

TECHNICAL UPDATE 09-3

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, DC 20005-4026



April __, 2009

Technical Update 09-3: Reportable Events; Missed Quarterly Contributions; Reporting Relief for Small Plans; Guidance for 2009 Plan Years.

Reporting to Pension Benefit Guaranty Corporation (PBGC) is required under section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4043.25 of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043) when a quarterly funding contribution required under section 303(j)(3) of ERISA is not timely made. This Technical Update 09-3 waives or reduces the burden of such reporting for 2009 for certain small plans.

In general, this Technical Update provides that for purposes of the reportable events regulation, if a required quarterly contribution for the 2009 plan year is not timely made to a plan, and the failure to make the contribution is not motivated by financial inability, the reporting requirement under § 4043.25 of the reportable events regulation —

(1) is waived if the plan has fewer than 25 participants for the prior plan year, and

(2) if the plan has at least 25 but fewer than 100 participants for the prior plan year, will be considered satisfied if a simplified notice is filed with PBGC by the time the first missed-quarterly reportable event report for the 2009 plan year would otherwise be due.

I. Background

ERISA section 4043(a) and subparts A and B of the reportable events regulation require plan administrators and contributing sponsors to notify PBGC within 30 days after they know or have reason to know that a reportable event has occurred. One reportable event, described in § 4043.25 of the reportable events regulation, is the failure to timely make a required funding contribution, including a required quarterly contribution. The regulation requires a notice of this event to include the amount and date of the missed contribution, the plan's most recent actuarial valuation report, and data on all controlled group members and their plans. Notice is waived if the required payment is made within 30 days after its due date. Under § 4043.4(d) of the regulation, PBGC may grant other waivers where it is convinced that doing so is appropriate under the circumstances; a waiver may be subject to conditions.

In a series of Technical Updates,¹ PBGC waived the reporting requirement in certain cases involving small plan sponsors that failed to make quarterly contributions for plan years through

¹ Technical Updates 97-6, 06-4, and 08-2.

2008. On February 20, 2009, PBGC announced that it was not granting an automatic waiver for missed quarterly contributions for plan years beginning in 2009. The announcement said that in PBGC's experience, many plans that had not reported missed quarterlies because of the automatic waiver later terminated with unfunded liabilities, and that if missed-quarterly reports had been made, PBGC might have been able to work with plan sponsors to avoid the underfunded terminations. The announcement also said that PBGC would continue to grant case-by-case waivers where appropriate.

In response to practitioners' expressions of concern following PBGC's announcement, PBGC has reconsidered its decision to grant no reporting relief for missed quarterly contributions for 2009. Practitioners have stated that many small plan sponsors choose not to make required quarterly contributions for reasons other than financial inability; that many small plans have funding valuation schedules that make it difficult or impossible to determine the amount, if any, of the quarterly contribution obligation by the quarterly contribution due date; and that for many small plans, filing of reportable events reports for missed quarterlies under the provisions of the reportable events regulation will be administratively burdensome.

II. Discussion.

PBGC continues to believe that it is important for the pension insurance system that PBGC learn promptly of failures to make required quarterly contributions to plans of all sizes. The filing of reportable events notices protects not just PBGC but also plan participants, and such protection is not less appropriate where plans are small than where they are large. However, PBGC seeks to make and apply its rules in such a way as to balance the importance of information for the pension insurance system against the importance of reducing compliance burdens for small plans and small plan sponsors.

Reportable events filings alert PBGC to the possibility of sponsor financial problems. PBGC has concluded that in cases where financial inability is not the reason why required quarterly contributions are not made, it may be appropriate to provide for an alternative — and very minimal — form of reporting for certain small plans, and to require no reporting at all for the smallest plans. In such cases, accordingly, PBGC is providing a reporting waiver for the smallest plans, and an alternative method of compliance with the reporting requirement for other small plans, for missed quarterly contributions for the 2009 plan year. If PBGC's experience shows that this waiver and alternative compliance method do not significantly impair its administration of the pension insurance system, the waiver and alternative procedure may be extended to future years.

Since the reason for providing this reporting relief is the absence of a financial motivation for not making quarterly contributions, the issue of whether quarterly contributions are due (and if so, in what amount) is not important to PBGC so long as financial inability is not the reason for missing them. Accordingly, the waiver and alternative compliance method provided for in this Technical Update are not conditioned on the sponsor's knowing whether a quarterly contribution is required, and a submission under the alternative compliance rules may be made before a required quarterly contribution is due.

In the context of providing this reporting relief, PBGC believes that where more than one quarterly contribution is missed for a year, there is no need for notice of each missed quarterly (as would be required under the reportable events regulation). Accordingly, the alternative compliance method provided for in this Technical Update requires only one submission for the 2009 plan year, regardless of the number of quarterlies expected to be (or actually) missed. However, the submission must be made by the time a report would otherwise be due under the reportable events regulation for the first required quarterly contribution that is not timely made.

III. Guidance

In the case of a plan that had **fewer than 25 participants** for whom flat-rate premiums were payable for the 2008 plan year, the reporting requirement under § 4043.25 of the reportable events regulation is waived with respect to a failure to make one or more required quarterly contributions for the 2009 plan year under section 303(j)(3) of ERISA if financial inability to make the contribution(s) is not the reason for not making the contribution(s).

In the case of a plan that had **25 or more but fewer than 100 participants** for whom flat-rate premiums were payable for the 2008 plan year, the reporting requirement under § 4043.25 of the reportable events regulation will be considered satisfied with respect to a failure to make one or more required quarterly contributions for the 2009 plan year under section 303(j)(3) of ERISA if financial inability to make the contribution(s) is not the reason for not making the contribution(s) and if, by the time the first missed-quarterly reportable event report for the 2009 plan year would otherwise be due, the person(s) that would be required to report (or a duly authorized representative) file(s) with PBGC a notice stating —

- (1) the name of the plan and the Employer Identification Number and Plan Number most recently reported for the plan in a PBGC premium filing;
- (2) the date the 2009 plan year began;
- (3) that a quarterly contribution to the plan for the 2009 plan year has not been (or will not be) timely made;
- (4) that financial inability to make the contribution is not the reason for not making the contribution;
- (5) the last day for satisfying the minimum funding requirement for the plan for the 2009 plan year (the “final payment date”);
- (6) that the filer understands that if the minimum funding requirement for the plan is not satisfied by the final payment date, a reportable event notice must be filed under the reportable events regulation; and

(7) the name, telephone number, and e-mail address of a person (who may be the filer) whom PBGC may contact for additional information.

Reports must be made either in the manner required for reportable events reports generally or by e-mail to post-event.report@pbgc.gov.

Sample notice language:

(1) This notice is for the Omega Alpha Pension Plan, EIN 12-3456789, PN 001.

(2) The 2009 plan year began January 1, 2009.

(3) A quarterly contribution to the plan for the 2009 plan year has not been timely made. The plan sponsor intends not to make any quarterly contributions to the plan for the 2009 plan year.

(4) Financial inability to make the contributions is not the reason for not making the contributions.

(5) The last day for satisfying the minimum funding requirement for the plan for the 2009 plan year is September 15, 2010.

(6) I understand that if the minimum funding requirement for the plan is not satisfied by September 15, 2010, a reportable event notice must be filed under the reportable events regulation.

(7) PBGC may contact Al Gebra, 800-000-0000, gebra.al@000.com, for additional information.

IV. Further guidance and other effect

This Technical Update updates the guidance provided in the instructions to PBGC Form 10.

V. PBGC Contact Points

For questions about this Technical Update 09-3, contact Amy Viener of the Policy, Research, and Analysis Department at 202-326-4080, ext. 3919, or viener.amy@pbgc.gov or Rick Lattimer of the Department of Insurance Supervision and Compliance at 202-326-4000, ext. 3081, or lattimer.rick@pbgc.gov.