

Pension Benefit Guaranty Corporation

§ 4043.2

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

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Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 303(k)(4) of ERISA or section 430(k)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in §4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multi-employer plan, PBGC, person, plan, plan administrator, plan year, single-employer plan, ultimate parent, and U.S. entity.

In addition, for purposes of this part: *De minimis 10-percent segment* means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

- (1) Revenue not exceeding 10 percent of the controlled group's revenue;
- (2) Annual operating income not exceeding the greater of—
 - (i) 10 percent of the controlled group's annual operating income; or
 - (ii) \$5 million; and
- (3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—
 - (i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or
 - (ii) \$5 million.

De minimis 5-percent segment has the same meaning as *de minimis 10-percent segment*, except that "5 percent" is substituted for "10 percent" each time it appears.

Event year means the plan year in which a reportable event occurs.

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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 date the reportable event occurs, 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 tax returns for employee withholding.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor of a plan.

Low-default-risk has the meaning described in § 4043.9.

Notice due date means the deadline (including extensions) for filing notice of a reportable event with PBGC.

Participant means a participant as defined in § 4006.2 of this chapter.

Public company means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Substantial owner means a substantial owner as defined in section 4021(d) of ERISA.

Well-funded plan safe harbor has the meaning described in § 4043.10.

[80 FR 55002, Sept. 11, 2015, as amended at 83 FR 49806, Oct. 3, 2018; 85 FR 6061, Feb. 4, 2020]

§ 4043.3 Requirement of notice.

(a) *Obligation to file*—(1) *In general.* Each person that is required to file a notice under this part, or a duly authorized representative, must submit the information required under this part by the time specified in § 4043.20 (for post-event notices), § 4043.61 (for advance notices), or § 4043.81 (for Form 200 filings). Any information filed with

PBGC in connection with another matter may be incorporated by reference. If an event is subject to both post-event and advance notice requirements, the notice filed first satisfies both filing requirements.

(2) *Multiple plans.* If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(3) *Optional consolidated filing.* A filing of a notice with respect to a reportable event by any person required to file will be deemed to be a filing by all persons required to give PBGC notice of the event under this part. If notices are required for two or more events, the notices may be combined in one filing.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice under subpart B or C of this part must file, by the notice date, the form specified by PBGC for that purpose, with the information specified in PBGC's reportable events instructions.

(c) *Reportable event forms and instructions.* PBGC will issue reportable events forms and instructions and make them available on its website (<http://www.pbgc.gov>).

(d) *Requests for additional information.* PBGC may, in any case, require the submission of additional relevant information not specified in its forms and instructions. Any such information must be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by PBGC, or within a different time period specified therein. PBGC may in its discretion shorten the time period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, PBGC may pursue any equitable or legal remedies available to it under the law, including assessing against each person required

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to provide the notice a separate penalty under section 4071 of ERISA.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6061, Feb. 4, 2020]

§ 4043.4 Waivers and extensions.

(a) *Waivers and extensions—in general.* PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed with PBGC in writing (which may be in electronic form) and must state the facts and circumstances on which the request is based.

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

(c) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(d) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

(1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination under part 4041 of this chapter; or

(2) A trustee is appointed for the plan under section 4042 of ERISA.

(e) *Events not described in this part.* Notice of a reportable event described in section 4043(c) of ERISA is waived except to the extent that reporting is required under this part.

§ 4043.5 How and where to file.

Reportable event notices required under this part must be filed electronically in accordance with the instructions posted on PBGC's Web site, [http://](http://www.pbgc.gov)

www.pbgc.gov. Filing guidance is provided by the instructions and by subpart A of part 4000 of this chapter.

§ 4043.6 Date of filing.

(a) *Post-event notice filings.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by PBGC. Subpart C of part 4000 of this chapter provides rules for determining when PBGC receives a submission.

§ 4043.7 Computation of time.

PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4043.8 Confidentiality.

In accordance with section 4043(f) of ERISA and § 4901.21(a) of this chapter, any information or documentary material that is not publicly available and is submitted to PBGC pursuant to subpart B or C of this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress. This provision does not apply to information or material submitted to PBGC pursuant to subpart D of this part, even where the submission serves as an alternative method of compliance with § 4043.25.

[80 FR 55002, Sept. 11, 2015, as amended at 88 FR 76664, Nov. 7, 2023]

§ 4043.9 Company low-default-risk safe harbor.

(a) *Low-default-risk.* An entity (a "company") that is a contributing sponsor of a plan or the highest level U.S. parent of a contributing sponsor is "low-default-risk" on the date of an event if that date falls within a safe harbor period of the company as described in paragraph (b) of this section.

(b) *Safe harbor period.* A safe harbor period for a company means a period that—

(1) Begins on a financial information date (as described in paragraph (c) of

this section) on which the company satisfies the low-default-risk standard in paragraph (e) of this section, and

(2) Ends 13 months later or (if earlier) on the company's next financial information date.

(c) *Financial information date.* A financial information date for a company means—

(1) A date on which the company files on Form 10-K with the Securities and Exchange Commission (“SEC”) audited annual financial statements (including balance sheets, income statements, cash flow statements, and notes to the financial statements) for the company's most recent completed fiscal year preceding the date of such filing;

(2) The date (the “closing date”) on which the company closes the annual accounting period that results in the production of audited or unaudited annual financial statements for the company's most recent completed fiscal year preceding the closing date, if audited annual financial statements are not required to be filed with the SEC; or

(3) A date on which the company files with IRS an annual federal income tax return or IRS Form 990 (in either case, a “return”) for the company's most recent completed fiscal year preceding the date of such filing, if at the time the return is filed there are no annual financial statements for the year of the return.

(d) *Supporting financial information.* For purposes of this section, the “supporting financial information” is the annual financial statements or return associated with the establishment of the financial information date.

(e) *Low-default-risk standard—(1) Adequate capacity.* For purposes of this part, except as provided in paragraph (e)(4) of this section, a company meets the low-default-risk standard as of a financial information date (the “qualifying date”) if the company has adequate capacity to meet its obligations in full and on time on the qualifying date as evidenced by satisfying either:

(i) Both of the criteria described in paragraphs (e)(2)(i) and (ii) of this section, or

(ii) Any four of the seven criteria described in paragraphs (e)(2)(i) through (vii) of this section.

(2) *Criteria evidencing adequate capacity.* The criteria referred to in paragraph (e)(1) of this section are:

(i) The probability that the company will default on its financial obligations is not more than four percent over the next five years or not more than 0.4 percent over the next year, in either case determined on the basis of widely available third-party financial information on the company's credit quality.

(ii) The company's secured debt (disregarding leases and debt incurred to acquire or improve property and secured only by that property) does not exceed 10 percent of the company's total assets.

(iii) The company has a ratio of retained-earnings-to-total-assets of 0.25 or more.

(iv) The company has a ratio of total-debt-to-EBITDA (earnings before interest, taxes, depreciation, and amortization) of 3.0 or less.

(v) The company has positive net income for the two most recently completed fiscal years preceding the qualifying date.

(vi) During the two-year period ending on the qualifying date, the company has not experienced an event described in § 4043.34(a)(1) or (2) (dealing with a default on a loan with an outstanding balance of \$10 million or more) with respect to any loan with an outstanding balance of \$10 million or more to the company regardless of whether reporting was waived under § 4043.34(b).

(vii) During the two-year period ending on the qualifying date, there has not been any failure to make when due any contribution described in § 4043.25(a)(1) or (2) (dealing with failure to make required minimum funding payments), unless reporting was waived under § 4043.25(c).

(3) *Using financial information to evaluate criteria.* (i) Subject to paragraph (e)(3)(ii) of this section with respect to evaluating the criterion described in paragraph (e)(2)(v) of this section, to evaluate whether criteria described in paragraphs (e)(2)(i) through (v) of this section are met, a

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company must use the supporting financial information described in paragraph (d) of this section associated with the qualifying date.

(ii) In addition to the use of the supporting financial information to evaluate criteria as described in paragraph (e)(3)(i) of this section, to evaluate whether the criterion described in paragraph (e)(2)(v) of this section is met, the company must also use the supporting financial information as described in paragraph (d) of this section associated with the financial information date for the fiscal year preceding the fiscal year covered by the supporting financial information associated with the qualifying date.

(iii) For purposes of paragraph (e)(2)(v) of this section, the excess of total revenue over total expenses as reported on the IRS Form 990 is considered to be net income.

(4) *Exception.* If a company receives an audit or review report for supporting financial information described in paragraph (d) of this section associated with the qualifying date that expresses a material adverse view or qualification, the company does not satisfy the low-default-risk standard.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6061, Feb. 4, 2020]

§ 4043.10 Well-funded plan safe harbor.

For purposes of this part, a plan is in the well-funded plan safe harbor for an event year if no variable-rate premium was required to be paid for the plan under parts 4006 and 4007 of this chapter for the plan year preceding the event year.

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-event filing obligation.

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred are required to notify PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies. If there is a change in plan administrator or contributing sponsor, the responsibility for any failure to file or defective filing

lies with the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.

§ 4043.21 Tax disqualification and Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waiver.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waiver.* Notice is waived for this event.

§ 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 shut-down, additional layoffs occur later in the same year, a single-cause event

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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).

[85 FR 6061, Feb. 4, 2020]

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§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

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

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

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

(b) *Alternative method of compliance—Form 200 filed.* If, with respect to the same failure, a filing is made in accordance with § 4043.81, that filing (while not considered to be submitted to PBGC pursuant to section 4043 of ERISA for purposes of section 4043(f) of ERISA) satisfies the requirements of this section.

(c) *Waivers—(1) Small plan.* Notice under this section is waived with respect to a failure to make a required quarterly contribution under section 303(j)(3) of ERISA or section 430(j)(3) of the Code if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *30-day grace period.* Notice under this section is waived if the missed contribution is made by the 30th day after its due date.

(3) *Late funding balance election.* Notice under this section is waived if the failure to make a timely required contribution is solely because of the plan sponsor's failure to timely make a funding balance election.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(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.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's "liquid assets" are less than two times the amount of the "disbursements from the plan" for such quarter. "Liquid assets" and "disbursements from the plan" have the same meaning as under section 303(j)(4)(E) of ERISA and section 430(j)(4)(E) of the Code.

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

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 4043.27 Distribution to a substantial owner.

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

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds \$10,000;

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(3) The distribution is not made by reason of the substantial owner's death;

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5 of this chapter) that are not funded; and

(5) Either—

(i) The sum of the values of all distributions to any one substantial owner within the one-year period ending with the date of the distribution is more than one percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year, or

(ii) The sum of the values of all distributions to all substantial owners within the one-year period ending with the date of the distribution is more than five percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year.

(b) *Determination rules*—(1) *Valuation of distribution*. The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution*. The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date*. The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that

would be reportable under this section if made to a substantial owner.

(c) *Alternative method of compliance—annuity*. In the case of an annuity for a substantial owner, a filing that satisfies the requirements of this section with respect to any payment under the annuity and that discloses the period, the amount of the payment, and the duration of the annuity satisfies the requirements of this section with respect to all subsequent payments under the annuity.

(d) *Waivers*—(1) *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.

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

(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).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 4043.28 Plan merger, consolidation or transfer.

(a) *Reportable event*. A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(l) of the Code.

(b) *Waiver*. Notice under this section is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 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) *Waivers.* (1) *De minimis 10-percent segment.* Notice under this section is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *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.

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

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

(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 Fi-

ancial 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

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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.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 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

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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.

[85 FR 6063, Feb. 4, 2020]

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend or redeems its own stock and the amount or net value of the distribution, when combined with other such distributions during the same fiscal year of the person, exceeds the person's net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles, for the prior fiscal year. A distribution by a person to a member of its controlled group is disregarded.

(b) *Determination rules.* For purposes of paragraph (a) of this section, the net value of a non-cash distribution is the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market

values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution is deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(c) *Waivers—(1) De minimis 10-percent segment.* Notice under this section is waived if the person making the distribution is 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 the person making the distribution is a foreign entity other than a foreign parent.

(3) *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.

(4) *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.

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

(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).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

§ 4043.32 Transfer of benefit liabilities.

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

(1) The plan makes a transfer of benefit liabilities to a person, or to a plan

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or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

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

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

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

(c) *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).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

§ 4043.33 Application for minimum funding waiver.

A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 302(c) of ERISA or section 412(c) of the Code.

§ 4043.34 Loan default.

(a) *Reportable event*. A reportable event occurs for a plan when, with respect to a loan with an outstanding balance of \$10 million or more to a member of the plan's controlled group—

(1) There is an acceleration of payment or a default under the loan agreement, or

(2) The lender waives or agrees to an amendment of any covenant in the loan agreement the effect of which is to cure or avoid a breach that would trigger a default.

(b) *Waivers*—(1) *De minimis 10-percent segment*. Notice under this section is waived if the debtor is not a contributing sponsor of the plan and represents 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 the debtor is a foreign entity other than a foreign parent.

§ 4043.35 Insolvency or similar settlement.

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

(1) Commences or has commenced against it any insolvency proceeding (including, but not limited to, the appointment of a receiver) other than a bankruptcy case under the Bankruptcy Code;

(2) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(3) Executes a general assignment for the benefit of creditors; or

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(4) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Waivers*—(1) *De minimis 10-percent segment*. Notice under this section is waived if the person described in paragraph (a) of this section is not a contributing sponsor of the plan and represents 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 the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(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.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

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

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

(1) On the notice date, neither the contributing sponsor nor any member of the plan’s controlled group to which the event relates is a public company; and

(2) The aggregate unfunded vested benefits, determined in accordance

with paragraph (c) of this section, are more than \$50 million; and

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

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

(d) *Shortening of 30-day period*. Pursuant to § 4043.3(d), PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event*. Advance notice is required for a change in a plan’s contributing sponsor or controlled group, as described in § 4043.29(a).

(b) *Waivers*—(1) *Small and mid-size plans*. Notice under this section is waived with respect to a change of contributing sponsor if the transferred plan has fewer than 500 participants.

(2) *De minimis 5-percent segment*. Notice under this section is waived if the person or persons that will cease to be members of the plan’s controlled group represent a *de minimis* 5-percent segment of the plan’s old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event*. Advance notice is required for a liquidation of a member

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of a plan's controlled group, as described in § 4043.30.

(b) *Waiver—de minimis 5-percent segment and ongoing plans.* Notice under this section is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event.* Advance notice is required for a distribution by a member of a plan's controlled group, as described in § 4043.31(a).

(b) *Waiver—de minimis 5-percent segment.* Notice under this section is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a).

(b) *Waivers—(1) Complete plan transfer.* Notice under this section is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

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

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

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

(3) *Section 414(l) safe harbor.* Notice under this section is waived if the benefit liabilities of 500 or fewer participants are transferred and the transfer complies with section 414(l) of the Code using the actuarial assumptions prescribed for valuing benefits in trusteeed

plans under §§ 4044.51 through 4044.58 of this chapter.

(4) *Fully funded plans.* Notice under this section is waived if the transfer complies with section 414(l) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded as determined in accordance with §§ 4044.51 through 4044.58 of this chapter and § 4010.8(d)(1)(ii) of this chapter.

[80 FR 55002, Sept. 11, 2015, as amended at 89 FR 48300, June 6, 2024]

§ 4043.66 Application for minimum funding waiver.

(a) *Reportable event.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33.

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

§ 4043.67 Loan default.

Advance notice is required for an acceleration of payment, a default, a waiver, or an agreement to an amendment with respect to a loan agreement described in § 4043.34(a).

§ 4043.68 Insolvency or similar settlement.

(a) *Reportable event.* Advance notice is required for an insolvency or similar settlement, as described in § 4043.35.

(b) *Extension.* For a case or proceeding under § 4043.35(a)(1) or (2) that is not commenced by a member of the plan's controlled group, the notice date is extended to 10 days after the commencement of the case or proceeding.

Subpart D—Notice of Failure To Make Required Contributions

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

(a) *General rules.* To comply with the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and (if that contributing sponsor is a member of a parent-subsidiary controlled group) the ultimate parent must complete and submit in accordance with

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this section a properly certified Form 200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a contribution payment required under sections 302 and 303 of ERISA and sections 412 and 430 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made when due (including interest), exceeds \$1 million.

(1) Form 200 must be filed with PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, PBGC will consider the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 303(k) of ERISA and section 430(k) of the Code, PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with §4043.3(d).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

Subpart A—Allocation of Assets

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Subpart B—Valuation of Benefits and Assets

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NON-TRUSTEED PLANS

- 4044.71 Valuation of annuity benefits.
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APPENDIX A TO PART 4044 [RESERVED]

APPENDIX B TO PART 4044—INTEREST RATES USED TO VALUE BENEFITS

AUTHORITY: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

SOURCE: 61 FR 34059, July 1, 1996, unless otherwise noted.

NOTE: Certain provisions of part 4044 have been superseded by legislative changes. For example, there are references to provisions formerly codified in 29 CFR part 2617, subpart C (and to the Notice of Sufficiency provided for thereunder) that no longer exist because of changes in the PBGC's plan termination regulations in response to the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987. The PBGC intends to amend part 4044 at a later date to conform it to current statutory provisions.