Shrinking Pension Plan Participation and PBGC Reportable Events

By: Margaret A. Lacek, EA, FSA, FCA, MAAA, Consultant and Actuary
– Cowden Associates, Inc.
July 2016

Are you administering a frozen defined benefit pension plan? If so, the number of plan participants who are actively employed will inevitably shrink as time passes. The Pension Benefit Guaranty Corporation (PBGC) requires that you monitor this active participant reduction and report the decrease if it meets certain criteria. This so-called "Active Participant Reduction" under PBGC regulation section 4043 has been a reportable event for many years, but the PBGC implemented new reporting rules effective January 1, 2016.

The PBGC modified the rules to:

- Distinguish between reductions caused by single cause events and normal attrition.
- Craft waivers of the filing requirements so that plans that pose a low risk to the PBGC insurance system can avoid reporting.
- Provide longer periods to file after the event has occurred in some cases.
- Require electronic reporting.

The PBGC defines an **active participant** as one who performs work in the plan sponsor's controlled group and receives compensation for it, though special rules may apply. Some of these special situations include paid or unpaid leave, layoffs lasting less than 30 days, and regularly recurring employment reductions that happen annually or more frequently.

Active participant reduction monitoring involves three steps:

- Testing for a reduction event
- Determining the reduction category
- Identifying any filing waivers

Reduction Event Testing

A reduction event occurs if the number of active participants falls below (a) 75% of the number at the beginning of the prior plan year OR (b) 80% of the number at the beginning of the current plan year.

As an example, consider the Shrinking Pension Plan's active participant count as shown below. Midway through 2015, the Plan purchased annuities for certain retired and terminated vested participants. This caused the total participant count to decline substantially, while the active count only declined by a handful of participants. As will be seen later, total participant counts have a bearing on whether reporting requirements may be waived.

	2016 Plan Year Event Check		2017 Plan Year Event Check	
Plan Year Beginning	1/1/2015	1/1/2016	1/1/2016	1/1/2017
Total Participants	108	60	60	60
Active Count	19	15	15	13
a) 75% of Count	14.25	n/a	11.25	n/a
b) 80% of Count	n/a	12	n/a	10.4
Greater of (a) and (b), rounded up	15		12	

If the active count falls below 15 during the 2016 plan year, a reportable event occurs. Only one active plan participant's departure triggers an event for the 2016 plan year.

Assume 2 active participants actually retire during 2016 and enter pay status. There would be a 2016 reportable event, and the active count declines to 13 by year end. Only two active participants leaving during 2017 would trigger an event for the 2017 plan year.

Reduction Event Category

Under the new regulations two different scenarios exist:

- First, if active participants leave due to a **single cause** then the plan administrator and a contributing sponsor must file a notice with the PBGC within 30 days after they know or have reason to know that the reduction occurred, unless a waiver applies. The PBGC gives examples of such causes as plan sponsor reorganization, layoffs, shutting down an operation, early retirement incentives, and natural disasters. Waivers are discussed later in this article.

- Second, normal **attrition**, such as retirements and terminations initiated by the employee, may cause an active participant reduction. The regulations permit accumulation of these through the plan year end and an extended period of time to file. If attrition triggers an event, the plan administrator and contributing plan sponsor must report it no later than the premium filing due date for the *following* year if no waivers apply.

For the Shrinking Pension Plan, normal attrition during 2016 triggered an active participant reduction measured on December 31, 2016, so the event must be reported by October 15, 2017, the 2017 plan year premium filing due date.

Electronic reporting will be required under either scenario in accordance with the instructions posted on the PBGC website. Failure to file can result in fines of up to $1,100 per day for each day late, but the PBGC assesses much smaller amounts starting at $25 per day based on considerations such as how quickly notice violations are corrected and the size of the plan involved.

Available Waivers

The new regulations provide four possible waivers of active participant reduction filing requirements:

- The small plan waiver. This depends on the total participant count for paying the PBGC flat rate premium for the plan year *before* the year of the reportable event. The count must be 100 or fewer to obtain the waiver.
  In the example, for the active participant reduction that occurs in the 2016 plan year, the relevant count is 108 for the 2015 premium filing. The Shrinking Pension Plan could take advantage of this waiver in 2017 and in future years, but not for 2016.
- The “well-funded” plan waiver. This requires that no variable rate premium (VRP) was owed for the plan year *before* the year of the event. If the Shrinking Pension Plan owed no variable rate premium for 2015, it could use this waiver for a 2016 event.
- The “public company” waiver. Public companies that file SEC Form 8-K in a timely manner obtain this waiver if they disclose the event in the filing, but under an item other than “Results of Operations and Financial Condition” or in financial statements under “Financial Statements and Exhibit”.
- The “low default risk” waiver. To use this option, the contributing plan sponsor and its highest U.S. parent must meet PBGC criteria on a “financial information date”. That date begins a “safe harbor period” that can extend up to thirteen months. If the reportable event takes place during a plan year when the plan is in the safe harbor period, reporting is waived.

The PBGC waives reporting for certain terminating plans and for multiemployer plans.

Other Considerations

A reportable event might also trigger notice obligations to lenders or possibly a default under credit and other agreements that the sponsor or members of its controlled group may have with lenders and other parties. Plan sponsors should review such agreements.

In addition to the Active Participant Reduction rules, soft frozen pension plans must also monitor compliance with IRS Code Section 401(a)(26) Minimum Participation rules, where the plan must cover the lesser of 50 employees, or 40% of the total employee group.

Keep in mind that the Active Participant Reduction is not the only reportable event under regulations. Of the list below, the last seven may require advance reporting.

- Failure to make required minimum contributions
- Inability to pay benefits when due
- Distribution to a substantial owner
- Change in contributing sponsor or controlled group
- Liquidation of a controlled group member
- Extraordinary dividends or stock redemptions
- Transfers of benefit liabilities (except for lump sum payments or annuity purchases)
- Application for a minimum funding waiver
- Loan default
- Insolvency or similar settlements

Waiver requirements vary for these other reportable events.

Please contact Cowden Associates if you have any questions, know or suspect that a reportable event has occurred and need assistance filing with the PBGC, wish to investigate the applicability of the waivers, or are concerned about Minimum Participation rules.

For more information please contact:
Margaret A. Lacek, EA, FSA, FCA, MAAA
Consultant and Actuary
Ph: 412-394-9952; Email: margaretl@cowdenassociates.com