

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4001, 4043, 4204, 4206, 4211, and 4231

RIN 1212-AB06

Pension Protection Act of 2006; Conforming Amendments; Reportable Events and Certain Other Notification Requirements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to conform PBGC's reportable events regulation under section 4043 of ERISA and a number of other PBGC regulations to statutory changes made by the Pension Protection Act of 2006 (PPA 2006) and to revisions of other PBGC regulations that implement the statutory changes. The rule would also eliminate most of the automatic waivers and filing extensions currently provided under the reportable events regulation and make other amendments to the regulation. For example, the rule would create two new reportable events based on provisions in PPA 2006 dealing with funding-based benefit limits and with asset transfers to retiree health benefits accounts.

DATES: Comments must be submitted on or before January 22, 2010.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212-AB06, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the web site instructions for submitting comments.

- *E-mail:* reg.comments@pbgc.gov.
- *Fax:* 202-326-4224.

- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212-AB06). Comments received, including personal information provided, will be posted to <http://www.pbgc.gov>. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and

Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under section 4007 of ERISA, pension plans covered by Title IV must pay premiums to PBGC. Section 4006 of ERISA establishes the premium rates and includes provisions for determining the variable-rate premium (VRP), which is based on plan funding rules. PBGC has regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) that implement the premium rules. A number of other provisions of ERISA, and of PBGC's other regulations, refer to funding and premium rules. Thus, changes in the funding and premium rules may require changes in some other PBGC regulations, such as PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), which implements section 4043 of ERISA (requiring that PBGC be notified of the occurrence of certain "reportable events").

On August 17, 2006, the Pension Protection Act of 2006 (PPA 2006), Public Law 109-280, was signed into law. PPA 2006 makes changes to the plan funding rules in Title I of ERISA and in the Internal Revenue Code of 1986 (Code) and amends the VRP provisions of section 4006 of ERISA to conform to the changes in the funding rules. On March 21, 2008, PBGC published in the **Federal Register** (at 73 FR 15065) a final rule amending its premium rates regulation and its premium payment regulation to implement the changes to ERISA and the Code made by PPA 2006. The changes to the funding and premium rules are effective for plan years beginning after 2007.

On November 28, 2007, PBGC issued Technical Update 07-2 (revised December 7, 2007 (corrected December 15, 2007)) (<http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16267.html>), providing transitional guidance on the applicability of the changes made by

PPA 2006, and the corresponding changes proposed for PBGC premium regulations, to the determination of funding-related amounts for purposes of the reportable events regulation. On March 24, 2008, PBGC issued Technical Update 08-2 (<http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16372.html>), providing a waiver for reporting of missed quarterly contributions by certain small employers in 2008. On January 9, 2009, PBGC issued Technical Update 09-1 (<http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16637.html>), providing interim guidance on compliance with reportable events requirements for plan years beginning in 2009. On April 30, 2009, PBGC issued Technical Update 09-3 (<http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/tu16725.html>), providing a waiver or alternative compliance method (depending on plan size) for reporting of missed quarterly contributions by certain small employers in 2009.

Overview of Proposed Regulatory Changes

This proposed rule would amend PBGC's reportable events regulation to make the advance reporting threshold test consistent with the PPA 2006 funding rules and PBGC's new variable-rate premium rules; eliminate most automatic waivers and filing extensions; create two new reportable events based on provisions in PPA 2006 dealing with funding-based benefit limits and with asset transfers to retiree health benefits accounts; reduce reporting of active participant reductions; clarify the provisions dealing with missed contributions and inability to pay benefits when due; clarify the benefit liability transfer event; remove from the regulation the lists of information items to be submitted (which are listed in the filing instructions); require filers to use PBGC forms to file reportable events notices; and eliminate the special "partial electronic filing" provision.

The rule would also amend six other PBGC regulations to revise statutory cross-references and otherwise accommodate the statutory and regulatory changes in the premium rules: the regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000); Terminology (29 CFR part 4001); Variances for Sale of Assets (29 CFR part 4204); Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (29 CFR part 4206); Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part

4211); and Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231).

Reportable Events

PBGC proposes to amend the reportable events regulation to accommodate the changes to the funding and premium rules, to eliminate most automatic waivers and filing extensions, to add two new reportable events, and to make other modifications.

Advance Reporting Test

Under section 4043(a) of ERISA, plan administrators and contributing sponsors must notify PBGC of certain “reportable events” within 30 days after they occur. Section 4043(b) of ERISA requires advance reporting by a contributing sponsor for certain reportable events if a “threshold test” is met, unless the contributing sponsor or controlled group member to which an event relates is a public company. The advance reporting threshold test is based on the aggregate funding level of plans maintained by the contributing sponsor and members of the contributing sponsor’s controlled group. The funding level criteria are expressed by reference to calculated values that are used to determine VRPs under section 4006 of ERISA. The reportable events regulation ties the statutory threshold test to the related provisions of the premium rates regulation.

The advance reporting threshold test in ERISA section 4043(b)(1) says: “The [advance reporting] requirements of this subsection shall be applicable to a contributing sponsor if, as of the close of the preceding plan year—

- The aggregate unfunded vested benefits [(UVBs)] (as determined under [ERISA] section 4006(a)(3)(E)(iii)) of plans subject to this title which are maintained by such sponsor and members of such sponsor’s controlled groups (disregarding plans with no unfunded vested benefits) exceed \$50,000,000, and
- The funded vested benefit percentage for such plans is less than 90 percent.

—For purposes of the second bullet above, the funded vested benefit percentage means the percentage which the aggregate value of the assets of such plans bears to the aggregate vested benefits of such plans (determined in accordance with [ERISA] section 4006(a)(3)(E)(iii)).”

PPA 2006 revised ERISA section 4006(a)(3)(E)(iii) to say that UVBs— “means, for a plan year, the excess (if any) of * * * the funding target of the plan as determined under [ERISA] section 303(d) for the plan year by only taking into account vested benefits and by using the interest rate described in [ERISA section 4006(a)(3)(E)(iv)], over * * * the fair market value of plan assets for the plan year which are held by the plan on the valuation date.”

The section 303 of ERISA referred to here is a completely new section added by PPA 2006. Under new ERISA section 303(g)(1), the value of plan assets and the funding target of a plan for a plan year are determined as of the valuation date of the plan for the plan year. Under new ERISA section 303(g)(2), the valuation date for virtually all plans subject to advance reporting under ERISA section 4043 will be the first day of the plan year. Thus, while ERISA section 4043(b)(1) refers to UVBs, assets, and vested benefits “as of the close of the preceding plan year,” in nearly all cases these quantities must, with respect to plan years beginning after 2007, be calculated as of the beginning of a plan year. This creates an ambiguity with regard to the date as of which the advance reporting threshold test is to be applied.

The proposed rule would resolve this ambiguity by requiring that the advance reporting threshold test be applied as of the valuation date for “the preceding plan year.” That is the same date as of which UVBs, assets, and vested benefits must be determined for premium purposes for the preceding plan year under the premium rates regulation as amended by PBGC’s final rule on VRPs under PPA 2006. Measuring these quantities as of that date for purposes of the advanced reporting threshold test will thus be less burdensome than

requiring that separate computations be made as of the close of that year. It will also enable a plan to determine before a reportable event occurs (and before an advance report is due) whether it is subject to the advance reporting requirement.

The proposed rule would make a number of editorial changes to the advance reporting threshold provisions with a view to improving clarity and simplicity as well as accommodating the changes discussed above. It would also provide that the plans whose funding status is taken into account in applying the threshold test are determined as of the due date for the report, and that the “public company” status of a contributing sponsor or controlled group member to which the event relates is also determined as of that date. Although the existing regulation does not explicitly address this issue, PBGC believes it is implicit that these determinations be current. Requiring that they be made as of the due date for the report ensures currency.

Automatic Waivers and Extensions

Section 4043.4 of the reportable events regulation provides that PBGC may grant waivers and extensions case by case. In addition, the existing regulation provides automatic waivers and extensions for most of the reportable events. For example, waivers are provided for small plans, for well-funded plans, and for events affecting *de minimis* segments of controlled groups or foreign entities. In many cases, where it may be impossible to know by the filing due date whether criteria for a particular waiver are met, an extension gives a potential filer an opportunity to determine whether the waiver applies.

PBGC proposes to eliminate most of these automatic waivers and extensions, as indicated in the following tables. The complete waivers provided for certain statutory events in §§ 4043.21 (disqualification or noncompliance), 4043.22 (amendment decreasing benefits), 4043.24 (termination), and 4043.28 (merger, consolidation, or transfer) would be retained.

POST-EVENT NOTICES

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
<i>Active participant reduction</i> (§ 4043.23).	<ul style="list-style-type: none"> • Small plan • Well-funded plan. 	<ul style="list-style-type: none"> • Prior event reported within 1 year. 	<ul style="list-style-type: none"> • 30 days after current VRP due date. • 30 days after next 5500 due date. • Following year flat-rate premium due date. 	None.

POST-EVENT NOTICES—Continued

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
<i>Missed contribution</i> (§ 4043.25).	<ul style="list-style-type: none"> • Payment within 30 days of due date. 	None	None	None.
<i>Inability to pay benefits when due</i> (§ 4043.26).	<ul style="list-style-type: none"> • Large plan 	<ul style="list-style-type: none"> • Large plan 	None	None.
<i>Distribution to substantial owner</i> (§ 4043.27).	<ul style="list-style-type: none"> • Distribution up to § 415 limit. • Distribution up to 1% of assets. • Well-funded plan. • <i>De minimis</i> transaction .. 	None	<ul style="list-style-type: none"> • 30 days after current VRP due date. 	None.
<i>Change in contributing sponsor or controlled group</i> (§ 4043.29).	<ul style="list-style-type: none"> • Foreign entity • Well-funded plan 	<ul style="list-style-type: none"> • <i>De minimis</i> transaction .. 	<ul style="list-style-type: none"> • 30 days after current VRP due date. 	None.
Liquidation (§ 4043.30)	<ul style="list-style-type: none"> • De minimis transaction .. • Foreign entity • Well-funded plan 	None	<ul style="list-style-type: none"> • 30 days after next 5500 due date. • 30 days after Form 10Q or press release. • 30 days after current VRP due date. • 30 days after next 5500 due date. • 30 days after Form 10Q or press release. 	None.
<i>Extraordinary distribution or stock redemption</i> (§ 4043.31).	<ul style="list-style-type: none"> • Statutory event • <i>De minimis</i> transaction .. • Foreign entity • Well-funded plan 	<ul style="list-style-type: none"> • Statutory event • <i>De minimis</i> transaction .. 	<ul style="list-style-type: none"> • 30 days after current VRP due date. • 30 days after next 5500 due date. • 30 days after Form 10Q or press release. 	None.
<i>Transfer of benefit liabilities</i> (§ 4043.32).	<ul style="list-style-type: none"> • Transfer of all assets and liabilities. • <i>De minimis</i> transfer. • § 414(I) safe harbor. • Plans fully funded. 	None	None	None.
<i>Funding waiver application</i> (§ 4043.33).	None	None	None	None.
<i>Loan default</i> (§ 4043.34) ...	<ul style="list-style-type: none"> • Cure or waiver • Foreign entity • Well-funded plan 	<ul style="list-style-type: none"> • Cure or waiver 	<ul style="list-style-type: none"> • 30 days after current VRP due date. • 30 days after next 5500 due date. • 1 day after cure period, acceleration, or default notice. 	<ul style="list-style-type: none"> • 1 day after cure period, acceleration, or default notice.
<i>Bankruptcy</i> (§ 4043.35)	<ul style="list-style-type: none"> • Foreign entity 	None	<ul style="list-style-type: none"> • 30 days after filer has actual knowledge. 	None.

ADVANCE NOTICES

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
<i>Change in contributing sponsor or controlled group</i> (§ 4043.62).	<ul style="list-style-type: none"> • Change in sponsor of small plan. • <i>De minimis</i> transaction. 	<ul style="list-style-type: none"> • <i>De minimis</i> transaction .. 	None	None.
<i>Liquidation</i> (§ 4043.63)	<ul style="list-style-type: none"> • <i>De minimis</i> transaction .. • <i>De minimis</i> transaction .. 	None	None	None.
<i>Extraordinary distributions or stock redemption</i> (§ 4043.64).	<ul style="list-style-type: none"> • <i>De minimis</i> transaction .. 	<ul style="list-style-type: none"> • <i>De minimis</i> transaction .. 	None	None.
<i>Transfer of benefit liabilities</i> (§ 4043.65).	<ul style="list-style-type: none"> • Transfer of all assets and liabilities. • <i>De minimis</i> transfer. • § 414(I) safe harbor. • Plans fully funded. 	None	None	None.
<i>Funding waiver application</i> (§ 4043.66).	None	None	10 days after event	Same day as event.
<i>Loan default</i> (§ 4043.67) ...	<ul style="list-style-type: none"> • Cure or waiver 	<ul style="list-style-type: none"> • Cure or waiver 	<ul style="list-style-type: none"> • 10 days after default • 1 day after cure period, acceleration, or default notice. 	<ul style="list-style-type: none"> • 10 days after default. • 1 day after cure period, acceleration, or default notice.

ADVANCE NOTICES—Continued

Event	Current waivers	Proposed waivers	Current extensions	Proposed extensions
<i>Bankruptcy (§ 4043.68)</i>	• 10 days after event	• 10 days after event.

Reportable events often signal financial distress and possible plan termination. When PBGC has timely information about a reportable event, it can take steps to encourage plan continuation—for example, by exploring alternative funding options with the plan sponsor—or, if plan termination is called for, to minimize the plan's potential funding shortfall through involuntary termination and maximize recovery of the shortfall from all possible sources. Without such timely information, PBGC typically learns that a plan is in danger only when most opportunities for protecting participants and the pension insurance system may have been lost.

PBGC believes that many of the automatic waivers and extensions in the existing reportable events regulation are depriving it of early warnings that would enable it to mitigate distress situations. For example, of the 88 small plans terminated in 2007, 21 involved situations where, but for an automatic waiver, an active participant reduction reportable event notice would have been required an average of three years before termination. Had those notices been filed, the need for some of those terminations might have been avoided, and PBGC might have been able to reduce the impact of other terminations on the pension insurance system.

PBGC believes that the increased reporting burden stemming from the elimination of most of the automatic waivers and extensions is justified by PBGC's need for timely information that may contribute to plan continuation or the minimizing of funding shortfalls. However, PBGC plans to monitor reportable events filings to determine whether some automatic waivers and extensions can be restored (or newly crafted waivers or extensions provided) without jeopardizing efforts to protect the benefits of participants in troubled plans and the pension insurance program. For each waiver and extension eliminated, PBGC solicits public comment on whether it has struck the correct balance between ensuring relevant information is received timely and increased reporting burden on the regulated community.

Active Participant Reduction—Facility Closings

An active participant reduction may occur as the result of a substantial

cessation of operations under ERISA section 4062(e) or a substantial employer withdrawal under ERISA section 4063(a). Events covered by section 4062(e) or 4063(a) must be reported to PBGC under section 4063(a). With a view to avoiding duplicative reporting, PBGC proposes to limit the active participant reduction event by excluding from consideration—in determining whether a reportable active-participant-reduction event has occurred—active participant reductions to the extent that they (1) fall within the provisions of section 4062(e) or 4063(a) and (2) are timely reported to PBGC as required under ERISA section 4063(a).

Active Participant Reduction—Frequency of Reporting

The description of the active participant reduction event in the statute and the existing regulation suggests that reporting could be required multiple times in the course of a year if multiple reductions occurred. In fact, any such report leads PBGC to monitor the situation for an extended period of time; while that monitoring continues, additional formal reports of active participant reductions are unnecessary. Accordingly, the proposed rule would waive reporting for this event if another active participant reduction was reported within the past year.

Failure To Contribute—Clarification

PBGC proposes to clarify the language in § 4043.25, dealing with the reportable event of failure to make required contributions. This reportable event does not apply only to contributions required by statute (including quarterly contributions under ERISA section 303(j)(3) and Code section 430(j)(3), liquidity shortfall contributions under ERISA section 303(j)(4) and Code section 430(j)(4), and contributions to amortize funding waivers under ERISA section 303(e) and Code section 430(e)). It also applies to contributions required as a condition of a funding waiver that do not fall within the statutory provisions on waiver amortization charges. The proposed revision would make this point clearer. (Note that such “non-statutory” contributions are not considered under § 4043.81, dealing with missed contributions that give rise to liens under ERISA section 303(k) and Code section 430(k).)

Inability To Pay Benefits When Due—Clarification

PBGC proposes to clarify the language in the provision dealing with automatic waiver of the reporting requirement for inability to pay benefits when due. This provision reflects PBGC's judgment that it need not require reporting of this event by larger plans that are subject to the “liquidity shortfall” rules imposing more stringent contribution requirements where liquid assets are insufficient to cover anticipated disbursement requirements. For these larger plans, (1) if the contributions required by the liquidity shortfall rules are made, the inability to pay benefits when due is resolved, and (2) if the required contributions are not made, that fact is reportable to PBGC as a failure to make required contributions. Accordingly, this provision waives reporting unless the plan is a small plan that is exempt from the liquidity shortfall provisions.

Transfer of Benefit Liabilities—Cashouts and Annuity Payments

Section 4043(c)(12) of ERISA requires reporting to PBGC when, in any 12-month period, three percent or more of a plan's benefit liabilities are transferred to a person outside the transferor plan's controlled group or to a plan or plans maintained by a person or persons outside the transferor plan's controlled group. Transfers of benefit liabilities are of concern to PBGC because they may reduce the transferor plan's funded percentage and because the transferee may not be as financially healthy as the transferor.

The existing text of the reportable events regulation does not make clear whether the satisfaction of benefit liabilities through the payment of a lump sum or the purchase of an irrevocable commitment to provide an annuity constitutes a transfer of benefit liabilities for purposes of this reporting requirement. PBGC has received inquiries seeking clarification of this point. PBGC proposes to provide that such cashouts and annuity payments do not constitute transfers of benefit liabilities that must be reported under the regulation.

Section 436 of the Code and section 206(g) of ERISA (as added by PPA 2006) prohibit or limit cashouts and annuity payments by significantly

underfunded plans. These provisions thus tend to prevent cashouts and annuitizations that would most seriously reduce a transferor plan's funded percentage. And since cashouts and annuitizations satisfy benefit liabilities (rather than transferring them to another plan), there is no concern about a transferee plan's financial health.

Transfer of Benefit Liabilities—Plans of Other Controlled Group Members

Section 4043.32(a) of the existing reportable events regulation requires post-event reporting not only for the plan that transfers benefit liabilities, but also for every other plan maintained by a member of the transferor plan's controlled group. However, existing § 4043.32(d) provides a waiver that in effect limits the post-event reporting obligation to the transferor plan. Existing § 4043.65 (dealing with advance reporting of benefit liability transfers) does not provide a similar waiver.

PBGC has concluded that it is unnecessary to extend the advance reporting requirement for benefit liability transfers beyond the transferor plan. Accordingly, PBGC proposes to revise § 4043.32(a) to narrow the reporting requirement to the transferor plan; to remove § 4043.32(d) (which would be redundant); and to revise § 4043.65(a) to remove the provision requiring that § 4043.32(d) be disregarded. The effect of these changes would be to leave the post-event notice requirement unchanged and to limit the advance notice requirement to the transferor plan.

New Reportable Event—Low Adjusted Funding Target Attainment Percentage

Section 436 of the Code and section 206(g) of ERISA (as added by PPA 2006) provide that if a plan's "adjusted funding target attainment percentage" is less than 60 percent, the plan in general must cease benefit accruals; may not be amended to increase benefits, establish new benefits, or increase accrual or vesting rates; and may not pay unpredictable contingent event benefits (such as shut-down benefits) or lump sums, or annuitize benefits. "Adjusted funding target attainment percentage" (a variant of the funding target attainment percentage) is defined in Code section 436(j)(2) and ERISA section 206(g)(9)(B). Code section 436(h) and ERISA section 206(g)(7) provide a number of rules under which the adjusted funding target attainment percentage (AFTAP) is presumed in specified circumstances to have specified values.

PBGC shares Congress's concern about the financial health of plans with AFTAPs below 60 percent and believes that a funding percentage that low may (depending on the financial condition of the contributing sponsor and controlled group members) be indicative of a need to terminate the plan. Accordingly, PBGC proposes to create a new reportable event under ERISA section 4043(c)(13) that would occur when an enrolled actuary certifies that a plan's AFTAP is less than 60 percent or when the AFTAP is presumed to be less than 60 percent under one of the rules in Code section 436(h) and ERISA section 206(g)(7). This would be both a post-event notice event and an advance notice event (although the due date for the advance notice would be extended until ten days after the event occurs).

New Reportable Event—Transfer to Retiree Health Account

Section 420(f) of the Internal Revenue Code (as added by PPA 2006) permits a pension plan to transfer "excess pension assets" to a health benefits account under the plan to fund health benefits for a "transfer period" of up to 10 years. The term "excess pension assets" is defined for this purpose as the amount by which plan assets exceed 120 percent of plan liabilities for benefits (including benefits accruing during the year). If the ratio of assets to liabilities falls below 120 percent at any valuation date during the transfer period, additional contributions must be made to the pension plan, or assets must be transferred back from the health benefits account to the pension plan, to restore the funding ratio to 120 percent.

The 120-percent required funding ratio in this new provision is less than the 125-percent ratio previously required under Code section 420, and the transfer period can be much longer, entailing potentially the transfer of significantly greater amounts of plan assets. Furthermore, because the actuarial assumptions used to apply the 120-percent test under Code section 420 may differ significantly from the assumptions that would be used to value plan liabilities if a plan termination were to occur during the transfer period, a plan could be underfunded for termination purposes even if it could pass the 120-percent funding test in Code section 420. PBGC is accordingly concerned that large transfers under Code section 420(f), especially if the funded ratio falls below 120 percent during the transfer period, may indicate a need to terminate the plan.

PBGC therefore proposes to create a new reportable event that would occur

if a section 420(f) transfer of \$10 million or more is made or if, following such a transfer, the funded ratio falls below 120 percent during the transfer period. This would be a post-event notice event only. (Even with advance notice, PBGC could not prevent such a transfer if it complied with the law; post-event reporting would give PBGC an opportunity to monitor the plan going forward.)

Requiring Use of Forms; Putting Data Submission Requirements in Instructions

PBGC issues three reporting forms for use under the reportable events regulation. Form 10 is for post-event reporting under subpart B of the regulation; Form 10-Advance is for advance reporting under subpart C of the regulation; and Form 200 is for reporting under subpart D of the regulation.

Under the existing regulation, use of PBGC forms for reporting events under subparts B and C of the regulation is optional. The data items in the forms do not correspond exactly with those in the regulation, and the regulation recognizes that filers that use the forms may report different information from those that do not use the forms. With a view to greater uniformity in the reporting process and attendant administrative simplicity for PBGC, PBGC proposes to make use of prescribed reportable events forms mandatory. PBGC also proposes to revise the forms and instructions (see the discussion of Paperwork Reduction Act requirements *infra*).

Consistent with this change, PBGC proposes to eliminate from the regulation the lists of information items that must be reported, so that the information to be reported would be described in the filing instructions only (rather than in both the filing instructions and the regulation). PBGC anticipates that as uncertainties about the operation of new PPA 2006 provisions are resolved, it may be appropriate to make changes in the information required to be submitted with reportable events notices, particularly those for failures to make required contributions timely.

"Partial Electronic Filing" Rule

The existing regulation contains a "partial electronic filing" provision under which a filing is considered timely made if certain basic information (specified in PBGC's reporting instructions) is submitted on time electronically and followed up within one or two business days (depending on the type of report) with the remaining

required information. This provision has facilitated last-minute filing where some required information consisted of documents that could not conveniently be sent electronically. But in the years since the regulation was issued, it has become common for documents to be created electronically and easy to create electronic images of documents that do not exist in electronic form. Thus PBGC believes that the “partial electronic filing” provision is no longer needed and that it is reasonable to require that all the information required for a filing be submitted on time, either electronically or on paper. Accordingly, PBGC proposes to eliminate the “partial electronic filing” provision. In the case of Form 200 filings, PBGC will accept an imaged signature, so that Form 200 filers need not submit a paper filing with ink signatures. (Forms 10 and 10-Advance do not require signatures.)

Other Changes

The proposed rule would make a number of editorial and clarifying changes to part 4043 and would add definitional cross-references, change statutory cross-references to track changes made by PPA 2006, and update language to conform to usage in PPA 2006 and regulations and reporting requirements thereunder. Some definitions of terms used in only one section of the regulation would be moved to the sections where they are used.

The proposed changes to the reportable events regulation make it unnecessary to define a number of terms at the beginning of the regulation. Accordingly, the definitions of “de minimis 10-percent segment,” “fair market value of the plan’s assets,” “foreign entity,” “foreign-linked entity,” “foreign parent,” “Form 5500 due date,” “public company,” “testing date,” “ultimate parent,” “unfunded vested benefits,” “variable-rate premium,” and “vested benefits amount” would be removed from § 4043.2. The definition of “de minimis 5-percent segment” (a term that in the existing regulation is defined by reference to the definition of “de minimis 10-percent segment”) would be made self-contained.

PBGC recognizes that the changes made by PPA 2006 in the statutory provisions dealing with missed contributions—which are reportable under §§ 4043.25 and 4043.81—affect the computation of interest on missed contributions, which in turn affects the reporting requirements. This proposed rule includes no amendment to the reportable events regulation dealing with such issues, but PBGC may provide further guidance on this subject, taking

into account as appropriate any relevant guidance from the Internal Revenue Service.

Other Regulations

Several other PBGC regulations also refer to plan funding concepts: The regulations on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000); Terminology (29 CFR part 4001); Variances for Sale of Assets (29 CFR part 4204); Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal (29 CFR part 4206); Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211); and Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231). Thus, these regulations must also be revised to be consistent with ERISA and the Code as amended by PPA 2006 and with the revised premium regulations. This proposed rule would make the necessary conforming revisions.

Applicability

In general, the changes to the reportable events regulation made by this rule would apply to post-event reports for reportable events occurring on or after the effective date of this rule and to advance reports due on or after the effective date of this rule. Technical Updates 07–2, 08–2, 09–1, and 09–3 would be superseded by this rule with respect to any circumstances to which this rule would apply.

Compliance With Rulemaking Guidelines

E.O. 12866

The PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a “significant regulatory action” under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under E.O. 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on the fact that the reportable events regulation requires only the filing of notices and that the economic impact of filing is not significant.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. There are two information collections under the reportable events regulation, approved under OMB control number 1212–0013 (covering subparts B and C) and OMB control number 1212–0041 (covering subpart D), both of which expire March 31, 2012. Copies of PBGC’s requests may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, 202–326–4040.

PBGC is proposing the following changes to these information requirements:

- PBGC’s experience is that in order to assess the significance of virtually every reportable events filing, it must obtain from the filer the most recent month-end statement of the market value of plan assets, the most recent adjusted funding target attainment percentage (AFTAP) certification, and the most recent actuarial valuation report that contains or is supplemented with all the items of information described in § 4010.8(a)(11) of PBGC’s regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010). Accordingly, PBGC proposes to require that every reportable events filing include these items.

- To provide better identification of controlled group members, PBGC proposes to require that lists of controlled group members include addresses as well as names.

- PBGC has found that some filers that should file Form 200 under § 4043.81 of the reportable events regulation (missed contributions totaling over \$1 million) file only Form 10 under § 4043.25 (missed contributions of any amount). This has led to delays in enforcing liens under ERISA section 302(f) and Code section 412(n) (corresponding to ERISA section 303(k) and Code section 430(k) as amended by PPA 2006). To address this issue, PBGC proposes that the information collections under the reportable events regulation include a requirement to report the aggregate outstanding balance (with interest) of all prior contributions not timely made.

- In missed contribution cases, there is sometimes a credit balance that is available for application to a contribution that is due. PBGC needs to be able to determine whether all or a portion of the credit balance has been properly applied toward payment of the

contribution. Accordingly, PBGC proposes to require filers of both Form 10 and Form 200 to indicate how much (if any) of the carryover balance or prefunding balance was used for partial payment of the missed contribution and submit copies of election letters relating to application of the carryover balance and prefunding balance to the contribution.

- To assist PBGC in assessing the impact of a change in contributing sponsor or controlled group, PBGC proposes to require submission of "before-and-after" financial statements for post-event as well as advance reporting. Where the event is the loss of one or more controlled group members, financial statements would be required for the controlled group before and after the loss of the departing member(s). Where the event is a transfer of a plan to another controlled group, financial statements would be required for the old and new controlled groups. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)

- To help PBGC assess the significance of a loan default or an extraordinary distribution or stock redemption, PBGC proposes to require filings for these events to include financial statements for all controlled group members to the extent not publicly available.

- PBGC Form 10—Advance (used for advance reporting under subpart C of the reportable events regulation) currently includes a requirement for the benefit liability transfer event that both the transferor and the transferee (and contributing sponsors) be identified. Form 10 (used for post-event reporting under subpart B) calls only for the identity of the transferee. PBGC proposes to change the Form 10 requirement to correspond to the requirement of Form 10—Advance.

- To assist PBGC in assessing the impact of a transfer of benefit liabilities, PBGC proposes to require submission of financial statements for both the transferor controlled group and the transferee controlled group. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)

- PBGC Form 10 currently requires for the bankruptcy event that the bankruptcy petition and docket (or similar documents) be submitted. Form 10—Advance requires that all documents filed in the relevant proceeding be submitted. Both forms require that the last date for filing claims be reported if known. PBGC proposes to replace these

requirements with a requirement that filers simply identify the judicial district where the bankruptcy petition was filed and the docket number of the filing.

- When an advance report of an extraordinary dividend or stock redemption is made, PBGC has a 30-day window in which to determine whether there is a basis for taking action before the dividend is paid and, if so, to act. In order to do so, PBGC needs information about contributing sponsors' financial health. Accordingly, PBGC proposes to add a requirement for contributing sponsor financial statements to the information submission requirements for advance reporting of extraordinary dividends and stock redemptions.

- PBGC proposes to require that the notice of a low adjusted funding target attainment percentage certified by an enrolled actuary include a copy of the enrolled actuary's certification.

- If a section 420(f) transfer of \$10 million or more is made, PBGC proposes to require that the notice to PBGC include a calculation demonstrating that the transfer does not reduce pension assets below 120 percent of liabilities for pension benefits.

- If, following a section 420(f) transfer of \$10 million or more, the funded ratio falls below 120 percent during the transfer period, PBGC proposes to require that the notice to PBGC include a calculation demonstrating how (by making additional pension plan contributions or by transferring assets back from the health benefits account to the pension plan) pension assets were restored to an amount not less than 120 percent of liabilities for pension benefits.

PBGC needs the information in reportable events filings under subparts B and C of part 4043 (Forms 10 and 10-Advance) to determine whether it should terminate plans that experience events that indicate plan or contributing sponsor financial problems. PBGC estimates that it will receive such filings from about 1,615 respondents each year and that the total annual burden of the collection of information will be about 6,890 hours and \$2,411,500.

PBGC needs the information in missed contribution filings under subpart D of part 4043 (Form 200) to determine the amounts of statutory liens arising under ERISA section 303(k) and Code section 430(k) and to evaluate the funding status of plans with respect to which such liens arise and the financial condition of the persons responsible for their funding. PBGC estimates that it will receive such filings from about 797 respondents each year and that the total

annual burden of the collection of information will be about 1,636 hours and \$572,600.

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. Although comments may be submitted through January 22, 2010, the Office of Management and Budget requests that comments be received on or before December 23, 2009 to ensure their consideration. Comments may address (among other things)—

- Whether each proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;

- The accuracy of PBGC's estimate of the burden of each proposed collection of information, including the validity of the methodology and assumptions used;

- Enhancement of the quality, utility, and clarity of the information to be collected; and

- Minimizing the burden of each collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

List of Subjects

29 CFR Part 4000

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4001

Employee benefit plans, Pension insurance.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4206

Employee benefit plans, Pension insurance.

29 CFR Part 4211

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4231

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4000, 4001, 4043, 4204, 4206, 4211, and 4231 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.53 [Amended]

2. In § 4000.53, paragraphs (c) and (d) are amended by removing the words “section 302(f)(4), section 307(e), and” where they occur in each paragraph and adding in their place the words “section 101(f), section 303(k)(4), and”.

PART 4001—TERMINOLOGY

3. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.2 [Amended]

4. In § 4001.2:

a. The definition of “controlled group” is amended by removing the words “section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA” and adding in their place the words “section 412(b)(2) of the Code or section 302(b)(2) of ERISA”.

b. The definition of “funding standard account” is amended by removing the words “section 302(b) of ERISA or section 412(b) of the Code” and adding in their place the words “section 304(b) of ERISA or section 431(b) of the Code”.

c. The definition of “substantial owner” is amended by removing the words “section 4022(b)(5)(A)” and adding in their place the words “section 4021(d)”.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

5. The authority citation for part 4043 is revised to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.1 [Amended]

6. Section 4043.1 is amended by removing the reference “302(f)(4)” and adding in its place the reference “303(k)(4)”; and by removing the reference “412(n)(4)” and adding in its place the reference “430(k)(4)”.

7. In § 4043.2:

a. The introductory text is amended by removing the word “Code” and adding in its place the words “benefit liabilities, Code”; and by removing the words “plan administrator, proposed termination date” and adding in their place the words “plan administrator, plan year, proposed termination date”.

b. The definitions of *de minimis 10-percent segment*, *fair market value of the plan’s assets*, *foreign entity*, *foreign-linked entity*, *foreign parent*, *Form 5500 due date*, *public company*, *testing date*, *ultimate parent*, *unfunded vested benefits*, *variable-rate premium*, and *vested benefits* are removed.

c. The definitions of *event year* and *notice date* are amended by removing the words “the reportable event” and adding in their place the words “a reportable event” in each of the two definitions.

d. The definition of *de minimis 5-percent segment* is revised to read as follows:

§ 4043.2 Definitions.

* * * * *

De minimis 5-percent segment means, in connection with a plan’s controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 5 percent of the controlled group’s revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 5 percent of the controlled group’s annual operating income;

(ii) 5 percent of the controlled group’s first \$200 million in net tangible assets at the end of the fiscal year(s); or

(iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 5 percent of the controlled group’s net tangible assets at the end of the fiscal year(s); or

(ii) \$5 million.

* * * * *

8. In § 4043.3:

a. Paragraph (a)(1) is amended by removing the words “by this part” and adding in their place the words “under this part”.

b. Paragraph (d) is amended by removing the words “submission of additional information” and adding in their place the words “submission of additional information not specified in its forms and instructions”.

c. Paragraphs (b) and (c) are revised to read as follows:

§ 4043.3 Requirement of notice.

* * * * *

(b) *Contents of reportable event notice*. A person required to file a reportable event notice under subpart B

or C of this part shall file, by the notice date, the form specified by PBGC for that purpose, with the information specified in PBGC’s reportable events instructions.

(c) *Reportable event forms and instructions*. The PBGC shall issue reportable events forms and instructions and make them available on its Web site.

* * * * *

9. In § 4043.4:

a. Paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (a) respectively.

b. Newly redesignated paragraph (a) is amended by removing the heading “*Other waivers and extensions*.” and adding in its place the heading “*Waivers and extensions—in general*.”.

c. Newly redesignated paragraph (b) is revised to read as follows:

§ 4043.4 Waivers and extensions.

* * * * *

(b) *Waivers and extensions—specific events*. For some reportable events, automatic waivers from reporting and information requirements and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, reporting is automatically waived for an occurrence that constitutes a reportable event under more than one section only if the requirements for an automatic waiver under each section are satisfied.

* * * * *

10. Section 4043.5 is amended by adding the following sentence at the beginning of the text of the section:

§ 4043.5 How and where to file.

Reportable event notices required under this part must be filed using the forms and in accordance with the instructions promulgated by PBGC, which are posted on PBGC’s Web site.

* * *

§ 4043.6 [Amended]

11. In § 4043.6:

a. Paragraph (a) is amended by removing the heading “*Post-Event notice filings*.” and adding in its place the heading “*Post-event notice filings*.”.

b. Paragraph (b) is amended by removing the heading “*Advance notice and Form 200 Filings*.” and adding in its place the heading “*Advance notice and Form 200 filings*.”.

c. Paragraph (c) is removed.

12. In § 4043.23:

a. The text of paragraph (a) is designated as paragraph (a)(1) and a paragraph heading is added.

b. New paragraph (a)(2) is added.
 c. Paragraphs (b) and (d) are removed.
 d. Paragraph (e) is redesignated as paragraph (b).
 e. And paragraph (c) is revised.
 The addition and revision read as follows:

§ 4043.23 Active participant reduction.

(a) *Reportable event*—(1) *In general.*
 * * *

(2) *Certain participant reductions disregarded.* For purposes of paragraph (a)(1) of this section, a reduction in the number of active participants is to be disregarded to the extent that the reduction—

(i) Is attributable to a substantial cessation of operations under ERISA section 4062(e) or to the withdrawal of a substantial employer under ERISA section 4063(a), and

(ii) Is timely reported to PBGC under ERISA section 4063(a).

* * * * *

(c) *Waiver.* Notice is waived for an event (the “current event”) if the notice date for another event (the “prior event”) under paragraph (a) of this section was not more than 12 months before the notice date for the current event and the prior event was reported to PBGC in accordance with the requirements of this part.

13. Section 4043.25 is revised to read as follows:

§ 4043.25 Failure to make required funding payment.

(a) *Reportable event.* A reportable event occurs when—

(1) A contribution required under sections 302 and 303 of ERISA or sections 412 and 430 of the Code is not made by the due date for the payment under ERISA section 303(j) or Code section 430(j), or

(2) Any other contribution required as a condition of a funding waiver is not made when due.

(b) *Alternative method of compliance—Form 200 filed.* If, with respect to the same failure, a filing is made in accordance with § 4043.81, that filing satisfies the requirements of this section.

14. In § 4043.26:

a. Paragraph (a)(2) is amended in the second sentence by removing the words “Liquid assets and disbursements from the plan” and adding in their place the words “ ‘Liquid assets’ and ‘disbursements from the plan’ ”; by removing the reference “302(e)(5)(E)” and adding in its place the reference “303(j)(4)(E)”; and by removing the reference “412(m)(5)(E)” and adding in its place the reference “430(j)(4)(E)”.
 b. Paragraph (c) is removed.

c. Paragraph (b) is revised to read as follows:

§ 4043.26 Inability to pay benefits when due.

* * * * *

(b) *Waiver.* Notice is waived unless the reportable event occurs during a plan year for which the plan is exempt from the liquidity shortfall rules in section 303(j)(4) of ERISA and section 430(j)(4) of the Code because it is described in section 303(g)(2)(B) of ERISA and section 430(g)(2)(B) of the Code.

§ 4043.27 [Amended]

15. In § 4043.27:

a. Paragraph (a)(4) is amended by removing the words “as provided in § 4022.5” and adding in their place the words “as provided in § 4022.5 of this chapter”.

b. Paragraphs (b), (c), and (d) are removed, and paragraph (e) is redesignated as paragraph (b).

16. In § 4043.29:

a. Paragraphs (c) and (d) are removed, and paragraph (e) is redesignated as paragraph (c).

b. The introductory text of newly redesignated paragraph (c) is amended by removing the words “waivers apply” and adding in their place the words “waiver applies”.

c. Paragraph (b) is revised to read as follows:

§ 4043.29 Change in contributing sponsor or controlled group.

* * * * *

(b) *Waiver; de minimis 10-percent segment.* Notice is waived if the person or persons that will cease to be members of the plan’s controlled group represent a *de minimis* 10-percent segment of the plan’s old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs. For this purpose, “*de minimis* 10-percent segment” means, in connection with a plan’s controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group’s revenue;

(2) Annual operating income not exceeding the greatest of—

(i) 10 percent of the controlled group’s annual operating income;

(ii) 5 percent of the controlled group’s first \$200 million in net tangible assets at the end of the fiscal year(s); or

(iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group’s net tangible assets at the end of the fiscal year(s); or

(ii) \$5 million.

* * * * *

§ 4043.30 [Amended]

17. In § 4043.30:

a. The heading of paragraph (a) is removed, and the introductory text of paragraph (a) is redesignated as the introductory text of § 4043.30.

b. Paragraphs (b), (c), and (d) are removed.

c. Paragraphs (a)(1), (a)(2), and (a)(3) are redesignated as paragraphs (a), (b), and (c).

§ 4043.31 [Amended]

18. In § 4043.31:

a. Paragraphs (b), (c)(3), (c)(4), (c)(5), and (d) are removed.

b. Paragraph (c) is redesignated as paragraph (b).

c. Paragraph (e) is redesignated as paragraph (c).

d. The reference “(e)” is removed and the reference “(c)” is added in its place once in paragraph (a) introductory text, once in paragraph (a)(1)(i), once in paragraph (a)(1)(ii), twice in paragraph (a)(2), twice in paragraph (a)(3), once in newly redesignated paragraph (c)(2)(i), once in newly redesignated paragraph (c)(2)(ii), once in newly redesignated paragraph (c)(5), and once in newly redesignated paragraph (c)(6)(iii).

19. In § 4043.32:

a. Paragraphs (b) and (d) are removed.
 b. Paragraph (a)(2) is redesignated as paragraph (b).

c. The heading of paragraph (a)(1) is removed, and the introductory text of paragraph (a)(1) is redesignated as the introductory text of paragraph (a).

d. Paragraphs (a)(1)(i) and (a)(1)(ii) are redesignated as paragraphs (a)(1) and (a)(2).

e. Redesignated paragraph (a)(1) is amended by removing the words “or any other plan maintained by a person in the plan’s controlled group”.

f. Paragraph (c) is revised to read as follows:

§ 4043.32 Transfer of benefit liabilities.

* * * * *

(c) *Distributions of lump sums and annuities.* For purposes of paragraph (a) of this section, the payment of a lump sum, or purchase of an irrevocable commitment to provide an annuity, in satisfaction of benefit liabilities is not a transfer of benefit liabilities.

§ 4043.33 [Amended]

20. In § 4043.33:

a. Paragraph (b) is removed.

b. The heading of paragraph (a) is removed, and the text of paragraph (a) is redesignated as the text of § 4043.33.

c. The figures “303” are removed and the figures “302(c)” are added in their

place; and the figures “412(d)” are removed and the figures “412(c)” are added in their place.

§ 4043.34 [Amended]

21. In § 4043.34:

a. Paragraph (a) introductory text is amended by removing the words “default by” and adding in their place the words “default under a loan agreement by”.

b. Paragraph (a)(3) introductory text is amended by removing the colon and adding in its place a dash.

c. Paragraphs (b), (c)(2), (c)(3), (d)(3), and (d)(4) are removed.

d. The heading of paragraph (c) introductory text is removed.

e. Paragraph (c)(1) is redesignated as paragraph (b).

f. Newly redesignated paragraph (b) is amended by removing the heading “*Default cured.*” and adding in its place the heading “*Waiver for cure of default.*”.

g. Paragraph (d)(5) is redesignated as paragraph (d)(3), and paragraph (d) is redesignated as paragraph (c).

h. Redesignated paragraph (c)(1) is amended by removing the words “(d)(2) or (d)(3)” and adding in their place the figures “(c)(2)”.

i. Redesignated paragraph (c)(2) is amended by removing the heading “*Cure period extensions.*” and adding in its place the heading “*Extensions.*”.

§ 4043.35 [Amended]

22. In § 4043.35:

a. Paragraphs (b), (c), and (d) are removed.

b. The heading of paragraph (a) introductory text is removed, and the introductory text of paragraph (a) is redesignated as the introductory text of § 4043.35.

c. Paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) are redesignated as paragraphs (a), (b), (c), (d), and (e).

23. New §§ 4043.36 and 4043.37 are added to subpart B to read as follows:

§ 4043.36 Adjusted funding target attainment percentage under 60 percent.

A reportable event occurs for a plan when the plan’s adjusted funding target attainment percentage under Code section 436(j)(2) and ERISA section 206(g)(9)(B) either—

(a) Is certified by an enrolled actuary to be less than 60 percent, or

(b) Is presumed under Code section 436(h) and ERISA section 206(g)(7) to be less than 60 percent.

§ 4043.37 Transfer of assets to retiree health account or subsequent reduction in funding ratio.

A reportable event occurs for a plan when either—

(a) The plan makes a qualified future transfer or a collectively bargained transfer under Code section 420(f) of \$10 million dollars or more, or

(b) On any valuation date of the plan during the transfer period described in Code section 420(f)(5) following any transfer described in paragraph (a) of this section, 120 percent of the sum of the funding target and the target normal cost determined under Code section 430 for the plan year exceeds the lesser of—

(1) The fair market value of the plan’s assets (reduced by the prefunding balance and funding standard account carryover balance determined under Code section 430(f)), or

(2) The value of plan assets as determined under Code section 430(g)(3) after reduction under Code section 430(f).

24. In § 4043.61, paragraphs (a), (b), and (c) are revised to read as follows:

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan is required to notify the PBGC no later than 30 days before the effective date of a reportable event described in this subpart C if the contributing sponsor is subject to advance reporting for the reportable event. If there is a change in contributing sponsor, the reporting obligation applies to the person who is the contributing sponsor of the plan on the notice date.

(b) *Persons subject to advance reporting.* A contributing sponsor of a plan is subject to the advance reporting requirement under paragraph (a) of this section for a reportable event if—

(1) On the notice date, neither the contributing sponsor nor any member of the plan’s controlled group to which the event relates is a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements; and

(2) The aggregate unfunded vested benefits, determined in accordance with paragraph (c) of this section, are more than \$50 million; and

(3) The aggregate value of plan assets, determined in accordance with paragraph (c) of this section, is less than 90 percent of the aggregate premium funding target, determined in accordance with paragraph (c) of this section.

(c) *Funding determinations.* For purposes of paragraph (b) of this section, the aggregate unfunded vested benefits, aggregate value of plan assets,

and aggregate premium funding target are determined by aggregating the unfunded vested benefits, values of plan assets, and premium funding targets (respectively), as determined for premium purposes in accordance with part 4006 of this chapter for the plan year preceding the effective date of the event, of plans maintained (on the notice date) by the contributing sponsor and any members of the contributing sponsor’s controlled group, disregarding plans with no unfunded vested benefits (as so determined).

* * * * *

§ 4043.62 [Amended]

25. In § 4043.62:

a. Paragraph (a) is amended by removing the words “*and information required*” from the paragraph heading; and by removing the words “§ 4043.29(a), and the notice shall include the information described in § 4043.29(b) and, if known, the expected effective date of the reportable event” and adding in their place the figures “§ 4043.29(a)”.

b. Paragraph (b) is amended by removing the heading.

c. Paragraph (b)(1) is removed.

d. Paragraph (b)(2) is amended by removing the heading “*De minimis 5-percent segment.*” and adding in its place the heading “*Waiver; de minimis 5-percent segment.*”.

e. Paragraph (b)(2) is redesignated as paragraph (b).

§ 4043.63 [Amended]

26. In § 4043.63:

a. Paragraph (a) is amended by removing the paragraph heading; and by removing the words “§ 4043.30(a), and the notice shall include the information described in § 4043.30(b) and, if known, the expected effective date of the reportable event” and adding in their place the reference “§ 4043.30”.

b. Paragraph (b) is removed.

c. The text of paragraph (a) is redesignated as the text of § 4043.63.

§ 4043.64 [Amended]

27. In § 4043.64:

a. Paragraph (a) is amended by removing the words “*and information required*” from the paragraph heading; and by removing the last sentence of the paragraph.

b. Paragraph (b) is amended by removing the word “*Waiver*” from the paragraph heading and adding in its place the words “*Waiver; de minimis 5-percent segment*”.

§ 4043.65 [Amended]

28. In § 4043.65:

a. Paragraph (a) is amended by removing the paragraph heading; and by

removing the words “§ 4043.32(a) (determined without regard to § 4043.32(d)), and the notice shall include the information described in § 4043.32(b)” and adding in their place the reference “4043.32(a)”.

b. Paragraph (b) is removed.

c. The text of paragraph (a) is redesignated as the text of § 4043.65.

§ 4043.66 [Amended]

29. In 4043.66:

a. Paragraph (a) is amended by removing the words “*and information required*” from the heading; and by removing the words “§ 4043.33(a), and the notice shall include the information described in § 4043.33(b)” and adding in their place the reference “§ 4043.33”.

b. Paragraph (b) is amended by removing the words “10 days after” and adding in their place the words “the day”; and by removing the words “has occurred” and adding in their place the word “occurs”.

§ 4043.67 [Amended]

30. In § 4043.67, paragraph (a) is amended by removing the words “*and information required*” from the heading; and by removing the last sentence of the paragraph.

§ 4043.68 [Amended]

31. In § 4043.68, paragraph (a) is amended by removing the words “*and information required*” from the heading; and by removing the words “§ 4043.35(a), and the notice shall include the information described in § 4043.35(b)” and adding in their place the reference “§ 4043.35”.

32. New §§ 4043.69 and 4043.70 are added to subpart C to read as follows:

§ 4043.69 Adjusted funding target attainment percentage under 60 percent.

(a) *Reportable event.* Advance notice is required when a plan’s adjusted funding target attainment percentage is certified or presumed to be less than 60 percent, as described in § 4043.36.

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.70 Transfer of assets to retiree health account or subsequent reduction in funding ratio.

Advance notice is waived for a reportable event described in § 4043.37.

33. In § 4043.81:

a. Paragraph (a) introductory text is amended by removing the reference “302(f)(4)” and adding in its place the reference “303(k)(4)”; by removing the reference “412(n)(4)” and adding in its place the reference “430(k)(4)”; by removing the words “required installment or any other” and adding in their place the word “contribution”; by removing the words “section 302 of ERISA and section 412 of the Code” and adding in their place the words “sections 302 and 303 of ERISA and sections 412 and 430 of the Code”; and by removing the words “installments or other”.

b. Paragraph (a)(2) is amended by removing the reference “302(f)(4)” and adding in its place the reference “303(k)(4)”; and by removing the reference “412(n)(4)” and adding in its place the reference “430(k)(4)”.

c. Paragraph (b) is amended by removing the reference “302(f)” and adding in its place the reference “303(k)”; and by removing the reference “412(n)” and adding in its place the reference “430(k)”.

d. Paragraph (c) is added to read as follows:

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

* * * * *

(c) *Ultimate parent.* For purposes of this section, the term “ultimate parent” means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsidiary controlled group.

PART 4204—VARIANCES FOR SALE OF ASSETS

34. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 4204.12 [Amended]

35. Section 4204.12 is amended by removing the reference “412(b)(3)(A)” and adding in its place the reference “431(b)(3)(A)”.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

36. The authority citation for part 4206 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 4206.7 [Amended]

37. Section 4206.7 is amended by removing the reference “412(b)(4)” and adding in its place the reference “431(b)(5)”.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

38. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEmployer PLANS

39. The authority citation for part 4231 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 4231.2 [Amended]

40. In § 4231.2, the definitions of “actuarial valuation” and “fair market value of assets” are amended by removing the words “section 302 of ERISA and section 412 of the Code” wherever they appear in each definition and adding in their place the words “section 304 of ERISA and section 431 of the Code”.

§ 4231.6 [Amended]

41. In § 4231.6:

a. Paragraph (b)(4)(ii) is amended by removing the reference “412(b)(4)” and adding in its place the reference “431(b)(5)”.

b. Paragraph (c)(2) is amended by removing the words “section 412 of the Code (which requires that such assumptions be reasonable in the aggregate)” and adding in their place the words “section 431 of the Code (which requires that each such assumption be reasonable)”.

c. Paragraph (c)(5) is amended by removing the figure “412” and adding in their place the figure “431”.

Issued in Washington, DC, this 18th day of November, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

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