

## PBGC Opinion: Annuity Lift-Out Is Not a Reportable Event

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In its first opinion letter in 24 years, the PBGC held that a reportable event under Section 4043(c)(3) of ERISA does not occur when a plan sponsor de-risks a defined benefit pension plan through a partial annuity buyout.

When a defined benefit pension plan experiences a reportable event, the plan sponsor is required to notify the PBGC of the event. Section 4043(c)(3) of ERISA provides that it is a reportable event when the number of active participants in a plan falls below 80% of the number of active participants at the beginning of the plan year or 75% of the number of active participants at the beginning of the previous plan year.

In the opinion letter, the PBGC explains that the purpose behind reportable events, such as the participant reduction reportable event listed in Section 4043(c)(3) of ERISA, is to notify the PBGC of events which **increase** the risk that the PBGC will assume liability for payment of plan benefits under Title IV of ERISA. Mass layoffs, reorganizations, and employee attrition that reach the percentage thresholds are active participant reductions that could increase risk to the PBGC and therefore would be reportable events.

When an employer chooses to de-risk a plan by annuitizing a portion of the benefits, the liabilities are shifted out of the plan, assumed by insurers, and no longer guaranteed by the PBGC. Although the number of active plan participants decreases, the effect is to **reduce** the risk of liability to the PBGC, not increase it. For this reason, the PBGC concluded that an annuity buyout, where the participants would remain employed by the plan sponsor, would not require reporting to PBGC under Section 4043(c)(3) of ERISA and the underlying PBGC regulations as an active participant reduction.

The PBGC Opinion Letter is available [here](#).