

TECHNICAL UPDATE 02-3

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

October 28, 2002



TECHNICAL UPDATE 02-3: DISASTER RELIEF RELATING TO PBGC DEADLINES IN RESPONSE TO TROPICAL STORM ISIDORE AND HURRICANE LILI

The Pension Benefit Guaranty Corporation is waiving certain penalties and extending certain deadlines in response to the major disasters declared by the President of the United States on account of Tropical Storm Isidore and Hurricane Lili. The PBGC is taking this action under its authority in section 4002(i) of ERISA, which was added by the Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427.

Persons Entitled to Relief

This Technical Update provides relief relating to PBGC deadlines as described below to Designated Persons. A "Designated Person" is any person responsible for meeting a PBGC deadline (for example, a plan administrator or contributing sponsor) that (1) is located in a disaster area for which the IRS has provided relief under Release No: LA-2003-01 (Oct. 2, 2002) in connection with filing extensions for Form 5500 series returns, or (2) cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations are directly affected by Tropical Storm Isidore or Hurricane Lili.

In Release No: LA-2003-01 (Oct. 2, 2002), the IRS provided relief in connection with filing extensions for Form 5500 series returns as a result of Tropical Storm Isidore or Hurricane Lili in the following areas:

- \$ Louisiana parishes: Acadia, Ascension, Assumption, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion.
- \$ Mississippi counties: Amite, Hancock, Harrison, Jackson, Pearl River, Pike, Stone.

If the IRS adds additional areas in connection with those filing extensions, any person responsible for meeting a PBGC deadline that is located in those additional areas will also be a Designated Person. This Technical Update refers to an extension of a Form 5500 deadline as a

result of Release No: LA-2003-01 (Oct. 2, 2002) or any subsequent release relating to Tropical Storm Isidore or Hurricane Lili as a *Form 5500 Disaster Extension* and to the resulting extended deadline as a *Form 5500 Disaster Extension Date*.

Case-by-Case Relief

This Technical Update does not cover every situation in which PBGC disaster relief may be warranted. For example:

- \$ This Technical Update does not capture every person that might experience difficulty in meeting a PBGC deadline for reasons relating to Tropical Storm Isidore or Hurricane Lili.
- \$ This Technical Update does not grant specific disaster relief for all filings. For example, it does not provide relief for certain filings that involve particularly important or time-sensitive information where there may be a high risk of substantial harm to participants or the PBGC insurance program, *e.g.*, notices of large missed contributions under section 302(f) of ERISA (Form 200), advance notices of reportable events under ERISA section 4043, and annual financial and actuarial information reports from certain controlled groups under ERISA section 4010.

Those persons affected by Tropical Storm Isidore or Hurricane Lili who need relief from the PBGC that is not covered by this Technical Update should contact the PBGC as soon as reasonably possible. The PBGC will work with them in ensuring that they receive appropriate relief. To request case-by-case relief, contact Diane Morstein at the PBGC by C

- \$ calling 1-800-736-2444, extension 4136, or 202-326-4136 (for TTY and TDD, call 800-877-8339 and request connection to 202-326-4136);
- \$ sending an e-mail to practitioner.pro@pbgc.gov; or
- \$ writing to Diane Morstein, Pension Benefit Guaranty Corporation, Suite 610, 1200 K Street, NW, Washington, DC 20005-4026, Re: Isidore/Lili Disaster Relief Technical Update.

Claiming Disaster Relief

A person claiming disaster relief described in this Technical Update for a filing made with the PBGC should print or type the words *ISIDORE/LILI* at the top of the filing. (On Form 1 or Form 1-EZ, also check the *disaster relief* box at the top of the form.) Similarly, if a

person receives an inquiry or bill from the PBGC that appears not to take disaster relief into account, the inquiry or bill should be returned to the PBGC with the same wording written at the top. (The PBGC may, for example, generate such an inquiry or bill because it has not yet been alerted to the fact that the filer claims disaster relief.)

Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after September 21, 2002, and before December 2, 2002, if the payment is made by December 2, 2002. Example: Plan A is a calendar year plan. The deadline for Plan A's 2001 Form 1 (or Form 1-EZ), along with the related premium payment, is October 15, 2002. Plan A's plan administrator is a Designated Person. The PBGC will waive late payment penalties and late filing penalties for the period from October 15, 2002, through December 2, 2002. (The PBGC is not waiving late payment interest charges.)

Single-Employer Plan Terminations

Standard terminations. If the plan administrator of a plan that is terminating in a standard termination is a Designated Person, any of the following plan termination deadlines for the plan that falls on or after September 21, 2002, and before December 2, 2002, is extended to December 2, 2002:

- \$ The deadline for filing the standard termination notice (Form 500) (29 CFR ' 4041.25(a)). (Note that this automatically extends the deadline for providing notices of plan benefits to participants and beneficiaries (29 CFR ' 4041.24(a)) because that deadline is the date when the standard termination notice is filed.)
- \$ The deadline for completing the distribution of plan assets (29 CFR ' ' 4041.28(a)).
- \$ The deadline for filing the post-distribution certification (Form 501) without penalty (29 CFR ' 4041.29(b)). (Note that this automatically extends the deadline for filing missing participant information and certifications without penalty and for paying missing participants=designated benefits to the PBGC without interest (29 CFR ' 4050.6(b)(2)).)

Distress terminations. If the plan administrator of a plan that is terminating in a distress termination is a Designated Person and the deadline for filing the distress termination notice (Form 601) (29 CFR ' 4041.45(a)) falls on or after September 21, 2002, and before December 2, 2002, that deadline is extended to December 2, 2002. (Plan administrators of plans in distress terminations for which the PBGC has issued a distribution notice should contact the PBGC for case-by-case relief. See **Case-by-Case Relief** above.)

Participant Notices

If the plan administrator of a plan is a Designated Person, any deadline for providing a Participant Notice that falls on or after September 21, 2002, and before December 2, 2002, is extended to December 2, 2002.

If the plan has a Form 5500 Disaster Extension for the 2001 plan year, the deadline for providing a Participant Notice for the 2002 plan year is automatically extended to two months after the 2001 Form 5500 Disaster Extension Date.

Reportable Events Notices

If a Designated Person is responsible for filing a reportable event post-event notice (29 CFR Part 4043, Subparts A and B) for which the deadline falls on or after September 21, 2002, and before December 2, 2002, that person=s deadline for filing the notice is extended to December 2, 2002.

In certain cases, the PBGC=s regulation on post-event notices of reportable events extends the reporting deadline until 30 days after a plan=s Form 5500 due date. (See 29 CFR ' 4043.23(d)(2), .29(d)(2), .30(d)(2), .31(d)(2), and .34(d)(4).) If such a 30-day extension applies to a Form 5500 for which there is a Form 5500 Disaster Extension, the 30-day extension period in the PBGC=s regulation automatically will begin to run on the Form 5500 Disaster Extension Date.

In the case of notices required in advance of the effective date of a reportable event (29 CFR Part 4043, Subparts A and C), the PBGC will grant relief where appropriate on a case-by-case basis. See **Case-by-Case Relief** above.

Annual Employer Reporting

The PBGC=s regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010) requires annual financial and actuarial information reporting in certain cases

by contributing sponsors (and their controlled group members) maintaining plans with large underfunding or certain missed contributions or funding waivers. The PBGC will grant relief where appropriate on a case-by-case basis for these reports. See **Case-by-Case Relief** above.

The regulation permits the filing of certain actuarial information by an alternative due date, which is 15 days after a plan's Form 5500 due date, if certain requirements are met (29 CFR ' 4010.10(b)). If such an alternative due date is based on a Form 5500 for which there is a Form 5500 Disaster Extension, the 15-day period in the PBGC's regulation will automatically be measured from the Form 5500 Disaster Extension Date.

Requests for Reconsideration or Appeals

The deadline for requesting review of a PBGC determination under the PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003) is generally 45 days (for an appeal) or 30 days (for a request for reconsideration) after the date of the determination. If a Designated Person is aggrieved by a PBGC determination, and the deadline for filing an appeal or a request for reconsideration of the determination falls on or after September 21, 2002, and before December 2, 2002, that person's deadline for filing the appeal or request for reconsideration is extended to December 2, 2002.

Multiemployer Plan Deadlines

Multiemployer premium deadlines. The disaster relief relating to premium deadlines (discussed under **Premiums** above) also applies to multiemployer plans.

Other multiemployer deadlines. Under the PBGC's regulations governing multiemployer plans, various persons (e.g., the plan sponsor) are subject to deadlines for making filings with the PBGC, issuing notices to persons other than the PBGC, and taking other actions. If the person responsible for meeting the deadline is a Designated Person, and the deadline falls on or after September 21, 2002, and before December 2, 2002, the PBGC will neither assess a penalty under ERISA section 4302 nor take any other enforcement action with respect to any failure to comply with the deadline during the period ending on December 2, 2002.

The PBGC recognizes that persons other than the PBGC may have rights to enforce some of these deadlines. The PBGC expects these persons to act reasonably C fully taking into account the effects of Tropical Storm Isidore or Hurricane Lili C in deciding whether and to what extent to exercise these rights.

The PBGC will grant other relief where appropriate on a case-by-case basis for deadlines relating to multiemployer plans. See **Case-by-case Relief** above.