

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 §303(k)(4) and Code §430(k)(4) and 29 CFR Part 4043, Subparts A and D, to make decisions regarding enforcement of a lien imposed by ERISA §303(k)(1) and Code §430(k)(1). Confidentiality is that provided under the Freedom of Information Act and the Privacy Act.

PBGC estimates that it will take an average of 12 hours and \$4,200 to comply with the above requirements when a payment failure first results in a total of unpaid balances that exceeds \$1 million, and 10 hours and \$3,500 when there is a subsequent payment failure and the total of unpaid balances continues to exceed \$1 million. These figures 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. 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 §303(k) and Code §430(k) provide that a lien arises in certain cases where there is a failure to make required contributions to a single-employer plan covered under ERISA §4021 for which the plan's funding target attainment percentage (as defined in ERISA §303(d)(2) and Code §430(d)(2)) is less than 100 percent. The lien arises, 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 §303(k)(4)(A) and Code §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 §303(k) and Code § 430(k) was formerly in ERISA §302(f) and Code §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-subsidiary controlled group, the "ultimate 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 ultimate 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-subsidiary," "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 §303(k) and Code §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.

What's New

- The Appendix to these instructions describes how the aggregate outstanding balance of required funding payments, including interest, must be computed.
- In missed contribution cases, there is sometimes a credit balance that is available for application to a contribution that is due. PBGC needs to be able to determine whether all or a portion of the credit balance has been properly applied toward payment of the contribution. Accordingly, PBGC is requiring filers of both Form 10 and Form 200 to indicate how much (if any) of the carryover balance or prefunding balance was used for partial payment of the missed contribution and submit copies of election letters relating to application of the carryover balance and prefunding balance to the contribution.

- The “partial electronic filing” method may no longer be used. The method, whereby certain basic information could be submitted on time electronically and followed up within 1 business day with the remaining required information, was described in (superseded) 29 CFR § 4043.6(c). All required information must now be filed by the due date (see 29 CFR § 4043.81(a)(1)).

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-subsiary” controlled group, the ultimate parent of such group. However, if a timely and complete Form 200 is properly filed by either a contributing sponsor or the ultimate 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, an ultimate 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). Notices must be filed using the Form 200 that is posted on PBGC’s web site.

If you want to e-mail materials that are larger than 10 megabytes, please use LeapFILE. Enter “pbgc.leapfile.com” in your Internet browser, click on “secure upload,” enter “form200@pbgc.gov” in the “Recipient Email” field, and attach the files.

Note: If you file the Form 200 electronically, PBGC now accepts fax and PDF signatures.

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 §303(k)(1) and Code §430(k)(1) and the total of unpaid balances of required payments (including interest) exceeds \$1 million.

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.

Note: There is no longer a special “partial electronic filing” provision whereby a filer could submit certain required information within 1 business day after the filing deadline. Now, all required information must be submitted by the filing deadline.

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.”

Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered 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 . If you want to e-mail materials totaling more than 10 megabytes, please use LeapFILE. Enter “pbgc.leapfile.com” in your Internet browser, click on “secure upload,” enter “form200@pbgc.gov” in the “Recipient Email” field, and attach the files.

By fax:

202-842-2643 (call 202-326-4070 to confirm that PBGC has received the fax. TTY/TDD users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4070.)

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 §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.

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

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 §303(k)(4)(A) and Code §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 filing 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 §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 29 CFR 4043.81, the Form 200 filing is deemed to satisfy the reportable event requirement (see 29 CFR 4043.25(b)).

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 that is a contributing sponsor as defined in ERISA §4001(a)(13).

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

DOL means the Department of Labor.

Due date means the date set forth in ERISA §303(j) and Code §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 §303 and Code §430.

EIN/PN means the nine-digit employer identification number assigned by the Internal Revenue Service to a person and the three-digit plan number assigned to a plan. The EIN/PN should be the EIN/PN most recently reported for a PBGC premium filing (if applicable).

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-subsiary” controlled group of corporations or group of trades or businesses under common control (within the meaning of subsection (b) or (c) of Code §414 and the regulations thereunder). Where there is more than one parent in a “parent-subsiary” group, the term “parent” refers to the “ultimate parent” (see definition below).

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

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

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

SEC means the Securities and Exchange Commission.

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

Ultimate parent means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsiary controlled 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 “ultimate parent” of Corporation X is Corporation A.)

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 ultimate parent is filing this form, the controlled group member that is the contributing sponsor. (If the ultimate 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 EIN assigned to the contributing sponsor in item 3a by the IRS for income tax purposes and the 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 the 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 contributing sponsor’s ultimate parent. If the contributing sponsor has no parent (*e.g.*, 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 ultimate 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 listing, to the extent known, (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 ultimate 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). Compute the total amount in accordance with the instructions in the Appendix.
- b Describe how the amount in item 8a was determined. This description must include an attached spreadsheet that shows the details of the calculation (see Appendix for the required information).
- 9c Attach a copy of any IRS letter(s) granting or modifying a funding waiver, except a letter relating to a waived funding deficiency that has been fully amortized.
- d Attach a statement describing any pending request(s) for a funding waiver, including the relief requested.

Part III. Contributing Sponsor and Controlled Group Financial Information

10a Attach copies of audited financial statements (or, if they are 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 they are 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 ultimate parent that is filing the Form 200.

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

Appendix

Failure to Make Required Funding Payments

Calculation of the aggregate unpaid balance of required funding payments

The aggregate unpaid balance of all required payments for which payment was not made when due is equal to the amount by which —

- the aggregate amount of all statutorily required¹ payments (including the current payment) that were not made when due, accumulated with interest, exceeds
- the aggregate amount of such payments that were actually made (after they were due), accumulated with interest.

Adjusting for interest

For plan years beginning before 2008,² missed contributions and actual contributions are accumulated at the valuation funding interest rate for the plan year to which the contribution relates.

For plan years beginning after 2007,² missed contributions and actual contributions are accumulated as follows:

- In the case of a required quarterly installment, the effective interest rate (as defined in ERISA § 303(h)(2)(A)) for the applicable plan year plus five percentage points (the adjustment for missed quarterly contributions under ERISA §303(j)(3)(A)).
- In all other cases, the effective interest rate for the applicable plan year.

If the effective interest rate for a plan year is not known at the time reporting is required, the lowest 24-month average segment rate for that plan year is used instead of the effective interest rate. The lowest segment rate is determined based on the applicable month used for funding purposes for the plan year without regard to whether an election has been made to use the yield curve for funding purposes.

Computations are done as of the date of each missed payment and are updated with each subsequent missed payment. The following example shows how to determine the aggregate unpaid balance of required payments, and in doing so, determine if/when the \$1,000,000 threshold is crossed. The example also illustrates the data to be submitted along with whichever filing is required: **Form 10** (required for post-event reportable events) or **Form 200** (required if the aggregate unpaid balance, including interest, exceeds \$1,000,000).

¹ Do not include payments (such as extra payments required solely as a condition of a funding waiver) that are not required under ERISA sections 302 and 303.

² For plans to which the new funding rules under the Pension Protection Act of 2006 (PPA 2006) did not become applicable for 2008, use the valuation funding interest rate for years before the new funding rules apply and the effective rate for years to which the new funding rules apply. (Such plans are described in PPA 2006 sections 104, 105, 106, and 402.)

Example

Assume the plan sponsor of a calendar-year plan:

- missed a required 2009 quarterly installment of \$600,000 on January 15, 2010
- made a contribution of \$200,000 on March 1, 2010
- missed a 2010 required quarterly installment of \$500,000 on April 15, 2010
- missed a 2010 required quarterly installment of \$500,000 on July 15, 2010
- missed the final 2009 required contribution of \$150,000 on September 15, 2010

In addition, assume the effective interest rate for plan year 2009 was 8% and for plan year 2010 was 6%. Adding 5% (see ERISA §303(j)(3)(A)) to the effective interest rates for the periods of underpayment, the applicable interest rates for the missed quarterlies for the 2009 and 2010 plan years are 13% and 11%, respectively.

Aggregate Unpaid Balance of Required Contributions as of 1/15/2010

Date	Applicable Plan Year	Applicable Interest Rate	Amount	Days until 1/15/2010	Interest Adjustment	Total
<i>Missed contribution</i> 01/15/2010 Quarterly	2009	13.00%	\$600,000	0	\$0	\$600,000
Total			\$600,000		\$0	\$600,000

Because the aggregate unpaid balance of required payments as of January 15, 2010 (\$600,000) is less than \$1,000,000, a Form 200 filing is not required. However, a **Form 10** filing is due on February 14, 2010 (with weekend extension). The table shown above is an example of the data to be submitted with the Form 10 filing.

Aggregate Unpaid Balance of Required Contributions as of 4/15/2010

Date	Applicable Plan Year	Applicable Interest Rate	Amount	Days until 04/15/2010	Interest Adjustment	Total
<i>Missed contribution</i> 01/15/2010 Quarterly	2009	13.00%	\$600,000	90	\$18,357	\$618,357
04/15/2010 Quarterly	2010	11.00%	\$500,000	0	\$0	\$500,000
<i>Payment made</i> 03/01/2010 Quarterly	2009	13.00%	(\$200,000)	45	(\$3,036)	(\$203,036)
Total			\$1,400,000		\$15,321	\$915,321

Because the aggregate unpaid balance of required payments as of April 15, 2010 (\$915,321) is less than \$1,000,000, a Form 200 filing is not required. However, another **Form 10** filing is due on May 15, 2010 (with weekend extension). The table shown above is an example of the data to be submitted with the Form 10 filing.

Aggregate Unpaid Balance of Required Contributions as of 7/15/2010

Date	Applicable Plan Year	Applicable Interest Rate	Amount	Days until 07/15/2010	Interest Adjustment	Total	
<i>Missed contribution</i>							
01/15/2010	Quarterly	2009	13.00%	\$600,000	181	\$37,488	\$637,488
04/15/2010	Quarterly	2010	11.00%	\$500,000	91	\$13,180	\$513,180
07/15/2010	Quarterly	2010	11.00%	\$500,000	0	\$0	\$500,000
<i>Payment made</i>							
03/01/2010	Quarterly	2009	13.00%	(\$200,000)	136	(\$9,318)	(\$209,318)
Total				\$1,400,000		\$41,350	\$1,441,350

Because the aggregate unpaid balance of required payments as of July 15, 2010 (\$1,441,350) exceeds \$1,000,000, a **Form 200** filing is due on July 25, 2010 (10 days after the missed contribution, with weekend extension). The table shown above is an example of the data to be submitted with the Form 200 filing.

Aggregate Unpaid Balance of Required Contributions as of 9/15/2010

Date	Applicable Plan Year	Applicable Interest Rate	Amount	Days until 09/15/2010	Interest Adjustment	Total	
<i>Missed contribution</i>							
01/15/2010	Quarterly	2009	13.00%	\$600,000	243	\$50,861	\$650,861
04/15/2010	Quarterly	2010	11.00%	\$500,000	153	\$22,358	\$522,358
07/15/2010	Quarterly	2010	11.00%	\$500,000	62	\$8,942	\$508,942
09/15/2010	Final	2009	8.00%	\$150,000	0	\$0	\$150,000
<i>Payment made</i>							
03/01/2010	Quarterly	2009	13.00%	(\$200,000)	198	(\$13,709)	(\$213,709)
Total				\$1,400,000		\$68,452	\$1,618,452

Because the aggregate unpaid balance of required payments as of September 15, 2010 (\$1,618,452) exceeds \$1,000,000, an updated **Form 200** filing is due on September 25, 2010 (10 days after the missed contribution, with weekend extension). The table shown above is an example of the data to be submitted with the Form 200 filing.