

with less than \$10 million in annual food sales. In the **Federal Register** of May 4, 2018 (83 FR 19619), we published a final rule to extend the compliance dates to January 1, 2020, for manufacturers with \$10 million or more in annual food sales, and January 1, 2021, for manufacturers with less than \$10 million in annual food sales.

We examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) and determined that the final rules on nutrition labeling, taken as a whole, will have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, as amended by Pub. L. 110–28), we are making available the SECG to explain the actions that a small entity must take to comply with the rule.

We are issuing the SECG consistent with our good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. The collections of information in §§ 101.9, 101.30, and 101.36 have been approved under OMB control number 0910–0813.

## III. Electronic Access

Persons with access to the internet may obtain the SECG at either <http://www.fda.gov/FoodGuidances> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: January 21, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4001, 4006, 4010, 4041, 4043, and 4233

**RIN 1212–AB34**

### Miscellaneous Corrections, Clarifications, and Improvements

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is making miscellaneous technical corrections, clarifications, and improvements to its regulations on Reportable Events and Certain Other Notification Requirements, Annual Financial and Actuarial Information Reporting, Termination of Single-Employer Plans, and Premium Rates. These changes are a result of PBGC's ongoing retrospective review of the effectiveness and clarity of its rules as well as input from stakeholders.

#### DATES:

*Effective date:* This rule is effective on March 5, 2020.

*Applicability dates:* Certain amendments made by this rule are applicable as described below.

- The changes in 29 CFR 4006.5(f)(3), which deal with premium proration for short plan years where the plan's assets are distributed in a termination, are applicable to plan years beginning in or after 2020.
- The changes in 29 CFR 4010.7(a)(2), § 4010.9(b)(2), and § 4010.11(a)(1)(i), (which deal with identifying legal relationships of controlled group members, consolidated financial statements, and calculating the funding target for purposes of the 4010 funding shortfall waiver, respectively) are applicable to 4010 filings due or amended on or after April 15, 2020. The changes in § 4010.8(d)(2) for valuing benefit liabilities in cash balance plan account conversions are applicable to plan years beginning on or after January 1, 2020.
- The changes in 29 CFR 4041.29 are applicable to plan terminations for which, as of March 5, 2020, the statutory deadline for certifying that plan assets have been distributed as required, has not passed.
- The changes in 29 CFR 4043.23, § 4043.27(d)(3), § 4043.29, § 4043.30, 4043.31(c)(6), § 4043.32(c)(4), and § 4043.35(b)(3) (which deal with active participant reductions, changes in contributing sponsor or controlled group, liquidation, insolvency or similar

settlement, and the public company waiver) are applicable to post-event reports for those reportable events occurring on or after March 5, 2020.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Cibinic ([cibinic.stephanie@pbgc.gov](mailto:cibinic.stephanie@pbgc.gov)), Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6352. TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–6352.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

##### *Purpose and Authority*

The purpose of this regulatory action is to make miscellaneous technical corrections, clarifications, and improvements to several Pension Benefit Guaranty Corporation (PBGC) regulations. These changes are based on PBGC's ongoing retrospective review of the effectiveness and clarity of its rules, which includes input from stakeholders on PBGC's programs.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. It also comes from section 4006 of ERISA, which gives PBGC the authority to prescribe schedules of premium rates and bases for the application of those rates; section 4010 of ERISA, which gives PBGC authority to prescribe information to be provided and the timing of reports; section 4041 of ERISA (Termination of Single-Employer Plans); and section 4043 of ERISA, which gives PBGC authority to define reportable events and waive reporting.

##### *Major Provisions*

The major provisions of this rulemaking amend PBGC's regulations on:

- Reportable Events and Certain Other Notification Requirements, by eliminating possible duplicative reporting of active participant reductions, clarifying when a liquidation event occurs and providing additional examples for active participant reduction, liquidation, and change in controlled group events.
- Annual Financial and Actuarial Information Reporting, by eliminating a requirement to submit individual financial information for each controlled group member, clarifying reporting waivers, and providing

guidance on assumptions for valuing benefit liabilities for cash balance plans.

- Termination of Single-Employer Plans, by providing more time to submit a complete PBGC Form 501 in the standard termination process.

- Premium Rates, by expressly stating that a plan does not qualify for the variable-rate premium exemption for the year in which it completes a standard termination if it engages in a spinoff in the same year, clarifying the participant count date special rule for transactions (e.g., mergers and spinoffs), and modifying the circumstances under which the premium is prorated for a short plan year resulting from a plan's termination.

### Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA)—one for single-employer pension plans and one for multiemployer pension plans. The amendments proposed in this rulemaking apply primarily to the single-employer program.

This rulemaking arises from PBGC's ongoing retrospective regulatory review program to identify and correct unintended effects, inconsistencies, inaccuracies, and requirements made irrelevant over time. It also responds to suggestions and questions from stakeholders that PBGC receives on an ongoing basis and through public outreach, such as PBGC's July 2017 "Regulatory Planning and Review of Existing Regulations" Request for Information.<sup>1</sup>

### Proposed Rule

PBGC published a proposed rule on June 27, 2019,<sup>2</sup> and received five written comments. The commenters were supportive of PBGC's regulatory review efforts and expressed that the clarifications and updates proposed would improve filer compliance and reduce reporting burden. Commenters also made helpful observations and suggestions for further clarification that PBGC incorporated in the final rule, particularly with respect to the regulations on "Annual Financial and Actuarial Information Reporting" and "Reportable Events and Certain Other Notification Requirements." Otherwise the final rule is substantially the same as the proposed with minor editorial changes. The public comments, PBGC's responses, and the provisions of this

final rule are discussed with respect to each of the regulations as identified below.

### Terminology—29 CFR Part 4001

The final rule, like the proposed, amends the general "Definitions" section (29 CFR 4001.2) for terms used in regulations under title IV of ERISA to include the terms "Ultimate parent" and "U.S. entity." Those terms are currently defined in PBGC's "Reportable Events and Certain Other Notification Requirements" regulation (29 CFR part 4043), "reportable events regulation," at §§ 4043.2 and 4043.81(c) respectively. Because amendments to PBGC's Annual Financial and Actuarial Information Reporting regulation (29 CFR part 4010), "4010 reporting regulation," use those same two terms, it is appropriate to move them to the common definitions section in § 4001.2.

### Reportable Events and Certain Other Notification Requirements—29 CFR Part 4043

Section 4043 of ERISA requires that PBGC be notified of the occurrence of certain "reportable events" that may signal financial issues with the plan or a contributing employer. The statute provides for both post-event and advance reporting. PBGC's reportable events regulation implements section 4043 of ERISA.

Reportable events include such plan events as missed contributions, insufficient funds, large pay-outs, and such sponsor events as loan defaults and controlled group changes—events that may present a risk to a sponsor's ability to continue to maintain a plan. When PBGC has timely information about a reportable event, it can take steps to encourage plan continuation. Without timely information about a reportable event, PBGC typically learns that a plan is in danger of failing only when the time has passed for PBGC to work with the sponsor to protect participants and the pension insurance system.

On September 11, 2015, PBGC issued a final rule,<sup>3</sup> the "2015 Final Rule," implementing changes to the reportable events regulation. The rule revised longstanding procedures governing when administrators and sponsors of single-employer defined benefit pension plans are required to report certain events to PBGC. The major changes in the 2015 Final Rule tied reporting waivers more closely to situations where a contributing sponsor is at risk of not being able to continue to maintain a plan (i.e., risk of default), revised

definitions and descriptions of several reportable events, and required electronic filing. The goal of the 2015 Final Rule was to ease reporting requirements where notice to PBGC is unnecessary but to allow for possible earlier PBGC intervention where there is an opportunity to help sponsors maintain a plan or otherwise preserve benefits for participants.

Since publication of the 2015 Final Rule, PBGC has further identified some opportunities to improve the reportable events and notification requirements by filling in gaps where guidance is needed, simplifying or removing language, codifying policies, providing examples, and further reducing unnecessary reporting. Those improvements are contained in this final rule.

### *Company Low-Default-Risk Safe Harbor—Commercial Measures Criterion*

Section 4043.9(e) of the reportable events regulation describes the standards for the low-default-risk safe harbor that is available for five events.<sup>4</sup> The low-default-risk safe harbor is available where a company that is a contributing sponsor of a plan has adequate capacity to meet its obligations as evidenced by satisfying a combination of certain criteria. Among the criteria listed, the commercial measures criterion requires that the company's probability of default on its financial obligations be no more than 4 percent over the next 5 years or 0.4 percent over the next year, as "determined on the basis of widely available financial information on the company's credit quality."

The preamble to the 2015 Final Rule made clear that the commercial measures criterion was to be met by looking to third-party information and not, for example, information that a company itself generates but that might be considered "widely available" because the information is posted on the company's website.<sup>5</sup> However, the regulatory text in the 2015 Final Rule did not explicitly mention third party information. To remove any ambiguity, the final rule, like the proposed, amends § 4043.9(e)(2)(i) to make clear that a plan must use third-party financial information to satisfy the criterion for the company financial soundness safe harbor.

<sup>4</sup> The five events are: Active participant reduction, substantial owner distributions, controlled group changes, extraordinary dividends, and benefit liabilities transfers.

<sup>5</sup> See 80 FR 54986.

<sup>1</sup> 82 FR 34619 (July 26, 2017).

<sup>2</sup> 84 FR 30666.

<sup>3</sup> 80 FR 54980 (Sept. 11, 2015).

### Active Participant Reduction

Under § 4043.23 of the reportable events regulation, an active participant reduction reportable event generally occurs when, as a result of a single-cause event or through normal attrition of employees (described below), the number of active participants in a plan is reduced below 80 percent of the number at the beginning of the year (one-year lookback) or below 75 percent of the number at the beginning of the prior year (two-year lookback). The regulation distinguishes between reductions caused by single-cause events and normal attrition events. If a plan loses more than 20 percent of its active participants due to a single-cause event, such as a reorganization or layoff, the plan administrator and contributing sponsor must file a notice with PBGC within 30 days after the reduction, unless a waiver applies. Conversely, if the active participant reduction is caused by the normal comings and goings of employees or other smaller scale reductions (*i.e.*, normal attrition), notice of the event is extended until the premium filing due date for the plan year following the event year.

Since publication of the 2015 Final Rule, PBGC has received questions from practitioners, including in a comment to its 2017 RFI on Regulatory Planning and Review of Existing Regulations (see the “Background” section of this preamble), about whether a plan administrator or contributing sponsor that files a single-cause event notice must also file an attrition event notice at a later date due to the same active participant reduction. Upon review, PBGC recognizes that § 4043.23 could be interpreted in this manner, although this was not PBGC’s intent.<sup>6</sup>

To address this issue, the final rule, like the proposed, amends § 4043.23(a)(2) to alter the way active participants are counted at the end of the plan year when determining whether an attrition event has occurred by taking into account the number of active participants that had already been the subject of a single-cause event report in the same plan year. Thus, to determine whether an attrition event has occurred, the number of participants who ceased to be active and were covered by a single-cause event reported in the same year are included in the year-end count (even though such participants are not active at year-end).

<sup>6</sup>In PBGC Technical Update 17–1, issued September 15, 2017, PBGC provided interim guidance on reporting under § 4043.23 by providing an alternative method for determining whether an active participant reduction due to attrition must be reported to PBGC under § 4043.23(a)(2).

This new method of counting would prevent duplicative reporting by disregarding the earlier single-cause event if already reported to PBGC.

PBGC received one comment stating the rule as proposed could suggest that an active participant reduction report due to attrition could be required even if an earlier single-cause event had occurred, but had not been reported to PBGC (*e.g.*, a reporting waiver applied). The commenter recommended clarifying the language in the final rule if that wasn’t PBGC’s intent. It is PBGC’s intent that an active participant reduction because of a single-cause event can only be disregarded for purposes of the attrition count if it was previously reported to PBGC. The purpose of the new counting method is to address and prevent situations of duplicative reporting, so no change was made in the final rule.

The final rule, like the proposed, also clarifies that multiple single-cause events during the plan year must be reported separately. Thus, each time a new single-cause event results in an active participant reduction greater than 20 percent over the number of active participants at the beginning of the plan year, a new Form 10 would be required to be filed. PBGC is making this clarification because dramatic reductions due to different events in the same year could signal that the plan sponsor’s ability to maintain the plan is rapidly deteriorating.

The final rule, like the proposed, includes examples showing the interplay between single-cause and attrition events, as well as a single-cause event that occurs over a period of time.

The final rule also adopts the proposed rule’s non-substantive changes to the formula for counting a single-cause event in § 4043.23(a)(1) that PBGC believes is clearer, more aligned to the language in § 4043.23(a)(2) described above, and easier to use.

To further reduce reporting burden, the final rule, like the proposed, eliminates the two-year/75 percent lookback requirement. Two commenters to the proposed rule supported this change. With a few years’ experience under the 2015 Final Rule, PBGC concluded that the one-year/80 percent test provides sufficient information and undertaking the additional burden of conducting the two-year/75 percent lookback is not necessary. To address the statutory requirement, the final rule, like the proposed, waives notice of the two-year lookback provided under section 4043(c)(3) of ERISA.

The final rule, like the proposed, also clarifies the definition of “active participant” in § 4043.23(b)(2). That

definition provides that an active participant for purposes of the active participant reduction event means, among other things, a participant who “is receiving compensation for work performed,” but does not address whether a participant is considered active or inactive if the participant ceases employment with one of the contributing sponsors of the plan, and begins working for another member of the same controlled group. The final rule clarifies that a participant is considered “active” for this purpose if the participant receives compensation from any member of the plan’s controlled group for work performed for any member of the plan’s controlled group.

Finally, the existing regulation provides that a reduction in the number of active participants may be disregarded if the reduction is timely reported to PBGC under section 4063(a) of ERISA, but does not specify when such report must be made in relation to a Form 10 report under § 4043.23 for the disregard provision to be available. PBGC’s intent in providing the waiver was to prevent duplicative reporting for the same event where notice had previously been filed.<sup>7</sup> To codify PBGC’s intent, the final rule, like the proposed, clarifies that reporting a reduction in the number of active participants under § 4043.23 may be disregarded if the reduction is timely reported under section 4062(e) and/or 4063(a) of ERISA<sup>8</sup> before the filing of a notice is due under § 4043.23.

### Inability To Pay Benefits When Due

In general, a reportable event occurs under § 4043.26 of the reportable events regulation when a plan fails to make a benefit payment timely or when a plan’s liquid assets fall below the level needed for paying benefits for six months. The 2015 Final Rule modified § 4043.26(a)(1)(iii) so that a plan is not treated as having a “current inability” to pay benefits when due if, among other things, the failure to pay is caused solely by “any other administrative delay, including the need to verify a person’s eligibility for benefits, to the

<sup>7</sup> See the proposed rule, Reportable Events and Certain Other Notification Requirements, 64 FR 20039 (April 3, 2013) for a discussion of improving the waiver structure. The final rule was published on September 11, 2015 (80 FR 54980).

<sup>8</sup> PBGC created a new forms series for reporting under section 4062(e) of ERISA in September 2019 intended to clarify and simplify the process for providing PBGC the required notifications following a substantial cessation of operations and election to make additional annual contributions to satisfy resulting liability. The forms are available on PBGC’s website at <https://www.pbgc.gov/prac/reporting-and-disclosure/erisa-section-4062-e>.

extent that the delay is for less than the shorter of two months or two full benefit payment periods.” In modifying the regulation, the 2015 Final Rule inadvertently imposed a time limit for verification of a person’s eligibility for benefits. PBGC recognizes that employers may need more than the specified time limit to verify a person’s eligibility for benefits and that such a circumstance is not indicative of a possible need for plan termination.

To resolve this issue, the final rule, like the proposed, amends § 4043.26 to clarify that an inability to pay benefits when due caused by the need to verify eligibility is not subject to the time limit imposed for other administrative delays.

#### *Change in Contributing Sponsor or Controlled Group*

Under § 4043.29 of the reportable events regulation, a reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons’ ceasing to be members of the plan’s controlled group. PBGC had received inquiries about when a reportable event is triggered under this section. For instance, although the heading of § 4043.29 includes “a change in contributing sponsor,” the regulatory text does not.

In response to the questions PBGC had received, the proposed rule would have modified the description of the event so that the event and the heading were consistent (*i.e.*, to require reporting when a transaction results in one or more persons ceasing to be a contributing sponsor of a plan, or ceasing to be a member of the plan’s controlled group (other than by merger involving members of the same controlled group)).

PBGC received two comments to this proposal. Both commenters suggested that the proposed modification would broaden the event by requiring plan administrators and sponsors to report changes in a contributing sponsor even where the former contributing sponsor remains within the controlled group. One commenter added that this type of change in contributing sponsor could be determined through other regular PBGC filings, such as annual premium filings. The other commenter stated that actuaries, who identify reportable events to plan sponsors and administrators, are unlikely to know about contributing sponsor changes within a controlled group, so the event could be easily missed. The commenters suggested narrowing the proposed event definition so that it does not apply to a change in contributing sponsor within the controlled group.

PBGC considered the comments, and after further reviewing risk to the insurance program, decided not to adopt the proposed amendment in the final rule. Changes in a contributing sponsor to the plan may raise concerns, since contributing sponsors support the pension plan. However, if a change does not result in a contributing sponsor ceasing to be a member of the plan’s controlled group,<sup>9</sup> PBGC believes the risk to the plan’s participants and to the insurance program doesn’t rise to the level of a reportable event. All members of a controlled group are jointly and severally liable under ERISA and the Code for obligations to the pension plan,<sup>10</sup> and PBGC believes the current statutory rules adequately ensure that PBGC has the tools to protect the pension plan where the controlled group doesn’t change.<sup>11</sup>

Where there is a transaction that causes the controlled group to change, including by a change in contributing sponsor, where one or more members ceases to be a member of the controlled group, that event must be reported to PBGC under § 4043.29. PBGC clarifies this section by adding the parenthetical “(including any person who is or was a contributing sponsor)” to modify “one or more persons” in the event definition in paragraph (a)(1). The final rule also changes the event heading to read “Change in controlled group.” While headings do not have the force of law, PBGC believes modifying the heading will help minimize confusion.

The final rule, like the proposed, also revises the examples in this section. The first example is revised to provide greater clarity on the timing of, and responsibility for, filing a report. Two new examples—one regarding dissolution of a controlled group member and one describing a merger of controlled group members illustrate some common situations implicated by the requirements in § 4043.29.

<sup>9</sup> 29 CFR 4001.2 provides that “controlled group” means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(b)(2) of the Code or section 302(b)(2) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414(m) or (o) of the Code. *Any reference to a plan’s controlled group means all contributing sponsors of the plan and all members of each contributing sponsor’s controlled group.* [emphasis added]

<sup>10</sup> 29 U.S.C. 1082(b)(2) and 26 U.S.C. 412(b)(2).

<sup>11</sup> Controlled group members are liable under section 4062(a) of ERISA for termination liability, section 4068 of ERISA for net worth and liens, section 430(k) of the Code for liens for missed contributions, and section 4007(e)(2) of ERISA for premium payments.

#### *Liquidation*

Section 4043.30(a)(1) of the reportable events regulation states that a reportable event occurs for a plan when a member of the plan’s controlled group “is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member).” In discussing this provision with practitioners over the years, it has become clear that this event description could benefit from greater clarity and precision, particularly with respect to what “involved in any transaction to implement” a liquidation means and when the event occurs. In particular, one such liquidation scenario that commonly results in increased risk of plan termination involves a company that ceases operations and sells substantially all of its assets over a period of time. As described in the preamble to the proposed rule, the company continues to sponsor a plan, but there is no new business income and any existing company assets may be used to cover other financial obligations, such as business wind-down costs and settlement of debts with other creditors.

When a company fails to notify PBGC that the company ceased business operations and began a liquidation, PBGC encounters greater difficulties in effectively intervening to protect plan assets and participant benefits, thereby increasing the potential for loss of employer funding for the plan and greater potential strain on the pension insurance system. In some cases, PBGC did not become aware of the process of liquidation until years later, when the best opportunity for protecting plan assets and participant benefits had passed.

The type of liquidations that concern PBGC may take a myriad of forms and be implemented over long periods of time (like the example above). To alleviate confusion and improve precision, the final rule, like the proposed, clarifies the definition of liquidation to state that a liquidation event occurs when a member of the plan’s controlled group “resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member’s board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations or a liquidation.” Hence, a cessation of operations, such as the

example above, would trigger a reportable event under § 4043.30.

The final rule, like the proposed, includes the word “revenue-generating” to qualify a cessation of business operations in acknowledgement of the fact that various administrative activities may continue during the winding down of a business. The use of the word “revenue-generating” is therefore designed to capture the fact that a company is not earning revenue to enable it to support the pension plan.

The decision to liquidate can have serious implications for participants and the pension insurance system. Given that PBGC’s success in such cases is often directly correlated with finding out about an event when there is still time to preserve plan assets, PBGC believes requiring reporting close to the time a decision to liquidate the company is made by the person(s) or body (such as a board of directors) that has the authority to make that decision will be most protective of participants and the pension insurance system. Since a liquidation may or may not involve a formal plan, a written agreement to sell assets to a single buyer, or a series of sales over time to maximize proceeds, the language in the final rule represents as close as possible to a uniform trigger for reporting of liquidation events. PBGC believes that in the vast majority of cases, the decision to liquidate must go through a formal approval or authorization process. Even in cases where the plan sponsor is a company owned by a single person and board formalities do not exist, a moment occurs when that owner has made the decision to move forward with a liquidation. This decision is the common point of departure for liquidations to move forward. For reference and further clarity, PBGC included in the final rule the three additional examples it proposed regarding a liquidation within a controlled group, occurring by cessation of operations, and through an asset sale.

Companies that liquidate as a result of insolvency are required to report both events to PBGC under § 4043.30 and § 4043.35 of the reportable events regulation. However, given the similarities between the two events, PBGC believes that reporting to PBGC under either section (instead of both) would be sufficient notification. Thus, PBGC is adding a waiver to provide relief from the possibility of duplicative reporting under a § 4043.30 liquidation or a § 4043.35 insolvency. The final rule, like the proposed, provides parallel waivers in both § 4043.30 and § 4043.35 to clarify that notice is waived if notice has already been

provided to PBGC for the same event under the other section.

#### *Public Company Extension—Liquidation Events*

PBGC does not intend to compel public company sponsors to disclose liquidations on a Form 10 before notifying the public. Thus, the final rule includes an extension under § 4043.30(c) to file the post-event reportable events notice until the earlier of the timely filing of a SEC Form 8-K disclosing the event or the issuance of a press release discussing it.

PBGC requested comment on whether the public company extension should be available for foreign private issuers and if so, how. For example, should the regulation allow an extension to file a reportable events notice involving a foreign private issuer that is a plan sponsor until the earlier of the timely filing of a SEC Form 6-K disclosing the event or the issuance of a press release discussing it, even if the country of incorporation for the foreign private issuer would not require reporting as timely as is required on a Form 8-K for the same event had the issuer been a U.S. filer?<sup>12</sup>

PBGC received no comments and has determined that the public company extension should not be available with respect to a SEC Form 6-K filing. As noted above, a Form 6-K may not require the same disclosure or be filed as soon after an event as a SEC Form 8-K.<sup>13</sup> However, the final rule clarifies that the public company extension is available to a foreign private issuer that is a public company where an English language press release relating to the event is issued in the U.S.

PBGC in this final rule also applies the public company extension for liquidations to the parent company of a contributing sponsor within the same controlled group. The final rule provides that where a contributing sponsor’s parent is a public company within the same controlled group, and files a Form 8-K or issues a press release disclosing the liquidation event, the due date for reporting the event to

PBGC is extended to the earlier of either of those public disclosures. PBGC extended the public company waiver in the same manner as described below.

#### *Public Company Waiver*

Reporting for five reportable events<sup>14</sup> is waived if any contributing sponsor of the plan (before the transaction that caused the event) is a public company, and the contributing sponsor timely files a SEC Form 8-K sufficiently disclosing the event under an item of the Form 8-K, except under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits). As explained in the 2015 Final Rule, PBGC found that SEC filings provide timely and adequate information with respect to the five events because these events are either required to be reported under a specific Form 8-K item or because they are material information for investors. Therefore, PBGC didn’t need to compel reporting of these events via a Form 10 under the reportable events regulation.

PBGC requested comment in the proposed rule on whether the public company waiver should be expanded to apply in situations where a parent company that is not a contributing sponsor to the plan timely files a SEC Form 8-K disclosing the event. PBGC received two comments that supported expanding the waiver. One stated that if a Form 8-K disclosing an event filed by a contributing sponsor is appropriate to waive reporting, then substantially the same information disclosed on a Form 8-K, but filed by a parent company, should also suffice. The other commenter suggested that reportable event notices generally should be waived where information required by PBGC is already publicly available.

In the interest of avoiding duplicative reporting where appropriate and possible, the final rule expands the public company waiver for the five events to apply where the contributing sponsor to the plan or the parent company (if not the contributing sponsor) files a Form 8-K adequately disclosing the event under an item of the Form 8-K other than under Item 2.02 or in financial statements under Item 9.01. Where a Form 8-K provides timely and sufficient information to PBGC with respect to the reportable event, PBGC sees no reason to make a distinction as to who makes the filing

<sup>12</sup> For more information on Securities and Exchange Commission filing obligations for foreign private issuers, see the discussion at <https://www.sec.gov/divisions/corpfin/international/foreign-private-issuers-overview.shtml> (including Form 6-K under section III.B.3. Periodic and Ongoing Reporting Obligations; Other Reports).

<sup>13</sup> See 17 CFR 240.13a-16, Reports of foreign private issuers on Form 6-K (17 CFR 249.306), which provides that the Form 6-K report is required to be transmitted promptly after the information required by Form 6-K is made public by the issuer, by the country of its domicile or under the laws of which it was incorporated or organized, or by a foreign securities exchange with which the issuer has filed the information.

<sup>14</sup> These five post-event filings are (1) active participant reduction, (2) distribution to a substantial owner, (3) change in contributing sponsor or controlled group, (4) extraordinary dividend or stock redemption, and (5) transfer of benefit liabilities.

between the contributing sponsor or the sponsor's parent company.

In this regard, PBGC is also clarifying in the Form 10 instructions what information is sufficient with respect to a particular reportable event for the public company waiver to apply. In general, for all five events, information should include the plan name, a brief description of the pertinent facts relating to each event, and the date and type of event being disclosed. As an example of information that would be relevant to a specific event, for an active participant reduction notice required because of a single-cause event, this information would include a statement explaining the cause of the reduction, such as facility shutdown or sale, discontinued operations, winding down of the company, or reduction in force. Plan administrators and sponsors should refer to the revised instructions and description of the public company waiver for the information relevant for each of the five events.

As stated in the **DATES** section of this preamble, this expansion of the public company waiver is applicable to post-event reports for those reportable events occurring on or after March 5, 2020.

#### **Annual Financial and Actuarial Information Reporting—29 CFR Part 4010**

Section 4010 of ERISA requires the reporting of actuarial and financial information by controlled groups with single-employer pension plans that have significant funding problems. It also requires PBGC to provide an annual summary report to Congress containing aggregate information filed with PBGC under that section. PBGC's "4010 reporting regulation" (29 CFR part 4010) implements section 4010 of ERISA.

#### *Definitions*

Section 4010.2 of PBGC's 4010 reporting regulation contains the terms used in part 4010 and their definitions. The final rule, like the proposed, amends this "Definitions" section to include the term "Foreign entity," which is used in amendments to § 4010.9 describing the financial information a filer is required to provide to PBGC. This definition is similar to the definition of "Foreign entity" in § 4043.2 of PBGC's reportable events regulation. The only difference is that "information year" replaces "date the reportable event occurs" in part (3) of the definition so that part (3) is satisfied for 4010 purposes if one of three tests are met for the fiscal year that includes the information year.

The final rule, like the proposed, also adds to the list of common terms

referenced in § 4010.2 the two terms it defines in the general definitions section of PBGC's regulations (§ 4001.2). As explained above, under "Terminology—29 CFR part 4001," those terms are "Ultimate parent," and "U.S. entity."

#### *Filers*

Section 4010.4 of the 4010 reporting regulation prescribes who is a filer. Paragraph (e) of this section explains how reporting is applicable to plans to which special funding rules apply. This paragraph provides that except in connection with the actuarial valuation report, the special funding rules under sections 104 and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (PPA) (applicable to multiple employer plans of cooperatives and charities, and plans of commercial passenger airlines and airline caterers, respectively) and under the Cooperative and Small Employer Charity Pension Flexibility Act of 2013, Public Law 113–97, are disregarded for all other 4010 purposes. The final rule, like the proposed, removes from paragraph (e) the reference to PPA section 104 because it has expired.

#### *Identifying Information*

Section 4010.7 of the 4010 reporting regulation describes what types of identifying information each filer must provide as part of its reporting. Paragraph (a)(1) of this section specifies what information is required to be included about current members of the filer's controlled group, such as identifying the legal relationships of each controlled group member to the other members. Filers identify the legal relationships by entering a description, e.g., parent, subsidiary, for each member. Identifying the legal relationships of controlled group members in this way can be burdensome to filers in larger controlled groups and does not provide a clear picture of the controlled group structure, frustrating the intent of this information.

The final rule, like the proposed, provides a simple method for filers in larger controlled groups to satisfy the requirement in paragraph (a) of this section. Instead of manually entering "parent," "subsidiary," or other relationship, filers with more than 10 controlled group members would just submit with their filing an organizational chart or other diagram showing the relationship of the controlled group members to each other.

Three commenters to the proposed rule suggested that PBGC permit filers to include an organizational chart with

their filing before the final rule is effective, citing the reduced burden and streamlining of requirements. Two of the three noted that while many filers have such diagrams readily available, some do not, and requested that the organizational chart be an optional method for filers to satisfy the legal relationship requirement.

PBGC considered these suggestions to make the chart an optional method to satisfy the legal relationship requirement and decided not to make the suggested change in the final rule.<sup>15</sup> Submitting a chart, which commenters agreed is something most companies already have, reduces burden by streamlining this reporting requirement for most filers. While it may add some burden for a minority of filers that do not have such diagrams, having controlled group member relationships more clearly presented overall benefits filers and PBGC by reducing the number of follow up questions to clarify the information as well as errors in data entry of information.

PBGC also clarifies in the final rule that for purposes of determining whether the requirement to provide an organizational chart applies, exempt entities are disregarded, (i.e., the requirement applies only to controlled groups with more than 10 non-exempt entities). For these filers, exempt entities may, but need not be, included in the organizational chart.

#### *Plan Actuarial Information*

Section 4010.8 of the 4010 reporting regulation prescribes the plan actuarial information a filer must provide. Paragraph (d)(2) of this section sets the actuarial assumptions and methods to use for determining a plan's benefit liabilities. PBGC had heard from practitioners that the assumptions in paragraph (d)(2) as they apply to cash balance pension plans are not clear and don't specify how a lump sum payment (which is the assumption used by most cash balance plans) under such a plan should be converted to an annuity form. The final rule provides needed guidance with respect to cash balance plans on these assumptions and changes the paragraph's structure to improve clarity.

The final rule, like the proposed, reorganizes § 4010.8(d)(2) by combining the actuarial assumptions of this section into a table and includes an assumption

<sup>15</sup> PBGC did not issue guidance at the suggestion of two commenters to permit plans to submit a chart before a final rule is effective. As noted above, some comments suggested that PBGC change its proposed provision, therefore it would not be appropriate to issue guidance before publishing a final rule informing the public of PBGC's decision and the basis for it.

that was inadvertently left out of the table in the proposed rule. The table includes the assumptions to use for valuing benefit liabilities for cash balance plans. Cash balance plan filers must convert account balances to annuity forms of payment using the rules under section 411(b)(5)(B)(vi) of the Code and 26 CFR 1.411(b)(5)–1(e)(2) that specify the interest crediting rate and annuity conversion rate upon plan termination. In other words, for purposes of reporting benefit liabilities, a cash balance plan would be treated as if terminated and lump sums converted to annuity payments using the assumptions in the applicable U.S. Department of the Treasury regulation cited above.

Two commenters asked PBGC to clarify how benefit liabilities should be determined for cash balance plans if the annuity conversion basis includes a mortality table that is automatically updated each year to reflect expected improvements in mortality experience (such as the applicable mortality table in section 417(e)(3) of the Code), and notes that 26 CFR 1.411(b)(5)–1(e)(2)(iii)(A)(2) provides that the mortality table that applies as of the annuity starting date is used if the annuity starting date is after the date of plan termination. The commenters recommended that PBGC permit use of the mortality table for the information year for 4010 reporting.

PBGC agrees that for 4010 reporting purposes expected improvements in mortality experience that apply under a cash balance plan for years after the information year need not be reflected in the calculation of benefit liabilities. Accordingly, the final rule provides that filers may disregard the updates to reflect expected improvements in mortality experience that are described in 26 CFR 1.411(b)(5)–1(e)(2)(iii)(A)(2) for the purpose of valuing benefit liabilities under § 4010.8(d)(2).

The same commenters requested that PBGC make this provision applicable for 4010 filings from cash balance plans due for the second information year (*i.e.*, 2020) after the year in which the final rule is effective. The commenters stated that by the time a final rule is effective, filers are likely to have already valued benefit liabilities using different assumptions for the 2019 information year. PBGC recognizes that some filers may have already begun or completed such valuations for the 2019 information year using alternative methods and that modifications may need to be made to valuation software to implement the final rule. In addition, PBGC recognizes that having the new rule apply for all 2020 information year

filings may pose problems for some filers (*e.g.*, a plan with a 7/1/2019–6/30/2020 plan year reported in a filing for a 1/1/2020–12/31/2020 information year). Therefore, as stated in the “Dates” section above, PBGC is making this valuation method applicable to plan years beginning on or after January 1, 2020. Cash balance plan filers may use the method prescribed in the final rule for valuing benefit liabilities for plan years beginning before 2020, regardless of which information year the filing is for, but they are not required to do so.

Another commenter stated that it assumed under the proposed rule that pre-retirement mortality could still be disregarded in determining benefit liabilities for 4010 purposes if the plan actuary does not use an assumption of pre-retirement mortality for funding purposes (as is permitted under Treasury regulations).<sup>16</sup> The commenters requested that this be clarified in the final rule. PBGC did not consider this comment because for purposes of determining benefit liabilities using the assumptions under section 4044 of ERISA and PBGC’s regulation (as prescribed in section 4010(d) of ERISA), pre-retirement mortality was never disregarded.

The final rule, like the proposed, also includes edits to § 4010.8(d)(3) to conform citations to ERISA and the Code and includes an additional edit to improve readability.

#### *Financial Information*

Section 4010.9 of the 4010 reporting regulation prescribes the financial information a filer must submit to PBGC for each member of the filer’s controlled group. Paragraph (b) of this section permits a filer to submit consolidated financial statements if the financial information of a controlled group member is combined with the information of other members in a consolidated statement. However, if consolidated information is reported, paragraph (b)(2) had also required filers to report revenues, operating income, and net assets for each controlled group member.

In PBGC’s 2017 Request for Information (RFI) on Regulatory Planning and Review of Existing Regulations (noted in the “Background” section of this preamble), a commenter stated that some filers have difficulty trying to identify and collect the three types of information under § 4010.9(b)(2) for each controlled group member and recommended that PBGC modify the regulation to request this detailed information only when

necessary as part of reviewing the plan and controlled group financial statements.

PBGC believes it can adequately assess risks to participants and plans without this detailed information, and with the “off-the-shelf” information on U.S. entities with foreign parents, as described below.<sup>17</sup> Therefore, PBGC proposed to remove the regulatory requirement to provide controlled group member-specific detail. Two commenters to the proposed rule supported the removal, and PBGC is eliminating the requirement in the final rule.

As noted above, the final rule, like the proposed, also clarifies what financial information must be provided for controlled group members that are U.S. entities where the ultimate parent is a foreign entity. In addition to the consolidated statements for the whole controlled group, the filer must submit consolidated (audited or unaudited) financial statements on only the U.S. entities that are members of the controlled group. If consolidated information is not available, the filer must provide separate audited (or unaudited) financial statements, or tax returns if financial statements are not available, for controlled group members that are U.S. entities.

Lastly, § 4010.9 allows filers to indicate where PBGC can find required financial information that is publicly available (in lieu of submitting that information to PBGC). Paragraph (d) of this section on “submission of public information” provides that a filer may submit a statement indicating when the financial information was made available to the public and where PBGC may obtain it. In PBGC’s experience, these statements have led to general websites, but not specific web pages where the information required to be reported can be found. Therefore, the final rule, like the proposed, clarifies that filers must provide the exact URL for the web page where public financial information is located. The example of a Securities and Exchange Commission filing in paragraph (d) is clarified accordingly.

#### *Waivers*

Reporting under section 4010 of ERISA is required if any one of three conditions is met. However, PBGC can waive reporting under its 4010 reporting regulation and does so in three

<sup>17</sup> In PBGC Technical Update 19–1, issued October 16, 2019, PBGC waived the requirement in § 4010.9(b)(2) to provide member-specific financial information. See <https://www.pb.gc.gov/prac/other-guidance/4010-financial-information-reporting-waiver>.

<sup>16</sup> See 26 CFR 1.430(d)(1)(f)(2).



situations (with discretion to waive in others) under § 4010.11 of the regulation.

PBGC automatically waives reporting where: (a) The aggregate funding shortfall is not in excess of \$15 million; (b) the aggregate participant count is less than 500; or (c) the sole reason filing would otherwise be required is because of either a statutory lien resulting from missed contributions over \$1 million or outstanding minimum funding waivers exceeding the same amount, provided the missed contributions or applications for minimum funding waivers were previously reported to PBGC.

PBGC received questions from practitioners about which plans are considered when determining if either of the first two waivers apply. Practitioners noted that the regulation clearly states that for purposes of the below-80 percent 4010 funding target attainment percentage (FTAP) triggering event for 4010 reporting (the “80% 4010 FTAP Gateway Test”) only plans maintained by the controlled group on the last day of the information year are considered, but that the same is not clear under § 4010.11 for purposes of determining whether either of the first two waivers apply. Without specifying “on the last day of the information year,” the language of the aggregate funding shortfall waiver in paragraph (a) and the waiver for smaller plans in paragraph (b) of § 4010.11, could be interpreted to mean that plans maintained at any time during the plan year must be included in the determination of whether the waiver applies. This is not the interpretation that PBGC intended or believes is reasonable in light of the standard in the 80% 4010 FTAP Gateway Test. Therefore, the final rule, like the proposed, modifies paragraphs (a) and (b) of § 4010.11 to insert “on the last day of the information year.”

In response to practitioner questions, PBGC had addressed in the proposed rule when at-risk assumptions (under section 303(i) of ERISA and section 430(i) of the Code) are to be used to calculate the funding target for purposes of the 4010 funding shortfall and waiving reporting where a plan’s aggregate funding shortfall is \$15 million or less. The proposed rule would have revised paragraph (a)(1)(i) of § 4010.11 to provide that at-risk retirement and form of payment assumptions are not required to be used to determine the funding target used to calculate the 4010 funding shortfall for a plan unless the plan is in “at-risk status” for funding purposes.

Commenters suggested that additional guidance is needed with respect to how the 4010 funding shortfall should be determined for plans in at-risk status. For example, commenters questioned whether the phase-in rule provided in section 303(i)(5) of ERISA for plans that have been in at-risk status for fewer than five consecutive years applies. They suggested other clarifications with respect to the participant count date for the \$700 per participant load, and the 4 percent expense load on the not at-risk funding target.

As the commenters note, PBGC intended for filers to be able to use already-calculated amounts for purposes of determining the 4010 funding shortfall. But on further review, and in light of the complications arising with respect to the at-risk transition rules, PBGC has decided to simplify a plan’s calculations for determining whether the \$15 million aggregate funding shortfall waiver applies. In this regard, the final rule provides that the special rules for at-risk plans in section 303(i) of ERISA and section 430(i) of the Code are disregarded for purposes of determining the funding target underlying the 4010 funding shortfall for a plan, even if the plan is in at-risk status. Based on PBGC’s review of plans in at-risk status, disregarding the at-risk rules solely for purposes of determining whether the 4010 funding shortfall waiver applies is unlikely to extend the waiver to plans it wasn’t intended to cover. PBGC believes it can reduce administrative burden on plans while maintaining the original intent and integrity of this waiver.

#### *Proposed Waiver*

The primary condition triggering reporting is that the 4010 FTAP of a plan maintained by the contributing sponsor or any member of its controlled group, is less than 80 percent (the “80% 4010 FTAP Gateway Test” mentioned above). Section 303(d)(2) of ERISA and section 430(d)(2) of the Code provide that in determining the FTAP of a plan for a plan year, plan assets are reduced by the amount of the plan’s prefunding and funding standard carryover balances. Plan sponsors are permitted under section 303(f) of ERISA and section 430(f) of the Code to elect to reduce (*i.e.*, waive) some or all of such funding balances, and by doing so increase the plan’s FTAP.<sup>18</sup>

PBGC is aware of situations where a plan’s 4010 FTAP was below 80 percent but would have been at least 80 percent if such an election had been made

timely with respect to 4010 reporting. To the extent the plan sponsor of these plans are willing to waive funding balances at a later date and thereby commit not to use the funding balances to satisfy the following year’s funding requirement, PBGC believes it would be appropriate to waive the 4010 reporting requirement. Therefore, PBGC had proposed to create an automatic 4010 reporting waiver where a plan sponsor makes a “late” election to reduce a funding balance, and the plan’s FTAP for 4010 purposes would have been greater than or equal to 80 percent had the election been timely made.

However, commenters raised issues with how this automatic waiver would work in practice. Some stated that such a waiver could be useful, but only in limited circumstances, and suggested technical clarifications around its application. Others requested clarity specifically about what is a “late election” to reduce a funding balance for 4010 reporting purposes because, for minimum funding purposes, “late elections” do not take effect for the plan year for which they are nominally made. Additional questions concerned whether a “late election” could be made only if the funding balance existed on the valuation date for the 4010 FTAP and had not been used against required minimum contributions, and the amount by which funding balances must be reduced.

PBGC considered these technical questions and concurs with the commenters that, as drafted, the automatic waiver leaves many questions unanswered. In light of this, and because it is likely that this automatic waiver would help only a few, if any, filers, PBGC is not adopting the proposed waiver in this final rule. PBGC encourages the plan sponsor of a plan with a 4010 FTAP below 80 percent solely because of an administrative error with respect to the timing of a funding balance election to request a case-specific waiver pursuant to § 4010.11(d).

Commenters suggested that PBGC in the final rule automatically waive 4010 reporting in other situations, such as where a plan’s 4010 FTAP would have been 80 percent or more (or the 4010 funding shortfall would have been less than \$15 million) if not for the timing of a contribution that was made too late to count as a prior year contribution (*i.e.*, more than 8½ months after the end of the prior plan year), as well as in situations where 4010 reporting is triggered by an acquisition. Creating additional reporting waivers is beyond the scope of this final rule, and PBGC has not included automatic waivers for the suggested situations. Where

<sup>18</sup> See 26 CFR 1.430(f)–1(f)(2) for rules on timing of elections.



extenuating circumstances come into play (e.g., a contribution was late because it was inadvertently wired to the wrong account), plan sponsors may request a case-specific waiver pursuant to § 4010.11(d). PBGC reviews such requests based on the facts and circumstances of specific cases.

#### **Termination of Single-Employer Plans—29 CFR Part 4041**

A single-employer plan covered by PBGC's insurance program may be voluntarily terminated only in a standard or distress termination. The rules governing voluntary terminations are in section 4041 of ERISA and PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041), "termination of single-employer plans regulation."

#### *Post-Distribution Certification*

ERISA requires the plan administrator of a plan terminating in a standard termination to certify to PBGC that the plan's assets have been distributed to pay all benefits under the plan. Certification under section 4041(b)(3)(B) of ERISA must be made within 30 days after the final distribution of assets is completed.

Section 4041.29 of the termination of single-employer plans regulation requires a plan administrator to submit by the 30-day statutory deadline a "post-distribution certification" (i.e., PBGC Form 501). PBGC has heard from practitioners that it is sometimes challenging to collect all of the information required to be submitted as an attachment to Form 501 within the prescribed timeframe (e.g., documentation that benefit obligations were settled for all participants including copies of cancelled checks in the case of lump sum distributions) and have asked whether PBGC could extend the certification deadline.

While PBGC cannot extend the statutory deadline for certifications, the final rule, like the proposed, amends § 4041.29(a) to provide an alternative filing option for plan administrators who need more time to complete the PBGC Form 501. This alternative permits a plan administrator to submit a completed PBGC Form 501 within 60 days after the last distribution date for any affected party if the plan administrator certifies to PBGC that all assets have been distributed in accordance with section 4044 of ERISA and 29 CFR part 4044 (in an email or otherwise, as described in the instructions to the Form 501) within 30 days after the last distribution date for any affected party.

The proposed rule revised § 4041.29(b) and paragraph (d)(2) of § 4041.30 (requests for deadline extensions) only to account for the proposed changes to § 4041.29(a).

One commenter expressed support for the additional time to file a Form 501 in § 4041.29(a)(2).

The same commenter suggested that PBGC modify proposed § 4041.29(b) in the final rule to clarify when PBGC would begin assessing penalties for required information not received by the deadlines in § 4041.29(a). Penalties under section 4071 of ERISA apply where there is a failure to timely provide required information. Thus, penalties may be assessed where a filing (e.g., the Form 501) is not filed by the stated deadline, or where a filing is submitted on time, but some or all required information is omitted or wrong. The commenter suggested the language of proposed § 4041.29(b)—that PBGC will assess a penalty "only to the extent a completed Form 501 is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a)"—could imply that PBGC may assess a penalty on an incomplete Form 501 before the 90-day threshold is reached. The commenter suggested replacing the words "only to the extent" with the words "only if" to clarify that penalties may only be assessed if required filings are submitted more than 90 days after the distribution deadline.

PBGC's proposed changes in § 4041.29 to provide an alternative filing deadline for the Form 501 were not intended to alter the long-standing penalty relief provided for in § 4041.29(b). Therefore, the final rule modifies the language in paragraph (b) to make clear that PBGC will not assess a penalty if the required information (e.g., the certification or Form 501) is filed within 90 days after the distribution deadline.

#### **Premium Rates—29 CFR Part 4006**

Under sections 4006 and 4007 of ERISA, plans covered by the termination insurance program under title IV of ERISA must pay premiums to PBGC. Section 4006 of ERISA deals with premium rates, including the computation of premiums, and PBGC's regulation on Premium Rates in 29 CFR part 4006, "premium rates regulation," implements section 4006 of ERISA.

#### *Determination of Unfunded Vested Benefits—Plans to Which Special Funding Rules Apply*

Section 4006.4 of the premium rates regulation, which provides rules for determining unfunded vested benefits, states in paragraph (f) that plans subject

to special funding rules must disregard those rules and determine unfunded vested benefits for premium purposes in the same manner as all other plans. Section 4006.4(f) referred to the special funding rules under sections 104, 105, 106, and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (PPA), that are applicable to multiple employer plans of cooperatives and charities, PBGC settlement plans, plans of government contractors, and plans of commercial passenger airlines and airline caterers.

The final rule, like the proposed, removes references to PPA sections 104, 105, and 106 because those provisions have expired. It adds a reference to the special funding rules of section 306 of ERISA and section 433 of the Code that apply to certain multiple-employer defined benefit pension plans maintained by certain cooperatives and charities, and that were added in 2014.<sup>19</sup>

#### *Variable-Rate Premium Exemptions; Plans Terminating in Standard Terminations*

In general, a single-employer plan pays a variable-rate premium (VRP) for the plan year ten-and-a-half months after the plan year begins based on the level of the plan's underfunding at the beginning of the plan year. In 2014, as part of PBGC's regulatory review process, PBGC amended its premium rates regulation to provide for a VRP exemption for the year in which a standard termination of a plan is completed ("2014 rule"). PBGC adopted this exemption because it did not seem appropriate to require a VRP of a terminating plan based on the underfunding at the beginning of the year when, by the time the premium was due (or shortly thereafter), the sponsor had fully funded the plan and distributed all accrued benefits (i.e., purchased annuities or paid lump sums) and PBGC coverage had ceased.<sup>20</sup>

PBGC has received questions from practitioners as to whether a plan qualifies for this "final year" exemption if a large number of participants are spun off to a new plan or transferred to another existing plan during the year in which the termination is completed. It had been suggested that, if the

<sup>19</sup> Cooperative and Small Employer Charity Pension Flexibility Act, Public Law 113–97 (Apr. 7, 2014).

<sup>20</sup> Before 2014, the standard termination VRP exemption in § 4006.5(a)(3) was available only if the proposed date of termination was in a prior year, but the plan had not yet completed the close-out by the end of that year. The 2014 rule expanded that exemption to include plans that are able to complete the termination within one plan year. See 79 FR 13547, 13553 (March 11, 2014).

exemption applies, a plan sponsor could significantly reduce its VRP because the transferor plan would not owe any VRP for its final year and the transferee plan would owe, at most, a pro-rata VRP for the plan year in which the transfer occurs.<sup>21</sup> However, the VRP exemption does not apply in this type of transaction because the benefits of most of the participants who were in the plan at the beginning of the year would not be fully funded or paid in full, and for those participants, PBGC coverage would still be in effect. PBGC added language to the 2018 premium filing instructions to highlight to filers that the VRP exemption does not apply in such cases.

In light of these questions, the final rule, like the proposed, amends § 4006.5(a)(3) of the premium rates regulation to expressly state that a plan does not qualify for the VRP exemption for the year in which a standard termination of the plan is completed if the plan engages in a spinoff during the premium payment year. In addition, the final rule provides an exception where the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code, *i.e.*, generally fewer than 3 percent of the assets are spun off. In other words, the VRP exemption applies for the year in which a standard termination for the plan is completed even if the plan engages in a de minimis spinoff during the year.

To distinguish cases where the termination has not yet been completed, the final rule, like the proposed, moves the exemption for certain plans in the process of completing a standard termination initiated in a prior year from § 4006.5(a)(3) to § 4006.5(a)(4) of the premium rates regulation.

PBGC received three comments with respect to its proposed amendment to § 4006.5(a)(3). Two commenters acknowledged that this provision is “clear and workable.” Three commenters suggested that it represents a change to the current provision and requested that it apply only prospectively. PBGC disagrees that the amendment represents a change to the provision. PBGC believes its interpretation of the 2014 rule is the only reasonable one. It is based directly on the regulation’s application to a plan that “makes a final distribution of assets in a standard termination during the premium payment year.” The preamble

to the 2014 rule states plainly that the exemption applies only when all benefits are fully satisfied in accordance with the standard termination rules. A plan that first transfers benefits (and associated assets) to another plan before completing a standard termination does not make a final distribution of assets in satisfaction of all benefits. As explained in the proposed rule, the amendment to § 4006.5(a)(3) is merely to expressly state the circumstances in which a plan does not qualify for the VRP exemption. Therefore, the final rule does not provide an applicability date for this provision.

#### *Participant Count Date; Certain Transactions*

To determine the flat-rate premium for a plan year, participants are counted on the “participant count date,” generally the day before the plan year begins. Changes in the participant count during the plan year do not affect that year’s flat-rate premium. Under the premium rates regulation, a special rule (§ 4006.5(e)) shifts the participant count date to the first day of the plan year in specified situations that take place at the beginning of a plan year so that the change in participant count is recognized immediately rather than a year later (*i.e.*, the “special rule”). Situations where this special rule applies include:

- The first plan year a plan exists.
- A plan year in which a plan is the transferor plan in the case of a beginning of year non-de minimis spinoff.
- A plan year in which a plan is the transferee plan in the case of a beginning of year non-de minimis merger.

For example, consider a scenario where Plan A, a calendar year plan, spins off a group of participants (and the corresponding assets and liabilities) into new Plan B at the beginning of Plan A’s 2018 plan year (assume the spinoff is not de minimis). Because of the special rule, both plans count participants on the first day of the year which means Plan B owes a 2018 flat-rate premium on behalf of the transferred participants, but Plan A does not.

PBGC received questions from practitioners as to whether the special rule applies to the transferee plan in a situation where spun off participants are transferred to an existing plan instead of a new plan. These practitioners believed the premium filing instructions could be interpreted to provide that the special rule does not apply to the transferee plan in this plan-to-plan transfer.

As explained in the proposed rule, that interpretation would lead to an

inconsistent result. For example, assume that instead of spinning off participants into a new plan, Plan A (in the above example) had transferred those participants to a pre-existing Plan C (also a calendar year plan) at the beginning of Plan C’s 2018 plan year. As noted above, the special rule would apply to Plan A, so Plan A would not include the transferred participants in its participant count. But, if the special rule does not apply to Plan C (*i.e.*, to the transferee plan), Plan C would count participants on the day before the transfer. That would mean that neither Plan A nor Plan C would owe flat-rate premiums on behalf of the transferred participants for 2018.

Therefore, PBGC is adopting in the final rule its proposed clarifications to the special rule in paragraph (e) of § 4006.5 to clarify that, in such plan-to-plan transfers, the participant count date of the transferee plan shifts to the first day of its plan year. Doing so makes clear that the transferee plan, in such a transaction, owes flat-rate premiums on behalf of the transferred participants. This provision generally operates where both plans have the same plan year and the transfer takes place at the beginning of the plan year.

As noted above, the special rule also applies where a plan is the transferee plan in the case of a beginning-of-year non-de minimis merger. For example, if two calendar year plans merge at the beginning of 2018, the surviving plan’s participant count date is shifted to January 1, 2018. As a result, the surviving plan owes 2018 flat-rate premiums on behalf of the participants who were previously in the transferor plan.

PBGC exempted de minimis mergers from this special rule because PBGC felt the burden resulting from shifting the participant count date was not justified in the case of a de minimis merger because the number of participants for whom neither plan would owe a flat-rate premium would be relatively small (*i.e.*, the regulations under section 414(l) of the Code provide that a merger is de minimis where the liabilities of the smaller plan are less than 3 percent of the assets of the larger plan).

PBGC received questions from practitioners as to whether this de minimis exemption applies where the surviving plan is the smaller plan. It had been suggested that, if the exemption applies, a plan sponsor could avoid paying flat-rate premiums on behalf of the large plan participants simply by merging it into a much smaller plan. In one case, a consultant reported that a plan sponsor was considering a strategy to establish a new plan covering only a

<sup>21</sup> If the transferee plan is an existing plan, the additional underfunding resulting from the transfer would not be reflected in its VRP because underfunding for VRP purposes is measured at the beginning of the year. If the transferee plan is a new plan, it would owe only a pro-rata VRP (see § 4006.5(f)(1)).

few employees so that it could merge a large plan into the new small plan at the beginning of the next year and avoid paying flat-rate premiums on behalf of the large plan participants. These results are inconsistent with the intent of the special rule and de minimis exception.

The final rule, like the proposed, clarifies that the special rule in paragraph (e) of § 4006.5 applies in the case of a beginning-of-year merger where a large plan is merged into a smaller plan (*i.e.*, the exception for de minimis mergers does not apply if the transaction is structured such that the smaller plan is the surviving plan).

PBGC received four comments with respect to the proposed provisions clarifying the special participant count date rule. While the commenters appreciated clarification of the rules, they believed the clarifications represented changes and should be applied only prospectively. Two of these commenters stated that some sponsors had completed transactions (*e.g.*, plan mergers) in reliance on their interpretation of how the special participant count date rules work. PBGC considered these comments. However, the provisions do not affect whether a transaction was (or was not) permissible. Rather, they simply set forth when the special rules apply in determining the participant count date. And as explained in the proposed rule, the provisions are merely clarifications of the existing special rules and as such, the final rule does not provide an applicability date for these provisions.

Two commenters recommended that PBGC eliminate the exceptions to the special rule for de minimis transactions (*e.g.*, spinoffs, mergers) and three commenters recommended that the special rule, which currently applies only to transactions that occur at the beginning of a plan year, also apply to transactions that occur on the last day of the prior plan year. PBGC considered the comments and believes it would not be appropriate to implement either change without providing an opportunity for public comment. PBGC believes both suggestions merit consideration and intends to do additional research and analysis to determine if such changes are warranted and/or appropriate. In particular, PBGC is concerned that eliminating the de minimis exception could result in some plans owing larger premiums than under the current rule.

#### *Premium Proration for Certain Short Plan Years*

The special rule in § 4006.5(f) of PBGC's premium rates regulation allows plan administrators to pay prorated VRP

and flat-rate premiums for a short plan year and lists the four circumstances that would create a short plan year. One of those circumstances is where the plan's assets are distributed pursuant to the plan's termination. For example, if a plan distributed its assets in a standard termination with a final short plan year covering nine months (*i.e.*, 75 percent of a full year), the calculated premium would be reduced by 25 percent.

This rule makes sense where all accrued benefits are distributed (*i.e.*, purchased annuities or paid lump sums) and PBGC's coverage ends. However, where a completed termination is preceded in the same year by a spinoff of a group of the plan's participants to another plan, the transferred participants remain in the insurance program and PBGC coverage of their benefits is still in effect. It has been suggested that a plan sponsor could use this rule to significantly reduce its premium obligation for the year simply by transferring most of its participants to another plan early in the plan year and then terminating what's left of the transferor plan (and, thus, owing only a pro-rata premium for its final short plan year).

In view of these considerations, the final rule, like the proposed, changes the circumstances under which the premium is prorated for a short plan year resulting from a plan's termination to exclude situations where the plan engages in a spinoff in that same year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code, (*i.e.*, generally fewer than 3 percent of the assets are spun off). As stated in the **DATES** section above, this provision is applicable for plan years beginning in or after 2020. In addition, the final rule, like the proposed, replaces the words "excess assets" in § 4006.5(f)(3) with "residual assets under section 4044(d) of ERISA" to be consistent with the statutory language.

#### **Miscellaneous**

This final rule corrects and updates the phone numbers for the PBGC multiemployer program division contact and the PBGC Participant and Plan Sponsor Advocate in the model notices contained in Appendix A to part 4233, the Partitions of Eligible Multiemployer Plans regulation.

#### **Executive Orders 12866, 13563, and 13771**

The Office of Management and Budget (OMB) has determined that this rulemaking is not a "significant regulatory action" under Executive

Order 12866. Accordingly, this final rule is exempt from Executive Order 13771, and OMB has not reviewed it under Executive Order 12866.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this final rule. Most of the final rule amendments clarify regulations and remove outdated provisions, which are neutral in their impact. A few would minimally affect the time and cost of reporting for plans and sponsors, which is discussed in the Paperwork Reduction Act section below.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that "may be outmoded, ineffective, insufficient, or excessively burdensome." These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified technical corrections, clarifications, and improvements to some of its regulations and has included those amendments in this final rule. PBGC expects to propose periodic rulemakings of this nature to revise its regulations as necessary for minor technical corrections and clarifications to rules.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act<sup>22</sup> imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

<sup>22</sup> 5 U.S.C. 601 *et seq.*

### *Small Entities*

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations<sup>23</sup> and is consistent with certain requirements in title I of ERISA<sup>24</sup> and the Code,<sup>25</sup> as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.<sup>26</sup>

Thus, PBGC believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration<sup>27</sup> under the Small Business Act. Therefore, PBGC requested comments on the appropriateness of the size standard used in evaluating the impact of the amendments in this proposed rule on small entities. PBGC received no comments on this point.

### *Certification*

Based on its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule would not have a significant economic impact on a substantial number of small entities. As explained above under “Executive Orders 12866, 13563, and 13771,” some of the amendments reduce requirements for plans and sponsors, including for small plans, resulting in administrative savings, or have a very minimal cost impact as discussed in the Paperwork Reduction Act section below. Most of the amendments clarify regulations and remove outdated provisions, which are neutral in their impact. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

<sup>23</sup> See, e.g., special rules for small plans under part 4007 (Payment of Premiums).

<sup>24</sup> See, e.g., section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

<sup>25</sup> See, e.g., section 430(g)(2)(B) of the Code, which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

<sup>26</sup> See, e.g., DOL’s final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

<sup>27</sup> See, 13 CFR 121.201.

### *Paperwork Reduction Act*

PBGC is submitting changes to the information requirements under this final rule to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Most of the changes PBGC is making are revisions to filing instructions, where necessary or helpful, to incorporate the clarifications in the final rule. Therefore, PBGC estimates the final rule would have a minimal impact on the hour and cost burden of reporting as described below.

#### *Reportable Events Regulation*

The collection of information in part 4043 is approved under control number 1212–0013 (expires February 28, 2022). The current information collection requirements in part 4043 have an estimated annual hour burden of approximately 1,855 hours and a cost burden of \$439,500. PBGC’s instructions for Form 10 and Form 10-Advance are being updated to describe, as necessary or helpful, the clarifications made by the final rule and for other informational purposes. The clarifications incorporated in the instructions would replace or augment existing language but would not create additional filing burden. However, the final rule would reduce reporting of active participant reduction events by eliminating the two-year lookback requirement. PBGC estimates that the approximately 180 filings it receives for active participant reduction events per year would be reduced by approximately 38 percent. Therefore, PBGC estimates that the total average annual hour burden under the final rule would be approximately 1,641 hours and the cost burden \$388,890.

#### *Annual Financial and Actuarial Information Reporting Regulation*

The collection of information in part 4010 is approved under control number 1212–0049 (expires May 31, 2022). The current information collection requirements have an estimated annual hour burden of 532 hours and a cost burden of \$12,871,040.

PBGC’s 4010 reporting e-filing instructions are being updated, as necessary or helpful, to describe the clarifications made by the final rule. The clarifications incorporated in the instructions replace existing language, and therefore would not create additional filing burden in these

instances. With respect to the requirement in § 4010.7 to submit an organizational chart or other diagram in place of information describing legal relationships of controlled group members, PBGC expects this change will reduce burden for most filers, but may increase burden for filers that do not have an organizational chart readily available. Overall, PBGC estimates that this requirement will not change the aggregate hour and cost burden.

However, PBGC estimates that the final rule would reduce filer burden by eliminating the requirement of § 4010.9(b)(2) to provide the revenues, operating income, and net assets for each controlled group member if a filer is submitting consolidated financial information. (Former Question 2 on Schedule F, Section II, of the e-4010 module of PBGC’s e-filing portal.) PBGC estimates that approximately 62 percent of a projected 560 filers per year (347.2 filers) are required to file Question 2 financial information. Based on estimates of the average hour and cost burden of this requirement, PBGC estimates that by eliminating it, the final rule would reduce total average annual filer burden by approximately 17 hours and \$7,742. Therefore, PBGC estimates the aggregate annual hour burden under the final rule would be approximately 515 hours and the cost burden \$12,863,298.

#### *Termination of Single-Employer Plans Regulation*

The collection of information in part 4041 is approved under control number 1212–0036 (expires March 31, 2021). The current information collection requirements in part 4041 (which includes standard and distress terminations) have an estimated annual hour burden of 29,890 hours and a cost burden of \$5,963,400.

The final rule would revise § 4041.29 to provide plan administrators of plans terminating in a standard termination the option of more time to complete a PBGC Form 501. PBGC estimates up to 5 minutes of time—for those plan administrators who would choose this option—to review the instructions and send an email to PBGC’s standard termination filings email address to certify that distributions have been made timely. There is no change in the information requirements contained in the PBGC Form 501.

PBGC estimates that approximately 25 percent of standard termination filers per year would choose this option. With a projected average increase in standard terminations over the current inventory, the total additional average hourly burden for this information collection

would be approximately 31 hours (25 percent of 1,503 plans = 375 plans × 5 minutes per plan (0.083 hours) = 31 hours). While PBGC projects this minimal additional time to review and send an email under the new option, overall compliance for plan administrators would be eased by extending the time to file.

#### Premium Rates Regulation

The collection of information with respect to premiums is approved under control number 1212-0009 (expires February 28, 2022). PBGC's Comprehensive Premium Filing Instructions are being updated to reflect the changes made by the final rule to the premium provisions. The updates incorporated in the instructions replace existing language and therefore would not create additional filing burden.

#### List of Subjects

##### 29 CFR Part 4001

Business and industry, Organization and functions (Government agencies), Pension insurance, Pensions, Small businesses.

##### 29 CFR Part 4006

Employee benefit plans, Pension insurance.

##### 29 CFR Part 4010

Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### 29 CFR Part 4041

Employee benefit plans, Pension insurance, Pensions.

##### 29 CFR Part 4043

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

##### 29 CFR Part 4233

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

For the reasons stated in the preamble, PBGC amends 29 CFR parts 4001, 4006, 4010, 4041, 4043, and 4233 as follows:

#### PART 4001—TERMINOLOGY

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

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

■ 2. Amend § 4001.2 by adding in alphabetical order definitions for “U.S. entity” and “Ultimate parent” to read as follows:

##### § 4001.2 Definitions

\* \* \* \* \*

*U.S. entity* means an entity subject to the personal jurisdiction of the U.S. district courts. *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 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. Amend § 4006.4 by revising paragraph (f) to read as follows:

##### § 4006.4 Determination of unfunded vested benefits.

\* \* \* \* \*

(f) *Plans to which special funding rules apply.* The following statutory provisions are disregarded for purposes of determining unfunded vested benefits (whether the standard premium funding target or the alternative premium funding target is used):

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109-280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

■ 5. In § 4006.5:

■ a. Revise paragraphs (a) introductory text and (a)(3);

■ b. Redesignate paragraph (a)(4) as paragraph (a)(5);

■ c. Add a new paragraph (a)(4); and

■ d. Revise paragraphs (e) and (f)(3).

The revisions and addition read as follows:

##### § 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1) through (5) of this section is not required to determine or report its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

\* \* \* \* \*

(3) *Certain plans completing a standard termination.* A plan is described in this paragraph if it—

(i) Makes a final distribution of assets in a standard termination during the premium payment year, and

(ii) Did not engage in a spinoff during the premium payment year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Certain plans in the process of completing a standard termination initiated in a prior year.* A plan is described in this paragraph if—

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA;

(ii) The proposed termination date set forth in the notice of intent to terminate is before the beginning of the premium payment year; and

(iii) The plan ultimately makes a final distribution of plan assets in conjunction with the plan termination.

\* \* \* \* \*

(e) *Participant count date; certain transactions.* (1) The participant count date of a plan described in paragraph (e)(2) or (3) of this section is the first day of the premium payment year.

(2) With respect to a transaction where some, but not all, of the assets and liabilities of one plan (the “transferor plan”) are transferred into another plan (the “transferee plan”)—

(i) The transferor plan if the spinoff is not de minimis and is effective at the beginning of the transferor plan's premium payment year; and

(ii) The transferee plan if the transferor plan meets the criteria in paragraph (e)(2)(i) of this section and the transfer occurs at the beginning of the transferee plan's premium payment year.

(3) With respect to a merger effective at the beginning of the premium payment year, the transferee plan if—

(i) The merger is not de minimis; or

(ii) The assets of the transferee plan immediately before the merger are less than the total assets transferred to the transferee plan in the merger.

(4) For purposes of this paragraph (e), “de minimis” has the meaning described in regulations under section 414(l) of the Code (for single-employer plans) or in part 4231 of this chapter (for multiemployer plans).

(f) \* \* \*

(3) *Distribution of assets.* The plan's assets (other than any residual assets under section 4044(d) of ERISA) are distributed pursuant to the plan's termination, but only if the plan did not engage in a spinoff during the plan year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

\* \* \* \* \*

#### PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

■ 6. The authority citation for part 4010 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1310.

■ 7. In § 4010.2:

- a. Amend the introductory text by removing “and” before “unreduced” and adding at the end of the sentence “, ultimate parent, and U.S. entity”; and
- b. Add in alphabetical order a definition for “Foreign entity”.

The addition reads as follows:

**§ 4010.2 Definitions.**

\* \* \* \* \*

*Foreign entity* means a member of a controlled group that —

- (1) Is not a contributing sponsor of a plan;
- (2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the information year, meets one of the following tests—

- (i) Is not required to file any United States Federal income tax form;
- (ii) Has no income reportable on any United States Federal income tax form other than passive income not exceeding \$1,000; or
- (iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan’s controlled group) and is not required to file any quarterly United States income tax returns for employee withholding.

\* \* \* \* \*

- 8. Amend § 4010.4 by revising paragraph (e) to read as follows:

**§ 4010.4 Filers.**

\* \* \* \* \*

(e) *Certain plans to which special funding rules apply.* Except for purposes of determining the information to be submitted under § 4010.8(h) (in connection with the actuarial valuation report), the following statutory

provisions are disregarded for purposes of this part:

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

- 9. Amend § 4010.7 by revising paragraph (a) to read as follows:

**§ 4010.7 Identifying information.**

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on PBGC’s website, <http://www.pbgc.gov>, the following identifying information with respect to each member of the filer’s controlled group (excluding exempt entities)—

(1) *Current members; individual member information.* For each entity that is a member of the controlled group as of the end of the filer’s information year—

(i) The name, address, and telephone number of the entity;

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation); and

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group.

(2) *Current members; legal relationships of members.* If, as of the end of the filer’s information year, the filer’s controlled group consists of—

(i) Ten or fewer members (excluding exempt entities), the legal relationship of each entity to the plan sponsor (for example, parent, subsidiary).

(ii) More than ten members (excluding exempt entities), an organizational chart or other diagram showing the members of the filer’s controlled group as of the end of the filer’s information year and the legal relationships of the members to each other. Exempt entities may, but need not, be included in this organizational chart or diagram.

(3) *Former members.* For any entity that ceased to be a member of the controlled group during the filer’s information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the day before the entity left the controlled group.

\* \* \* \* \*

- 10. Amend § 4010.8 by revising paragraphs (d)(2) and (3) to read as follows:

**§ 4010.8 Plan actuarial information.**

\* \* \* \* \*

(d) \* \* \*

(2) *Actuarial assumptions and methods.* The value of benefit liabilities must be determined using the rules in paragraphs (d)(2)(i) through (iii) of this section.

(i) *Benefits to be valued.* Benefits to be valued include all benefits earned or accrued under the plan as of the end of the plan year ending within the information year and other benefits payable from the plan including, but not limited to, ancillary benefits and retirement supplements, regardless of whether such benefits are protected by the anti-cutback provisions of section 411(d)(6) of the Code.

(ii) *Actuarial assumptions.* The value of benefit liabilities must be determined using the actuarial assumptions described in the following table:

TABLE 1 TO PARAGRAPH (d)(2)(ii)

Assumptions:	As prescribed in accordance with	
Interest .....	§ 4044.52(a).	
Form of payment .....	§ 4044.51.	
Expenses .....	§ 4044.52(d).	
Decrements		
• Mortality .....	§ 4044.53.	
• Retirement .....	§§ 4044.55–4044.57.	
• Other decrements (e.g., turnover, disability).	Either Option 1 or Option 2—	
	<p><i>Option 1</i> .....</p> <p>Disregard (i.e., assume 0% probability of decrements other than mortality or retirement occurring).</p>	<p><i>Option 2</i></p> <p>Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer’s information year.</p> <p>If there is no distinction between termination and retirement assumptions, reflect only rates for ages before the Earliest PBGC Retirement Date (as defined in § 4022.10 of this chapter).</p>

TABLE 1 TO PARAGRAPH (d)(2)(ii)—Continued

Cash balance plan account conversions .....	Section 204(b)(5)(B)(vi) of ERISA and section 411(b)(5)(B)(vi) of the Code (which deal with the interest crediting rate and annuity conversion rates), as if the plan terminated on the last day of the plan year ending within the filer's information year. Expected improvements in mortality experience that apply under the plan for periods after the information year may be disregarded for valuing benefit liabilities for 4010 reporting purposes.
Other (e.g., cost-of-living increases, marital status).	Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer's information year.

(iii) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine benefit liabilities) must be included in determining the earliest and unreduced retirement ages used to determine the expected retirement age and in determining an active participant's entitlement to early retirement subsidies and supplements at the expected retirement age. See the examples in paragraph (e) of this section.

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan for an information year, the value of benefit liabilities may be determined using the same retirement assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within that information year without regard to the at-risk assumptions of section 303(i) of ERISA and section 430(i) of the Code.

\* \* \* \* \*

■ 11. Amend § 4010.9 by removing “Web site” and adding in its place “website” in paragraph (a) introductory text and revising paragraphs (b), (d), and (e).

The revisions read as follows:

**§ 4010.9 Financial information.**

\* \* \* \* \*

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) The audited consolidated financial statements for the controlled group for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) If the ultimate parent of the controlled group is a foreign entity, financial information on the U.S. entities (other than an exempt entity) that are members of the controlled group. The information required by this paragraph (b)(2) may be provided in the form of consolidated financial statements if the financial information of each controlled group member that is a U.S. entity is combined with the information of other group members that are U.S. entities. Otherwise, for each U.S. entity that is a controlled group member, provide the financial information required in paragraph (a) of this section.

\* \* \* \* \*

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to PBGC, may include a statement with the other information that is submitted to PBGC indicating when such financial information was made available to the public and where PBGC may obtain it (including the exact URL for the web page where the financial information is located). For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing and the exact URL for the web page where the filing can be retrieved as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.*

Consolidated financial statements provided pursuant to paragraph (b) of this section may include financial information of persons who are not controlled group members (e.g., joint ventures) or are exempt entities.

■ 12. In § 4010.11:

■ a. Revise paragraphs (a) introductory text and (a)(1);

■ b. Add “on the last day of the information year” after the words “controlled group” in the first sentence in paragraph (b)(1);

The revisions read as follows:

**§ 4010.11 Waivers.**

(a) *Aggregate funding shortfall not in excess of \$15 million waiver.* Unless reporting is required by § 4010.4(a)(2) or (3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year (disregarding plans with no 4010 funding shortfall) does not exceed \$15 million, as determined under paragraphs (a)(1) and (2) of this section.

(1) *4010 funding shortfall; in general.* A plan's 4010 funding shortfall for a plan year equals the funding shortfall for the plan year as provided under section 303(c)(4) of ERISA and section 430(c)(4) of the Code, with the following exceptions:

(i) The funding target used to calculate the 4010 funding shortfall is determined without regard to the interest rate stabilization provisions of section 303(h)(2)(C)(iv) of ERISA and section 430(h)(2)(C)(iv) of the Code and without regard to the at-risk plan provisions in section 303(i) of ERISA and section 430(i) of the Code.

(ii) The value of plan assets used to calculate the 4010 funding shortfall is determined without regard to the reduction under section 303(f)(4)(B) of ERISA and section 430(f)(4)(B) of the Code (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

\* \* \* \* \*

**PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS**

■ 13. The authority citation for part 4041 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

■ 14. Revise § 4041.29 to read as follows:

**§ 4041.29 Post-distribution certification.**

(a) *Filing requirement.* The plan administrator must either—



(1) Within 30 days after the last distribution date for any affected party, file with PBGC a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto; or

(2)(i) Within 30 days after the last distribution date for any affected party, certify to PBGC, in the manner prescribed in the instructions to PBGC Form 501, that the plan assets have been distributed as required, and

(ii) Within 60 days after the last distribution date for any affected party, file a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* PBGC will assess a penalty for a late filing under paragraph (a) of this section only if the required information is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

■ 15. Amend § 4041.30 by revising paragraph (d)(2) to read as follows:

**§ 4041.30 Requests for deadline extensions.**

\* \* \* \* \*

(d) \* \* \*

(2) *Post-distribution deadlines.* Extend a filing deadline under § 4041.29(a).

**PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS**

■ 16. The authority citation for part 4043 continues to read as follows:

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

**§ 4043.2 [Amended]**

■ 17. Amend § 4043.2 by removing “and” and adding in its place “, ultimate parent, and U.S. entity” in the introductory text, and removing the definition “U.S. entity”.

**§ 4043.3 [Amended]**

■ 18. Amend § 4043.3 in paragraph (c) by removing “Web site” and adding in its place “website”.

**§ 4043.9 [Amended]**

■ 19. Amend § 4043.9 in paragraph (e)(2)(i) by adding “third-party” after “available”.

■ 20. Revise § 4043.23 to read as follows:

**§ 4043.23 Active participant reduction.**

(a) *Reportable event.* A reportable event occurs for a plan:

(1) *Single-cause event.* (i) On each date in a plan year when, as a result of a new single cause, the ratio of the

aggregate number of individuals who ceased to be active participants because of that single-cause, to the number of active participants at the beginning of such plan year, exceeds 20 percent.

(ii) Examples of single-cause events include a reorganization or restructuring, the discontinuance of an operation or business, a natural disaster, a mass layoff, or an early retirement incentive program.

(2) *Attrition event.* At the end of a plan year if the sum of the number of active participants covered by the plan at the end of such plan year, plus the number of individuals who ceased to be active participants during the same plan year that are reported to PBGC under paragraph (a)(1) of this section, is less than 80 percent of the number of active participants at the beginning of such plan year.

(b) *Determination rules—(1) Determination dates.* The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year, and the number of active participants at the end of a plan year may be determined by using the number of active participants at the beginning of the next plan year.

(2) *Active participant.* “Active participant” for purposes of this section means a participant who—

(i) Is receiving compensation from any member of the plan’s controlled group for work performed for any member of the plan’s controlled group;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

(3) *Employment relationship.* For purposes of determining whether a participant is an active participant, a participant does not cease to be active if the participant leaves employment with one member of a plan’s controlled group to become employed by another controlled group member.

(c) *Reductions due to cessations and withdrawals.* For purposes of paragraph (a) of this section, a reduction in the number of active participants is to be disregarded to the extent that it—

(1) Is attributable to an event described in sections 4062(e) or 4063(a) of ERISA, and

(2) Is timely reported to PBGC under section 4062(e) and/or section 4063(a) of ERISA before the due date of the notice required by paragraph (a) of this section.

(d) *Waivers—(1) Small plan.* Notice under this section is waived if the plan

had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Low-default-risk.* Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(3) *Well-funded plan.* Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(5) *Statutory events.* Notice is waived for an active participant reduction event described in section 4043(c)(3) of ERISA except to the extent required under this section.

(e) *Extension—attrition event.* For an event described in paragraph (a)(2) of this section, the notice date is extended until the premium due date for the plan year following the event year.

(f) *Examples—(1) Determining whether a single-cause event occurred (Example 1).* A calendar-year plan had 1,000 active participants at the beginning of the current plan year. As the result of a business unit being shut down, 160 participants are permanently laid off on July 30. Before July 30, and as part of the course of regular business operations, some active participants terminated employment, some retired and some new hires became covered by the plan. Because reductions due to attrition are disregarded for purposes of determining whether a single-cause event has occurred, it is not necessary for the sponsor to tabulate an exact active participant count as of July 30. Rather, the relevant percentage for determining whether a single-cause event occurred is determined by dividing the number of active participants laid-off as a result of the business unit shut down to the beginning of year active participant count. Because that ratio is less than 20 percent (*i.e.*,  $160/1,000 = .16$ , or 16 percent), a single-cause event under paragraph (a)(1) of this section did not occur on July 30. However, if, as a result of the business unit shutdown, additional layoffs occur later in the same year, a single-cause event may

subsequently be triggered (See Example 3 in paragraph (f)(3) of this section).

(2) *Determining whether an attrition event occurred in year when a single-cause event occurred (Example 2).*—(i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the number of active participants laid off on July 30 was 230 and thus, a single-cause event occurred. Further, assume that the event was timely reported to PBGC (*i.e.*, on or before August 30). Lastly, assume the active participant count as of year-end is 600.

(ii) To prevent duplicative reporting (*i.e.*, to ensure that the participants who triggered a single-cause reporting requirement do not also trigger an attrition event), the 230 participants who triggered that single-cause reporting requirement are not taken into account for purposes of determining whether an attrition event occurred. This is accomplished by increasing the year-end count by 230. Therefore, the applicable percentage for the attrition determination is 83 percent (*i.e.*,  $(600 +$

$230)/1,000 = .83$ ). Because 83 percent is greater than 80 percent, an attrition event has not occurred.

(3) *Single-cause event spread out over multiple dates (Example 3).* (i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the layoffs resulting from the business unit shut down are spread out over several months. Table 1 to paragraph (f)(3) summarizes the applicable calculations:

TABLE 1 TO PARAGRAPH (f)(3)

Single-cause event spread out over multiple dates

Date	Number laid-off	Aggregate reduction	Applicable percentage
February 1 .....	50	50	$50/1,000 = 5$ percent.
May 15 .....	50	100	$100/1,000 = 10$ percent.
September 1 .....	110	210	$210/1,000 = 21$ percent.
November 1 .....	40	250	$250/1,000 = 25$ percent.

(ii) A single-cause event occurs on September 1 because that is the first time the applicable percentage exceeds 20 percent. This event must be reported by October 1. The November 1 layoff does not trigger a subsequent single-cause event because the layoff is part of the same single-cause event already timely reported to PBGC. However, they will be considered in the determination of whether an attrition event occurs at year-end as explained in paragraph (f)(3)(iii) of this section.

(iii) As illustrated in Example 2 in paragraph (f)(2) of this section, for purposes of determining whether an attrition event has occurred, the year-end count is increased by the number of participants that triggered a single-cause event. In this case, that number is 210. The fact that an additional 40 active participants were laid off as a result of the business unit shut down after the single-cause event occurred does not affect the calculation because it was not already reported to PBGC. For example, if the year-end active participant count is 560, the number that gets compared to the beginning-of-year active participant count is 770 (*i.e.*,  $560 + 210 = 770$ ). Because 770 is less than 80 percent of 1,000, an attrition event has occurred and must be reported.

(4) *Multiple single-cause events in same plan year (Example 4).* Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the July 30 shutdown of the business unit resulted in 205 layoffs on that date. A single-cause event occurred and is timely reported. Later in the same plan year, the company announces an

early retirement incentive program and 210 employees participate in the program with the last employees participating in the program retiring on November 15 of the plan year. A new single-cause event has occurred as of November 15 resulting in a reporting obligation of the active participant reduction due to the retirement incentive program ( $210/1000 = 21$  percent).

■ 21. Amend § 4043.26 by revising paragraph (a)(1) to read as follows:

**§ 4043.26 Inability to pay benefits when due.**

(a) \* \* \*

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan is not treated as being currently unable to pay benefits if its failure to pay is caused solely by—

(i) A limitation under section 436 of the Code and section 206(g) of ERISA (dealing with funding-based limits on benefits and benefit accruals under single-employer plans),

(ii) The need to verify a person's eligibility for benefits,

(iii) The inability to locate a person, or

(iv) Any other administrative delay, to the extent that the delay is for less than the shorter of two months or two full benefit payment periods.

\* \* \* \* \*

■ 22. Amend § 4043.27 by revising paragraph (d)(3) to read as follows:

**§ 4043.27 Distribution to a substantial owner.**

\* \* \* \* \*

(d) \* \* \*

(3) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

■ 23. Amend § 4043.29 by revising the section heading and paragraphs (a), (b)(6), and (c) to read as follows:

**§ 4043.29 Change in controlled group.**

(a) *Reportable event.* (1) A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons' (including any person who is or was a contributing sponsor) ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group).

(2) For purposes of this section, the term "transaction" includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement. A transaction is not

reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) \* \* \*

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(c) *Examples.* The following examples assume that no waiver applies.

(1) *Controlled group breakup.*

Company A (the contributing sponsor of Plan A), and Company B (the contributing sponsor of Plan B) are in the same controlled group with Parent Company AB. On March 31, Parent Company AB and Company C enter into an agreement to sell the stock of Company B to Company C, a company outside of the controlled group. The transaction will close on August 31 and Company B will continue to maintain Plan B. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Company B will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A and Parent Company AB are no longer part of Plan B's controlled group. Both reports are due on April 30, 30 days after they entered into the agreement to sell Company B.

(2) *Change in contributing sponsor.*

Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.*, the date the binding contract was executed), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If on the notice due date the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become

effective by the notice due date, Company R has the reporting obligation.

(3) *Dissolution of controlled group member.* Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Pursuant to an asset sale agreement, Company B sells its assets to a company outside of the controlled group. After the sale, Company B will be dissolved and no longer operating. Since Company B will no longer be a member of Plan A's controlled group, a reportable event occurs on the date Company B enters into the asset sale agreement. Note that this event may also be required to be reported as a liquidation event under 29 CFR 4043.30.

(4) *Merger of controlled group members.* Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Parent Company AB decides to merge the operations of Company B into Company A. Although Company B will no longer be a member of Plan A's controlled group, no report is due given Company B is merging with Company A.

■ 24. Revise § 4043.30 to read as follows:

**§ 4043.30 Liquidation.**

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member's board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations, sale, or a liquidation, unless the event would be reported under paragraph (a)(2) or (3) of this section;

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Waivers*—(1) *De minimis 10-percent segment.* Notice under this section is waived if the person or persons that liquidate under paragraph (a) of this section do not include any contributing sponsor of the plan and represent a de minimis 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that

liquidates under paragraph (a) of this section is a foreign entity other than a foreign parent.

(3) *Reporting under insolvency event.* Notice under this section is waived if reporting is also required under § 4043.35(a)(3) or (4) and notice has been provided timely to PBGC for the same event under that section.

(c) *Public company extension.* If any contributing sponsor of the plan, or the parent company within a parent-subsidiary controlled group of such contributing sponsor, is a public company, the due date for notice under this section is extended until the earlier of—

(1) The date the contributing sponsor or parent company timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits); or

(2) The date when a press release with respect to the liquidation described under paragraph (a) of this section is issued in the U.S. in the English language.

(d) *Examples*—(1) *Liquidation within a controlled group.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B, Company Q (the parent of Company A and Company B). Company B represents the most significant portion of cash flow for the controlled group. Company B experiences an unforeseen event that negatively impacts operations and results in an increase in debt. The controlled group liquidates Company B by ceasing all operations, settling its debts, and merging any remaining assets into Company Q. (For purposes of this example, it does not matter under which of paragraphs (a)(1) through (3) of this section reporting is triggered). The transaction is to be treated as a tax-free liquidation for tax purposes. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Company B will liquidate within the controlled group.

(2) *Cessation of operations.* Plan A is sponsored by Company A. The owners of Company A decide to cease all revenue-generating operations. Certain administrative employees will wind down the business and continue to be employed until the wind down is complete, which could take several months. Company A is required to report a liquidation reportable event 30 days after the decision is made to cease all revenue-generating operations.

(3) *Sale of assets.* Plan A is sponsored by Company A. In a meeting of the

Board of Directors of Company A, the Board resolves to sell all the assets of Company A to Company B. Under the asset sale agreement with Company B, Company B will not assume Plan A; Company A expects to undertake a standard termination of Plan A. Company A is required to report a liquidation event 30 days after the Board resolved to sell the assets of Company A.

- 25. Amend § 4043.31 by revising paragraph (c)(6) to read as follows:

**§ 4043.31 Extraordinary dividend or stock redemption.**

\* \* \* \* \*

(c) \* \* \*

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

- 26. Amend § 4043.32 by revising paragraph (c)(4) to read as follows:

**§ 4043.32 Transfer of benefit liabilities.**

\* \* \* \* \*

(c) \* \* \*

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

- 27. Amend § 4043.35 by adding paragraph (b)(3) to read as follows:

**§ 4043.35 Insolvency or similar settlement.**

\* \* \* \* \*

(b) \* \* \*

(3) *Liquidation event.* Notice under paragraph (a)(3) or (4) of this section is waived if reporting is also required under § 4043.30 and notice has been provided timely to PBGC for the same event under that section.

**§ 4043.81 [Amended]**

- 28. Amend § 4043.81 by removing paragraph (c).

**PART 4233—PARTITIONS OF ELIGIBLE MULTIEmployer PLANS**

- 29. The authority citation for part 4233 continues to read as follows:

*Authority:* 29 U.S.C. 1302(b)(3), 1413.

**Appendix A to Part 4233—[Amended]**

- 30. Amend the two model notices in appendix A by removing the phone number “(202) 326-4000 x6535” under PBGC Contact Information after “Phone:” and adding in its place “(202) 229-6047”, and by removing the phone number “(202) 326-4488” under PBGC Participant and Plan Sponsor Advocate Contact Information after “Phone:” and adding in its place “(202) 229-4448”.

Issued in Washington, DC.

**Gordon Hartogensis,**  
*Director, Pension Benefit Guaranty Corporation.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[EPA-HQ-OAR-2010-0682; FRL 10004-55-OAR]**

**RIN 2016-AT18**

**National Emission Standards for Hazardous Air Pollutants: Petroleum Refinery Sector**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action sets forth the U.S. Environmental Protection Agency’s (EPA’s) decision on aspects of the Agency’s proposed reconsideration of the December 1, 2015, final rule: Petroleum Refinery Sector Residual Risk and Technology Review (RTR) and New Source Performance Standards (NSPS). This action also finalizes proposed amendments to clarify a compliance issue raised by stakeholders subject to the rule, to correct referencing errors, and to correct publication errors associated with amendments to the final rule which were published on November 26, 2018.

**DATES:** This final action is effective on February 4, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2010-0682. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed in the index, some information is not publicly

available, (e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet, and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, please contact Ms. Brenda Shine, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3608; fax number: (919) 541-0516; email address: [shine.brenda@epa.gov](mailto:shine.brenda@epa.gov). For information about the applicability of the national emission standards for hazardous air pollutants (NESHAP) to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-7027; fax number: (202) 564-0050; and email address: [malave.maria@epa.gov](mailto:malave.maria@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Acronyms and abbreviations.* A number of acronyms and abbreviations are used in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

AEGL acute exposure guideline level  
CAA Clean Air Act  
CFR Code of Federal Regulations  
DCU delayed coking unit  
EPA Environmental Protection Agency  
ERPG emergency response planning guideline  
FCCU fluid catalytic cracking unit  
HAP hazardous air pollutants  
ICR information collection request  
lb/day pounds per day  
LEL lower explosive limit  
MACT maximum achievable control technology  
MIR maximum individual risk  
MPV miscellaneous process vent  
NESHAP national emissions standards for hazardous air pollutants  
NSPS new source performance standards