

# Form 200 Instructions

## Notice Of Failure To Make Required Contributions

### PAPERWORK REDUCTION ACT NOTICE

PBGC needs this information, which is required to be filed under ERISA section 4043, 29 CFR Part 4043, Subparts A and D, ERISA section 303(k)(4), and Code section 430(k)(4), to make decisions regarding enforcement of a lien imposed by ERISA section 303(k)(1) and Code section 430(k)(1). Confidentiality is limited to that provided under the Freedom of Information Act and the Privacy Act.

The estimated time needed to complete this form is 2.9 hours and \$1,015 when a payment failure first results in a total of unpaid balances that exceeds \$1 million and 1.4 hours and \$637 when there is a subsequent payment failure and the total of unpaid balances continues to exceed \$1 million. These times are estimated averages that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

If you have any comments concerning the accuracy of these time estimates or suggestions for improving the form or these instructions, please send your comments to the Pension Benefit Guaranty Corporation, Legislative and Regulatory Department, 1200 K Street, NW, Washington, DC 20005-4026.

This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0041. Under the Paperwork Reduction Act, 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.

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## INTRODUCTION

ERISA section 303(k) and Code section 430(k) include the same lien provisions relating to a failure to make required contributions to a single-employer plan covered under ERISA section 4021 for a post-1987 plan year for which the plan's funding target attainment percentage (as defined in ERISA section 303(d)(2)/Code section 430(d)(2) is less than 100 percent. There is a lien, in favor of the plan, upon all property and rights to property (whether real or personal) belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member) if:

- (1) any person fails to make a required contribution payment when due, and
- (2) the unpaid balance of the payment (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.

Any lien imposed for failure to make required contributions may be perfected and enforced only by PBGC or, at its direction, by the plan's contributing sponsor or any member of the contributing sponsor's controlled group. ERISA section 303(k)(4)(A) and Code section 430(k)(4)(A) require that PBGC be notified whenever there is a failure to make a required payment and the total of unpaid balances (including interest) exceeds \$1 million. Notice must be provided within 10 days of the due date for the required payment.

*Note: The substance of ERISA section 303(k) and Code section 430(k) was formerly in ERISA section 302(f) and Code section 412(n).*

To comply with this notification requirement, PBGC regulations (29 CFR 4043.81) require that a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidary controlled group, the parent, file Form 200 whenever such a failure occurs.

*Note: PBGC's decision not to require (at this time) controlled group members other than contributing sponsors and parents to file Form 200 does not in any way limit the joint-and-several liability of each controlled group member for required payments (whether the controlled group of which a contributing sponsor is a member is a "parent-subsidary," "brother-sister," or "combined" group), the imposition of the lien on all assets of each controlled group member, or the ability of PBGC to take all appropriate steps to perfect and enforce the lien.*

PBGC has restricted Form 200 to information generally needed in its decision-making regarding enforcement of a lien imposed by ERISA section 303(k) and Code section 430(k). If PBGC concludes that it needs additional information in a particular case, it will notify (in writing) the person required to supplement the Form 200 and specify the date by which the additional information must be submitted.

## GENERAL INSTRUCTIONS

### Who Must File

Form 200 must be filed by (1) a contributing sponsor and (2) if a contributing sponsor is a member of a "parent-subsidary" controlled group, the parent of such group. However, if a timely and complete Form 200 is properly filed by either a contributing sponsor or the parent, PBGC will deem the other to have so filed. (As noted in the "Introduction," each other member of any controlled group of which a contributing sponsor is a member also is jointly and severally liable for required payments, and PBGC may enforce the statutory lien imposed on its assets.)

*Note: An authorized representative may file a Form 200 on behalf of a contributing sponsor, a parent or both.*

## **How to File**

Form 200 may be filed with PBGC by mail, commercial delivery service, hand delivery or electronic transmission (e.g., e-mail or fax).

## **When to File**

Form 200, including all required documentation and information, must be filed with PBGC no later than 10 days after the due date for the required payment.

*Note: Form 200 must be filed each time there is a failure described in ERISA section 303(k)(1) and Code section 430(k)(1) and the total of unpaid balances of required payments (including interest) exceeds \$1 million.*

## **Filing Date**

The filing date for the Form 200 is the date it is received by PBGC at the address listed under "Where to File."

**Special rule for electronic transmission:** An electronic transmission of a Form 200 will be deemed timely filed if (1) the transmission is received by PBGC on or before the filing deadline, (2) the transmission contains at least the information in items 1-8 of the Form 200 and (3) the remaining required information, including original signature certifications for Part IV of the Form 200, is received by PBGC at the address listed under "Where to File" on the first regular business day following the filing deadline.

**Computation of time:** In computing the 10-day period, the due date of the payment that resulted in the requirement to notify PBGC is not included. Form 200 is due 10 days thereafter unless that day is a Saturday, Sunday, or Federal holiday, in which case the 10-day period runs until the next day that is not a Saturday, Sunday, or Federal holiday. Information received on a weekend or Federal holiday or after 5 p.m. on a weekday is deemed to be filed on the next regular business day.

## **Where to File**

By mail, commercial delivery service or hand delivery:

Pension Benefit Guaranty Corporation  
Department of Insurance Supervision and Compliance  
1200 K Street, NW  
Washington, DC 20005-4026

By e-mail:

form200@pbgc.gov

By fax:

202-842-2643 (call 202-326-4070 to confirm that the fax has been received)

## **Special Rule for Terminating Plans**

The fact that a plan is in the process of terminating does not mean that a Form 200 notice need not be filed. However, a notice is waived if the deadline for filing the notice 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 or (2) a trustee is appointed for the plan under ERISA §4042(c).

## **Effect of Failure to Timely File**

If a Form 200 (or other required information) is not provided within the specified time limit, PBGC may assess against each person required to provide the notice a separate penalty under ERISA section 4071 of up to \$1,100 a day for each day for which the notice or other information is overdue. PBGC will generally assess the full \$1,100 a day penalty for failure to timely file a complete Form 200 (see 29 CFR Part 4071 and PBGC's Statement of Policy on *Assessment of Penalties for Failure to Provide Required Information* (60 FR 36837, July 18, 1995)). PBGC may pursue any other equitable or legal remedies available to it under the law.

## **For Copies of PBGC Form 200, Questions, Problems**

To request copies of Form 200, contact PBGC's Customer Service Center at 202-326-4000.

If you have questions or problems regarding Form 200 or these instructions, contact:

Pension Benefit Guaranty Corporation  
Department of Insurance Supervision and Compliance  
1200 K Street, NW  
Washington DC 20005-4026  
Telephone: 202-326-4070

The phone numbers above are not toll-free numbers, and PBGC cannot accept collect calls.

For TTY/TTD users, call the federal relay service toll-free at 1-800-877-8339 and ask to be connected to the right number.

## **Use of Facsimile Forms**

PBGC will accept a reproduction or other facsimile of Form 200 if it presents the same items in the same location. However, any required signature must be an original.

## **Attachments**

If responding to an item requires the attachment of documentation or information, mark the attachment to identify the item to which it responds.

## **Previously Submitted Information**

Because ERISA section 303(k)(4)(A) and Code section 430(k)(4)(A) require that PBGC be notified each time there is a failure to make a required payment and the total of unpaid balances of required payments (including interest) exceeds \$1 million, more than one filing may be required regarding the same plan, and at least some of the information included in a previous Form 200 may continue to be accurate and responsive at the time that a subsequent Form 200 must be filed. It also is possible that information submitted to PBGC in another context (*e.g.*, in a distress termination filing pursuant to ERISA section 4041(c) or in a notice of a reportable event required by 29 CFR Part 4043) is responsive. Therefore, a filer may respond to an item that calls for previously submitted documentation or other information by identifying the previous submission in which the response was provided.

## Reportable Event

A failure to make a required contribution may also be a reportable event under 29 CFR 4043.25(a). If with respect to such failure, a Form 200 is completed and submitted in accordance with §4043.81, the Form 200 filing shall be deemed to satisfy the reportable event requirement (see 29 CFR 4043.25(d)).

## DEFINITIONS

As used in PBGC Form 200 and these instructions:

**Code** means the Internal Revenue Code of 1986, as amended.

**Contributing sponsor** means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

**Controlled group**, for purposes of ERISA section 303(k) and Code section 430(k), means any group treated as a single employer under subsection (b), (c), (m), or (o) of Code section 414.

**DOL** means the Department of Labor.

**Due date** means the date set forth in ERISA section 303(j) and Code section 430(j) for payment of a required installment and, in the case of a payment other than a required installment, the date such payment is required to be made under ERISA section 303 and Code section 430.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended.

**IRS** means the Internal Revenue Service.

**Parent** means the parent of a "parent-subsidiary" controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of Code section 414 and the regulations thereunder). Where there is more than one parent in a "parent-subsidiary" group, the term "parent" refers to the parent at the highest level in the chain of corporations and/or other organizations comprising the group. (For example, if Corporation A owns all of the stock of Corporation B and Corporation C, and Corporation B owns all of the stock of Corporation X, the contributing sponsor, then the "parent" of Corporation X is Corporation A.)

**Required installment** means any of the four quarterly contribution payments required for each plan year by ERISA section 303(j) and Code section 430(j).

**Required payment** means a required installment or other payment required under ERISA sections 302 and 303 and Code sections 412 and 430.

**SEC** means the Securities and Exchange Commission.

**Single-employer plan** means any defined benefit plan (as defined in ERISA section 3(35)) that is not a multiemployer plan (as defined in ERISA section 4001(a)(3)) and that is covered by title IV of ERISA.

## SPECIFIC INSTRUCTIONS

### Part I. General Plan Information

1a Enter the complete name of the plan as it appears on the plan document.

- b Enter the first day of the plan year for which the payment described in item 7a was required.
- 2 Enter the name, address, and telephone number of the individual or the board or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if a contributing sponsor is so designated, enter the name, address, and telephone number of that contributing sponsor.
- 3a Enter the name, address, and telephone number of (1) the contributing sponsor that is filing this form or (2) if the parent is filing this form, the controlled group member that is the contributing sponsor. (If the parent is filing and the plan covers the employees of more than one controlled group member, provide information with respect to the controlled group member with the greatest number of participants.)
  - b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor in item 3a by the IRS for income tax purposes and the 3-digit plan number (PN) assigned by the contributing sponsor. The EIN/PN reported should be the EIN/PN most recently reported for a PBGC premium filing (if applicable).
  - c If the EIN/PN in item 3b is different from that used in earlier filings with PBGC (including premium and reportable event filings), the DOL, or the IRS, enter the EIN/PN previously reported. (If a different EIN or PN has not been used for this contributing sponsor/plan in previous filings, enter "NA" (not applicable).)
- 4b If you checked "Yes" to item 4a, enter the name, address, telephone number, and EIN (or "none" if there is no EIN) of the parent (*i.e.*, the filer or the parent of the filer's controlled group). (If the controlled group is a "brother-sister" group, enter "none".)
- d If you checked "Yes" to item 4c, attach a statement with (1) the name, address, telephone number, and EIN (or state that there is no EIN) of each other controlled group member and (2) a description of the structure of the controlled group. (The description must include the relationship of each member of the parent-subsiary, brother-sister, or combined group, as applicable, to the controlled group. For example: "Corporation A, the parent of a parent-subsiary group of trades or businesses under common control, has three wholly-owned subsidiaries, Corporation B, Corporation C, and Partnership D. Corporation B and Corporation C each owns 50 percent of the stock of Corporation X, the contributing sponsor. Partnership D owns all of the stock of Corporation Y.")
- 5a Check "Yes" if the plan is maintained by two or more contributing sponsors and all plan assets are available to pay benefits to all plan participants and beneficiaries.
  - b If you checked "Yes" to item 5a, attach a statement with (1) the name of each contributing sponsor and (2) the address, telephone number, and EIN (or state that there is no EIN) of any contributing sponsor(s) for which this information is not provided in response to previous items.
- 6 Enter the name, address, and telephone number of an individual who is an authorized representative of the contributing sponsor or the parent filing this form if this is not the individual signing the certification in item 12.

## **Part II. Plan Funding Information**

*Note: An enrolled actuary must certify that the information in items 7 and 8, among other things, conforms to applicable Code and IRS requirements (see item 11).*

- 7a Describe the required payment that was not made when due, resulting in the requirement to notify PBGC (e.g., "the second quarterly installment for the plan year beginning on July 1, 2009").
- 8a Enter the total amount, as of the due date in item 7b, of the unpaid balance of the required payment described in item 7a and the aggregate unpaid balance of all preceding required payments for which payment was not made when due (i.e., include in this amount the unpaid balances, including interest, of all required payments for which payment was not made when due).
- b Describe how the amount in item 8a was determined, including the actuarial assumptions and methods used if different from the actuarial assumptions and methods used in the plan actuarial valuation report submitted in response to item 9a.
- 9c Attach a copy of any IRS letter(s) granting or modifying a funding waiver or an extension of the amortization period for any plan year, except a letter relating to (1) a waived funding deficiency that has been fully amortized or (2) an extended amortization period that has ended if all contributions required pursuant thereto have been made.
- d Attach a statement describing any pending request(s) for a funding waiver and/or for an extension of the amortization period, including the relief requested.

### **Part III. Contributing Sponsor and Controlled Group Financial Information**

- 10a Attach copies of audited or, if not available, unaudited financial statements that were prepared for the contributing sponsor and each other controlled group member individually, including balance sheets, income statements, statements of cash flows, and notes to financial statements and annual reports. However, if financial statements were only prepared on a consolidated basis for more than one controlled group member, consolidated financial statements and consolidating financial statements or, if not available, consolidating trial balances that identify each controlled group member individually may be attached instead.

### **Part IV. Certifications**

- 11 This certification must be made by an enrolled actuary.
- 12 This certification must be made by an officer (or an individual of comparable authority in an unincorporated organization) of the contributing sponsor or parent that is filing the Form 200.

*Note: No additions or deletions may be made to the certifications.*