Pension Benefit Guaranty Corporation

§ 4043.32 Transfer of benefit liabilities.

(a) Reportable event—(1) In general. A reportable event occurs for a plan when—

(i) The plan or any other plan maintained by a person in the plan’s controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan’s controlled group; and

(ii) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan’s total benefit liabilities. Both the benefit liabilities transferred and the plan’s total benefit liabilities shall be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(l) of the Code.

(2) Date of transfer. The date of transfer shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(l) of the Code, the date determined in accordance with 26 CFR 1.414(l)-1(b)(11) will be considered the date of transfer.

(b) Initial information required. In addition to the information required in § 4043.3(b), the notice shall include—

(1) Identification of the transferee(s) and each contributing sponsor of each transferee plan by name and EIN/PN or EIN, as appropriate;

(2) An explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, the value of plan assets) for each transfer; and

(3) An estimate of the amounts of assets and liabilities being transferred, and the number of participants whose benefits are transferred.

(c) Waivers—(1) Complete plan transfer. Notice is waived if the transfer is a transfer of all of the transferor plan’s benefit liabilities and assets to one other plan.

(2) Transfer of less than 3 percent of assets. Notice is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(l) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.
§ 4043.33 Application for minimum funding waiver.

(a) Reportable event. A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 303 of ERISA or section 412(d) of the Code.

(b) Initial information required. In addition to the information in § 4043.3(b), the notice shall include:

(i) A copy of the relevant loan documents (e.g., promissory note, security agreement);

(ii) The due date and amount of any missed payment;

(iii) A copy of any notice of default from the lender; and

(iv) A copy of any notice of acceleration from the lender.

§ 4043.34 Loan default.

(a) Reportable event. A reportable event occurs for a plan whenever there is a default by a member of the plan’s controlled group with respect to a loan with an outstanding balance of $10 million or more, if:

(1) The default results from the debtor’s failure to make a required loan payment when due (unless the payment is made within 30 days after the due date);

(2) The lender accelerates the loan; or

(3) The debtor receives a written notice of default from the lender (and does not establish the notice was issued in error) on account of:

(i) A drop in the debtor’s cash reserves below an agreed-upon level;

(ii) An unusual or catastrophic event experienced by the debtor; or

(iii) A persisting failure by the debtor to attain agreed-upon financial performance levels.

(b) Initial information required. In addition to the information in § 4043.3(b), the notice shall include:

(1) A copy of the relevant loan documents (e.g., promissory note, security agreement);

(2) The due date and amount of any missed payment;

(3) A copy of any notice of default from the lender; and

(4) A copy of any notice of acceleration from the lender.

(c) Waivers—(1) Default cured. Notice is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

(2) Foreign entity. Notice is waived if the debtor is a foreign entity other than a foreign parent.

(3) Plan funding. Notice is waived if—

(i) No variable rate premium. No variable rate premium is required to be paid for the plan for the event year;

(ii) $1 million unfunded vested benefits. As of the testing date for the event year, the plan has less than $1 million in unfunded vested benefits;

(iii) No unfunded vested benefits. As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter; or

(iv) 80-percent funded. As of the testing date for the event year, the fair market value of the plan’s assets is at least 80 percent of the plan’s vested benefits amount.

(d) Notice date and extensions—(1) In general. Except as provided in paragraph (d)(2) or (d)(3) of this section, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

(2) Cure period extensions. The notice date is extended to one day after—

(i) The applicable cure period provided in the loan agreement (in the case of a reportable event described in paragraph (a)(1) of this section);