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PBGC Provides One-Time 4010 Filing Waiver for Certain Employers

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ERISA Section 4010 requires a contributing sponsor of certain single-employer pension plans, as well as the sponsor's controlled group members, to provide controlled group, financial, and actuarial information to the PBGC each year. The requirement generally applies when one or more plans within a controlled group has a funding target attainment percentage for 4010 purposes ("4010 FTAP") below 80%.

Technical Update Number 23-1 released by the PBGC on August 7th provides a one-time waiver of the ERISA Section 4010 reporting requirement for any filer that meets the following requirements:

- The filer was not required to submit a 4010 report for any of the five immediately preceding information years;
- Either (i) none of the includable plans has a market-based 4010 FTAP below 85%, *or* (ii) the market-based aggregate 4010 funding shortfall does not exceed $15 million; and
- The valuation date for each includable plan with a 4010 FTAP below 80% is on or after October 1, 2022 and on or before March 1, 2023.

Absent relief from the PBGC, many entities that are not typically subject to 4010 reporting would have been required to submit a filing this year. As explained in the Update, the "atypical and almost unprecedented interaction of market conditions" in late 2022 and early 2023 is expected to drive many plans' 4010 FTAP below 80% "for the first time in a long time (or perhaps ever)." The same plans might have 4010 FTAPs at or above the 80% threshold if the calculation used a market-based approach that does not smooth out discount rates and asset values over time.

To take advantage of the waiver, the filer must notify the PBGC by email no later than 15 days before the 4010 report would otherwise be due. The notice must be sent to ERISA.4010@pbgc.gov with the subject line "Technical Update 23-1 Waiver" and identify both the controlled group's ultimate parent and the date that the applicable information year ends. Given the detailed information required for a full 4010 report, the waiver provides welcome relief for sponsors and controlled group members that historically have not needed to file 4010 reports with the PBGC.

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