



**Testimony of Mark Dunbar, MSPA  
on behalf of  
ASPPA and the ASPPA College of Pension Actuaries**

**Public Hearing on the Proposed Rule Relating to  
Reportable Events and Certain Other Notification Requirements**

**June 18, 2013**

**Pension Benefit Guaranty Corporation  
29 CFR Parts 4000, 4001, 4043, 4204, 4206 and 4231  
[RIN 1212-AB06]**

Good morning. My name is Mark Dunbar, current president of the ASPPA College of Pension Actuaries (ACOPA). I am here today to testify on behalf of ASPPA and the ASPPA College of Pension Actuaries.

ASPPA is a national organization of more than 15,000 retirement plan professionals who provide consulting, actuarial and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, enrolled actuaries, accountants and attorneys. All credentialed actuarial members of ASPPA are members of the ASPPA College of Pension Actuaries, which has primary responsibility for the content of comment letters that involve actuarial issues.

We appreciate the opportunity to speak about concerns raised in our comment letter filed June 3. As a general comment, we commend PBGC for the proposed rule's focus on companies and plans that pose substantial risk to PBGC.

**Small business exemptions**

We are pleased with the small plan waivers in the proposed rule and believe they should be retained in the final rule. Their inclusion will allow small business to avoid time consuming reporting that adds cost with little or no benefit to the system, and will allow PBGC to concentrate on the more challenging underfunded plans. However, small businesses were not provided with an exemption from the requirement to report distributions to substantial owners in excess of \$10,000 in the past year. For a substantial owner taking lifetime payments from a plan in excess of \$10,000 per year, the distribution only has to be reported once – when the annuity begins - *if* the annuity does not increase. However, when the owner is still employed, and

distributions are made to satisfy minimum required distribution rules, the payment may be increasing and this exception to annual reporting may not be available. Payments made to satisfy the minimum required distribution rules are not discretionary, and should not be reportable events. As a result, we recommend that the exclusion for reporting payments to substantial owners be expanded to include any payments made to comply with the minimum required distribution rules. Furthermore, lump sum payments to substantial owners should not be reportable for small plans since the plan must still be 110% funded after the distribution under IRS regulations.

### **Financial soundness safe harbor**

As with the small plan waivers, the waivers for financially sound plans are sensible and welcome. We also appreciate the goal of further focusing the reporting requirement on plan sponsors that may not have the financial strength to meet future obligations. However, we do have some concerns about the approach to determining whether or not an employer is financially sound, especially as it relates to the self-employed, and other small businesses.

Meeting the financial soundness safe harbor could prove burdensome for employers that do not currently have a credit rating if they need to apply for one and prepare and provide financial statements and other business information necessary to judge their credit worthiness. It is also unclear how the credit rating and the other four criteria would be applied to businesses with owner-employees. Would the individual's credit rating play a role? Would the individual's assets and liabilities be considered in the context of the four criteria that must be met in addition to the favorable credit report to meet the safe harbor?

We realize that, assuming the small plan exceptions in this proposed rule are included in the final rule, it is unlikely the financially sound plan sponsor criteria will come into play in the context of reportable events. However, the concept of a financially sound plan sponsor developed in this rule may well find its way into other rules, so it would not be wise to ignore these concerns.

This concludes our remarks. I look forward to your questions.