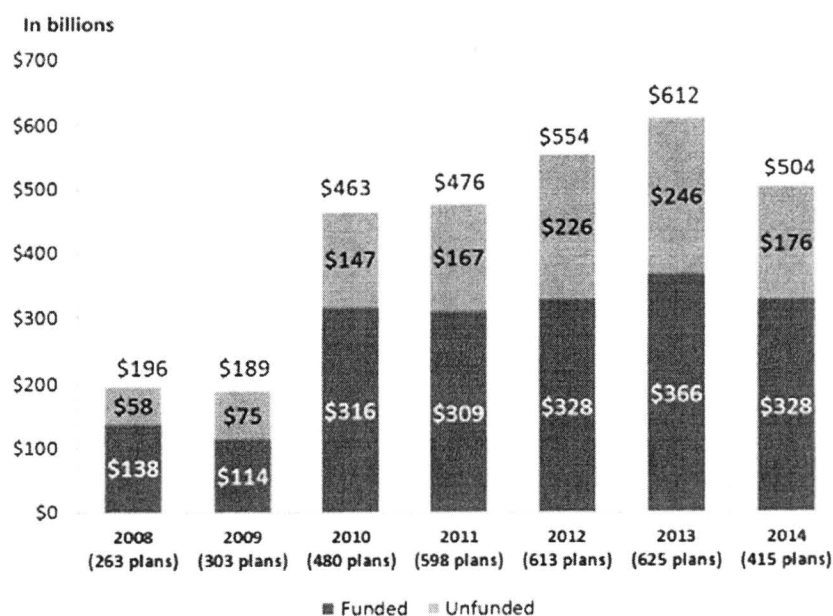
⁷ In 2014, over 60% of plans had less than 100 participants (Table S-31 of PBGC's Databook <http://www.pbpc.gov/documents/2014-data-tables-final.pdf>.) Note that while most plans are small, the majority of all single-employer system participants are in plans that cover more than 10,000 participants, as shown in Table S-30 of PBGC's Databook.

BENEFIT LIABILITIES DETERMINED USING PBGC ASSUMPTIONS AND METHODS

ERISA Section 4010 requires that, for each plan included in a 4010 filing, “the amount of benefit liabilities ... determined using the assumptions used by the corporation in determining liabilities” is reported. Figure 2 shows the total liability and funded liability reported (all plans combined) in each of the seven post-PPA years.

For this purpose, assets are valued at fair market value and liabilities are measured on a termination basis (i.e., using assumptions provided in PBGC’s Section 4044 regulations) and therefore, this amount is commonly called “termination liability.”

Figure 2 – Aggregate Benefit Liabilities (Termination Basis) reported in 4010 Filings



ADDITIONAL REQUIRED ACTUARIAL CALCULATIONS

ERISA Section 4010(d)(1)(C) requires that filers report the funding target attainment percentage (FTAP), determined without regard to the interest rate stabilization rules (see footnote 3).

ERISA Section 4010(d)(1)(B) requires that plans report the funding target of the plan recalculated as if the plan has been in at-risk status for at least 5 plan years as defined in ERISA Section 303(i), also without regard to the interest rate stabilization rules. Calculations under the at-risk rules are the standard ERISA Section 303 assumptions modified for anticipated changes in retirement age and form of payment selection. The resulting liability is then increased by a statutorily prescribed “loading factor.”

A summary of both data elements is shown in Figure 3.

Figure 3 - Additional Actuarial Information Reported in 4010 Filings

Year	Average Funding Target Attainment Percentage ⁸	Aggregate At-Risk Funding Target (in billions)
2008	84%	\$148.0
2009	80%	\$151.2
2010	76%	\$277.3
2011	73%	\$390.1
2012	75%	\$445.7
2013	76%	\$486.6
2014	75%	\$550.3

RECENT CHANGES TO 4010 REGULATION

PBGC recently amended its 4010 regulation to reduce the administrative burden associated with preparing 4010 filings, to better align an existing reporting waiver to PBGC's original intent and to implement additional reporting waivers. A summary of these changes follows:

- *Reducing administrative burden of reporting* – It is burdensome and costly for companies to calculate the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years, as required by ERISA Section 4010(d)(1)(B) (i.e., the data reported in right-most column of Figure 3). And, unless a plan has actually been in at-risk status for at least 5 consecutive plan years (which is very unlikely), the 4010(d)(1)(B) amount is not used for any purpose other than reporting under ERISA Section 4010. PBGC does not typically need this data item because termination liability, which is also reported, is the relevant amount (see Figure 2).

To reduce the administrative burden of preparing a 4010 filing, PBGC amended its regulation to provide that the ERISA Section 4010(d)(1)(B) amount need not be reported as part of a 4010 submission. Rather, if a situation arises where PBGC (or Congress) determines it needs that data item from a particular plan (that is subject to 4010 reporting), PBGC may request the plan submit that data item at a later date.

- *Implementing new waivers*
 - **Smaller plans** — To eliminate the burden of reporting on smaller companies, the regulation now includes a waiver from reporting for plans with controlled groups with fewer than 500 participants, regardless of plan underfunding.

⁸ These amounts represent the average FTAP (i.e., the sum of each plan's reported FTAP divided by the total number of plans). The overall average FTAP can be above 80% for plans reporting information under Section 4010 because all plans sponsored by the employer must file 4010 information if the FTAP for any plan in the controlled group is below 80%.

-
- Duplicative reporting — The statute provides that companies file 4010 information if a statutory lien arose as the result of missing more than \$1 million of required contributions or if the plan received a minimum funding waiver for which the outstanding balance exceeds \$1 million. The regulation now waives reporting for companies filing solely because of either of these events if the missed contributions or applications for minimum funding waivers were reported to PBGC under its regulation on Reportable Events and Certain Other Notification Requirements (part 4043) by the due date for the 4010 filing.
 - *Revising existing reporting waiver* — PBGC's regulation provides a reporting waiver for companies with aggregate underfunding of \$15 million or less. This waiver has been part of the regulation since PPA was implemented. As originally drafted, the regulation provided that the liability used to determine plan underfunding for this purpose was the same liability used to determine funding requirements under ERISA Section 430. At that time, the liability used for purposes of the 80% FTAP gateway test (to determine whether a 4010 filing was required), was the same as the liability determined under Section 430.

However, MAP-21 and subsequent legislation⁹ provided interest rate stabilization rules which result in significantly lower liabilities. The legislation provided that the interest rate stabilization rules do not apply for purposes of the 80% FTAP gateway test, but because of the specific wording of PBGC's regulation, the stabilization rules continued to apply when determining whether underfunding was less than \$15 million. As a result, many large plans with funding percentages well below 80% (for purposes of the 80% FTAP gateway test) qualified for the \$15 million waiver and thus were not required to submit 4010 information, even though their underfunding was far in excess of \$15 million.

The recent amendments resolve the inconsistency by providing that the liability used to determine whether a 4010 filing is required (i.e., the funding target determined without regard to the stabilization rules) is also used for determining whether the aggregate 4010 funding shortfall exceeds \$15 million.

These changes apply to information years beginning on or after January 1, 2016.

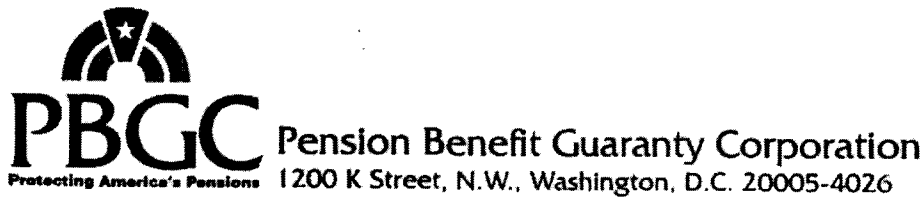
⁹ The Highway Transportation and Funding Act of 2014 (Pub. L. 113-159, enacted August 8, 2014) and the Bipartisan Budget Act of 2015 (Pub. L. 114-74, enacted November 2, 2015).

RECOMMENDATION TO MAKE 4010 MORE EFFECTIVE

4010 filings provide PBGC more current and more useful underfunding information than any other source. They are also the only way that sponsors report plan underfunding on a termination basis, as no other reporting requirement uses this measure, and they are one of the few sources of financial information for all members of a controlled group, not just the plan sponsor. In theory, the 4010 data greatly enhance PBGC's ability to identify and monitor potential risks to the pension insurance system, to focus PBGC resources on situations that pose the greatest risks to the system, to assert appropriate claims in bankruptcy against members of a controlled group of the plan sponsor of a terminated plan, and to prepare PBGC's financial statements.

However, in practice, the 4010 reporting criteria fail to properly target plans as companies that are on the verge of bankruptcy (or even, in bankruptcy) are exempt from reporting simply because their plans were over 80% funded.¹⁰ **In fact, since the PPA changes took effect, PBGC has incurred more than \$4 billion in total claims arising from the termination of plans sponsored by companies that were not required to submit 4010 information.** Better targeting of reporting requirements could take a substantial and unnecessary reporting burden off some companies and help PBGC do its job better. Therefore, PBGC recommends that Section 4010 be amended to revise reporting criteria in ways that minimize burden and improve the usefulness of the data.

¹⁰ Prior to PPA, reporting was required if aggregate underfunding exceeded \$50 million.



Office of the Director

January 27, 2016

The Honorable David B. McKinley
U.S. House of Representatives
Washington, DC 20515

Attn: Mike Hamilton / Blake Wheeler

Re: United Mine Workers of America 1974 Pension Plan

Dear Representative McKinley:

I am responding to your letter concerning the United Mine Workers of America 1974 Pension Plan (UMWA Plan) and the impact on the Pension Benefit Guaranty Corporation (PBGC) multiemployer fund and plan retirees if the UMWA Plan were to become insolvent. We appreciate your efforts to find a solution that will shore up the UMWA plan to protect participants' hard-earned pension benefits. As you know, the President's 2016 Budget supports reforms to ensure that UMWA plan participants continue to receive benefits over the long term, maintaining our commitment to mine workers' retirement security while also ensuring that taxpayers are not paying more than is needed to do so.

Your letter asks for PBGC's perspective on several issues: our responses follow each of your questions below.

1) What is the potential impact to the PBGC's multiemployer insurance program if the PBGC becomes liable for UMWA pension fund?

The unfunded current liability of the UMWA Plan, as reported by the Plan, was almost \$6 billion as of July 1, 2013. That amount is more than three times the current level of assets in PBGC's multiemployer fund.

Under most simulations, PBGC's model of its multiemployer program shows our multiemployer fund running out of money after paying several years of financial assistance to the UMWA Plan. In 82% of our simulations, PBGC pays financial assistance to the UMWA Plan for 1 to 3 years before PBGC's multiemployer fund is exhausted. At the point PBGC's multiemployer fund runs out of money, annual financial assistance to the UMWA Plan is estimated to average around 15% to 20% of total annual financial assistance to multiemployer plans.

Assistance to the UMWA Plan will be a significant factor in PBGC's multiemployer fund insolvency and will accelerate that insolvency by a number of months, but it will not be the sole driver of the fund's insolvency. Addressing PBGC's multiemployer fund insolvency will require both a resolution of the UMWA Plan and additional resources.

2) *What action would Congress have to take if the PBGC runs out of money? What is the potential cost?*

Under ERISA section 4022A(f), before PBGC's multiemployer fund runs out of money, Congress will be faced with a choice to –

- a. Raise premiums so that PBGC can continue to provide the level of guarantees set forth in the statute. (The per-participant premium rate for plan years beginning in 2016 is \$27 for multiemployer plans.) Estimates indicate a 4-fold to 8-fold increase in premiums would be required;
- b. Reduce guarantees to the level affordable by current premium receipts. Estimates indicate that this would result in a 4-fold to 8-fold reduction in the amount provided by PBGC guarantees (that is, to 12.5% to 25% of the current guarantee). Almost all participants would receive less than \$250/month, with many receiving even less; or
- c. Raise premiums somewhat and reduce guarantees accordingly.

If Congress takes no action, by law PBGC guarantees would be cut to the level sustainable by current premium receipts (see b. above). Alternatively, Congress could provide additional funding to PBGC through sources other than premiums or take steps to improve funding in pension plans to reduce the level of future reliance on the PBGC guarantee.

3) *What would be the impact on the retirees if the UMWA plan goes to the PBGC?*

If the PBGC multiemployer fund is still solvent when the UMWA Plan becomes insolvent, benefit payments would be reduced to the level of the guarantee. Based on information received from the UMWA Plan several years ago, it appears that the benefits of about 15% of participants are fully covered by the current PBGC guarantee.

PBGC multiemployer guarantees are generally much lower than in its single-employer program and vary with participant service. For example, for an individual with 10 years of service PBGC guarantees 100% of the first \$1,320 of pension payments per year and 75% of pensions above that amount, but in no event more than \$4,290 per year. By comparison, under the single-employer program, the maximum guaranteed annual benefit for 2016 for an individual receiving a single-life annuity at age 65 is \$60,136, regardless of service.

Of those UMWA plan participants whose benefits are not fully protected by the guarantee, all but about 10% of participants would receive most (80% to 90%) of their benefit. Some participants, particularly disabled mine workers who received a disability pension due to a disability incident early in their careers, would see benefit cuts of over 50% or 60%, with some cases exceeding 70%.

Once the PBGC multiemployer fund becomes insolvent, as discussed in question 2 above, either significant additional resources would need to be provided or benefits would be cut an additional 4-fold to 8-fold (i.e., to 12.5% to 25% of the current guarantee).

I hope that this information is helpful. If you or members of your staff have any questions, please feel free to contact Michael Rae, PBGC's Deputy Chief Policy Officer, at 202-326-4000 ext. 3401, or Rae.Michael@pbgc.gov.

The Administration looks forward to working with you on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Thomas Reeder". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

W. Thomas Reeder
Director