

# Form 10 Instructions

## Post-Event Notice of Reportable Events

### PAPERWORK REDUCTION ACT NOTICE

PBGC needs this information, which is required to be filed under ERISA §4043 and 29 CFR Part 4043, Subparts A and B, so that it can take action to protect participants and the termination insurance program in appropriate cases. Confidentiality is that provided under the Freedom of Information Act and the Privacy Act. PBGC estimates that it will take an average of 6 hours and \$2,100 to comply with these requirements. If you have any comments concerning the accuracy of this estimate or suggestions for improving this form, 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 1212-0013. 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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## PART I – GENERAL INSTRUCTIONS

Section 4043(a) of the Employee Retirement Income Security Act (ERISA) requires that plan administrators and contributing sponsors notify PBGC promptly after the occurrence of certain “reportable events.” PBGC’s regulation on Reportable Events (29 CFR Part 4043, Subparts A and B) describes in detail each reportable event and any applicable extension or waiver provisions. The reportable events are:

- A. Active participant reduction
- B. Failure to make required funding payments
- C. Inability to pay benefits when due
- D. Distribution to a substantial owner
- E. Change in contributing sponsor or controlled group
- F. Liquidation of contributing sponsor or controlled group member
- G. Extraordinary dividend or stock redemption
- H. Transfer of benefit liabilities
- I. Application for minimum funding waiver
- J. Loan default
- K. Bankruptcy or similar settlement
- L. Adjusted funding target attainment percentage under 60%
- M. Asset transfer to retiree health account or subsequent reduction in funding ratio

Part III of these instructions summarizes the rules for each event. The Appendix to the instructions gives more information about reporting a failure to make required funding payments (see Part III.B.). The Appendix explains how to calculate of the aggregate outstanding balance, with interest, of all prior contributions not timely made.

The rules in the *Reportable Events* regulation apply only to reportable events involving single-employer plans covered by title IV of ERISA. In these instructions, “plan” always means such a single-employer plan.

### What’s New

PBGC recently amended its reportable events regulation to accommodate statutory changes made by the Pension Protection Act of 2006 (“PPA 2006”) and for other purposes. See \_\_ FR \_\_ (\_\_\_\_\_, 2010). In connection with the amendments, the Form 10 instructions and Form 10 have been changed; the key changes include:

- Elimination of most automatic waivers and filing extensions
- A requirement that filers use PBGC forms to file reportable events notices
- Elimination of the “partial electronic filing” provision whereby certain basic information could be submitted on time electronically and followed up within 2 business days with the remaining required information
- A requirement that filers submit the most recent month-end statement of the market value of plan assets, the most recent Adjusted Funding Target Attainment Percentage (AFTAP) certification, and the most recent actuarial valuation report that contains or is supplemented with all the items of information described in § 4010.8(a)(11) of PBGC’s regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010)
- A requirement that filers submit “before-and-after” financial statements for certain reportable events
- A requirement that a description of a filer’s controlled group include the members’ addresses
- Creation of two new reportable events based on provisions in PPA 2006 dealing with funding-based benefit limits and with asset transfers to retiree health benefits accounts
- Reduced reporting of active participant reductions
- Reduced reporting for bankruptcy events

- A requirement that filers submit financial statements for all controlled group members to the extent not publicly available for loan defaults or extraordinary distributions or stock redemptions
- Clarification of requirements dealing with missed contributions and inability to pay benefits when due
- A requirement that filers submit financial statements for both the transferor controlled group and transferee controlled group for the benefit-liability-transfer event
- A limitation on the scope of the benefit-liability-transfer event related to cashouts and annuitizations
- A requirement for more detailed information for missed contribution cases (see part III.B.) where the missed contribution is statutory, for example, a required quarterly contribution or liquidity shortfall contribution. In such a case:
  - PBGC is requiring a computation showing the aggregate outstanding balance of required funding payments, including interest, and is providing instructions for making the computation.
  - PBGC is requiring filers that are using a credit balance to indicate how much 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.

### **Advance Reporting Rule for Non-Public Companies**

Section 4043(b) of ERISA requires that certain contributing sponsors notify PBGC at least 30 days before the effective date of certain reportable events. If an advance notice is filed (using Form 10-Advance), no post-event notice (using Form 10) for the same event is required.

A contributing sponsor of a plan is subject to the advance reporting requirement for a reportable event if:

- (1) on the due date for the reportable event, 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 plans maintained (on the due date for the reportable event) by the contributing sponsor and members of the contributing sponsor's controlled group, disregarding plans with no unfunded vested benefits, have —
  - (i) aggregate unfunded vested benefits of more than \$50 million; and
  - (ii) an aggregate value of plan assets that is less than 90% of the aggregate premium funding target.

The unfunded vested benefits, value of plan assets, and premium funding targets are those determined for premium purposes for the plan year preceding the effective date of the event.

Form 10 and the rules described in these instructions do not apply to advance reporting. See the Form 10-Advance package and 29 CFR Part 4043, Subparts A and C, for further information about advance reporting.

### **Who Must Notify PBGC**

The plan administrator and each contributing sponsor of a plan for which a reportable event has occurred must file a post-event reportable event notice with PBGC using the PBGC Form 10. If there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the plan administrator or contributing sponsor(s) on the date the post-event notice is due.

*Note: An authorized representative may file a reportable event notice on behalf of a plan administrator, a contributing sponsor or both.*

A single event (such as a controlled group break-up) may be a reportable event for more than one plan in the controlled group. In that case, the reporting requirement applies to the plan administrator and each

contributing sponsor of each plan. Any filing will be deemed to be a filing by all persons required to notify PBGC.

## **Reporting Waivers**

Automatic waivers are provided for certain reportable events in certain circumstances (see Part III of these instructions). Post-event reporting is waived for any occurrence that is reportable as more than one reportable event only if the requirements for a waiver for each reportable event are met.

## **How To File**

A reportable event notice 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 10 that is posted on PBGC's web site.

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 "post-event.report@pbgc.gov" in the "Recipient Email" field, and attach the files.

## **When To File**

A reportable event notice must be filed within 30 days after a plan administrator or contributing sponsor knows or has reason to know that a reportable event has occurred. PBGC has extended this deadline for a loan-default event in certain specified circumstances (see Part III.J. of these instructions).

If the same event is reportable as two or more reportable events with different filing deadlines, and a separate notice is filed for each event, the notice for each event must be filed by the deadline for that event. If the notices are filed together, or if a single notice is filed for all the events, the filing must be made by the earliest filing deadline.

In computing any period of time, the day of the event from which the period begins to run is not included. The last day of the period is included, unless it is a weekend or Federal holiday, in which case the period runs until the end of 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 2 business days after the filing deadline. Now, all required information must be submitted by the filing deadline.*

## **Filing Date**

The date when a reportable event notice (or additional information required by PBGC) is considered to have been filed is:

1. **By United States mail**: The date of the postmark stamped on the cover in which the information is mailed, if the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly addressed to PBGC at the address listed under "Where to File";
2. **By commercial delivery service**: The date the information is deposited for delivery to PBGC with a commercial delivery service, provided it is received by PBGC at the address listed under "Where to File" within two regular business days; or
3. In a case not meeting the conditions in (1) or (2) above: The date the document 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:

[post-event.report@pbgc.gov](mailto:post-event.report@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 “post-event.report@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/TTD users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4070.)

## **What to File**

A plan administrator or contributing sponsor must use the PBGC Form 10 to file a post-event reportable event notice with PBGC, and include with the Form 10 both general information and event-specific information. General information required is listed at the start of Part III of the instructions, and specific information is listed under “Required Attachments” for each reportable event described in Part III and on the Form 10.

If any required information has previously been submitted to PBGC, the filer may refer to the previous submission instead of resubmitting the information.

If the same event is reportable as more than one reportable event, separate notices may be filed separately or together, or a single notice may be filed covering all of the events. If filing a single notice, the notice must include all the required information for each event. (See also “When to File.”)

Notices for two or more events may be submitted together.

PBGC may require that a plan administrator or contributing sponsor submit additional information within 30 days after the date of PBGC’s written request. PBGC may shorten this 30-day period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

*Note: Any non-public information submitted to PBGC as part of a reportable event notice shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosure to either body of Congress.*

## **Information on Controlled Group Structure**

The requirement to submit a description of a plan’s controlled group may be satisfied by submitting an organization chart or other diagram if it includes or is supplemented with names and addresses of all members of the plan’s controlled group.

## Special Rule for Terminating Plans

The fact that a plan is terminating does not excuse a failure to timely file a required reportable event notice. However, the 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 File

If a notice (or any other required information) is not provided within the specified time limit, PBGC may assess against each plan administrator and contributing sponsor 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 (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 Questions, Problems, Copies of Forms

If you have questions or problems regarding reportable events or you need copies of this package, the Form 10-Advance package or the Form 200 package, contact:

Pension Benefit Guaranty Corporation  
Department of Insurance Supervision and Compliance  
1200 K Street, NW  
Washington, DC 20005-4026  
Telephone: 202-326-4000

TTY/TTD users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000.

## PART II - DEFINITIONS

**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** means, in connection with any person, a group consisting of that person and all other persons under common control with that person (generally 80% ownership; see 29 CFR §4001.3). Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

**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% of the controlled group's revenue;
2. Annual operating income not exceeding the greatest of:
  - a. 10% of the controlled group's annual operating income,
  - b. 5% of the controlled group's first \$200 million in net tangible assets at the end of the fiscal year(s), or
  - c. \$5 million; and
3. Net tangible assets at the end of the fiscal year(s) not exceeding the greater of:
  - a. 10% of the controlled group's net tangible assets at the end of the fiscal year(s), or

b. \$5 million.

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

**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).

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

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

**Participant** has the meaning set forth in §4006.6 of PBGC’s regulation on Premium Rates (29 CFR Part 4006).

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

**Public company** means a person subject to the reporting requirements of §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.

**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.

**Variable-rate premium** means the portion of the single-employer premium based on a plan’s unfunded vested benefits (see ERISA §4006(a)(3)(E) and 29 CFR §4006.3(b)).

## **PART III - SPECIFIC INSTRUCTIONS**

**General Information Required for All Reportable Events; see also each reportable event listed below for event-specific information required:**

- The name of the plan;
- The name, address, and phone number of the filer—either the contributing sponsor(s) or the plan administrator;
- The name, address, and phone number of the individual whom PBGC should contact if it has questions about the filing;
- The EIN of the contributing sponsor and PN of the plan;
- A brief statement of the pertinent facts relating to the reportable event;
- A copy of the plan document in effect, *i.e.*, the last restatement of the plan and all amendments thereto;
- A copy of the most recent Adjusted Funding Target Attainment Percentage (AFTAP) certification.
- A statement of any material change in the assets or liabilities of the plan occurring after the date of the most recent actuarial valuation;
- The most recent month-end market-value statement of plan assets; and
- A copy of the most recent actuarial valuation report that includes or is supplemented with all of the items described in 29 CFR §4010.8(a)(11):
  - The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving payment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);

- A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 and any changes in those assumptions and methods since the previous valuation and justifications for any change; in the case of a plan that provides lump sums, other than *de minimis* lump sums, the summary must include the assumptions on which participants are assumed to elect a lump sum and how lump sums are valued;
- The effective interest rate (as defined in ERISA section 303(h)(2)(A) and Code section 430(h)(2)(A));
- The target normal cost calculated pursuant to ERISA section 303 without regard to subsection 303(i)(2) (and Code section 430 without regard to subsection 430(i)(2));
- For the plan year and the four preceding plan years, a statement as to whether the plan was in at-risk status for that plan year;
- In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to ERISA section 303 as if the plan has been in at-risk status for 5 consecutive years;
- The value of the plan's assets (reflecting any averaging method) as of the valuation date and the fair market value of the plan's assets as of the valuation date;
- The funding standard carryover balance and the prefunding balance (maintained pursuant to ERISA section 303(f)(1) and Code section 430(f)(1)) as of the beginning of the plan year and a summary of any changes in such balances in the past year (e.g., amounts used to offset minimum funding requirement, amounts reduced in accordance with any elections under ERISA section 303(f)(5) or Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);
- A list of amortization bases (shortfall and waiver) under ERISA section 303 and Code section 430, including the year the base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;
- An age/service scatter for active participants including average compensation information for pay-related plans and average account balance information for hybrid plans presented in a format similar to that described in the instructions to Schedule SB of the Form 5500;
- Expected disbursements (benefit payments and expenses) during the plan year; and
- A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during the plan year, and the plan's early retirement factors; in the case of a plan that provides lump sums, other than *de minimis* lump sums, the summary must include information on how annuity benefits are converted to lump sum amounts (for example, whether early retirement subsidies are reflected).

## **A. Active Participant Reduction**

(see 29 CFR §4043.23)

**Definition of Event** - A reportable event occurs when the number of active participants (definition follows) under a plan is reduced to less than:

1. 80% of the number of active participants at the beginning of the plan year; or
2. 75% of the number of active participants at the beginning of the previous plan year.

For purposes of this reportable event:

Disregard a reduction in the number of active participants to the extent that the reduction is both (1) attributable to a substantial cessation of operations under ERISA §4062(e) or to the withdrawal of a substantial employer under ERISA §4063(a), and (2) timely reported to PBGC under ERISA §4063(a).



The filer may substitute the number of active participants at the end of the previous plan year for the number of active participants at the beginning of the current plan year.

An **active participant** is a participant who (1) is receiving compensation for work performed; (2) is on paid or unpaid leave granted for a reason other than a layoff; (3) is laid off from work for a period of time that has lasted less than 30 days; or (4) is absent from work due to a recurring reduction in employment that occurs at least annually.

**Reporting Waiver** - Reporting of this event (the “current event”) is waived if the notice date for another active-participant-reduction event (the “prior event”) was not more than 12 months before the notice date for the current event and the prior event was reported to PBGC as required.

**Required Attachments:**

- Statement explaining the cause of the reduction (*e.g.*, facility shutdown or sale). This statement may be included with the brief statement of pertinent facts listed under General Information above.
- Number of active participants at the date the event occurs, at the beginning of the current plan year, and at the beginning of the prior plan year

**B. Failure to Make Required Funding Payments**

(see 29 CFR §4043.25)

**Definition of Event** - A reportable event occurs when a payment required under ERISA §302 and §303 or Code §412 and §430 is not made by the due date for the payment:

1. Missed Statutory Payments – Required payments include required quarterly contributions under ERISA §303(j)(3) or Code §430(j)(3) and liquidity shortfall contributions required under ERISA §303(j)(4) or Code §430(j)(4).
2. Missed Non-Statutory Payments – Required payments include any other contribution required solely as a condition of a funding waiver under ERISA §302(c) or Code §412(c).

*Note: If a contributing sponsor or controlled group member files a complete Form 200 with PBGC within 10 days of the due date of the payment in accordance with 29 CFR §4043.81, the Form 200 filing satisfies the notice requirement for this event. A reportable event notice under this section is not a substitute for the Form 200.*

**Required Attachments:**

- Description of the plan’s controlled group structure, including the name and address of each controlled group member
- Name of each plan maintained by any member of the plan’s controlled group, its contributing sponsor(s) and EIN/PN
- Due date and amount of both the missed contribution and the next payment due.
- Statement of how much, if any, of a carryover balance or prefunding balance was used for partial payment of the missed contribution
  - Copies of election letters relating to the use of carryover balances and prefunding balances to satisfy the current payment due
- If the current missed contribution is statutory (for example, a payment that is required under ERISA sections 302 and 303, such as a required quarterly contribution or liquidity shortfall contribution), the aggregate outstanding balance, with interest, of all contributions not timely made, determined in accordance with the appendix, with a spreadsheet (like that in the appendix) showing how the balance was computed

### **C. Inability to Pay Benefits When Due**

(see 29 CFR §4043.26)

**Definition of Event** - A reportable event occurs when a plan is currently unable, or projected to be unable, to pay benefits.

A plan is currently unable to pay benefits if the plan 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.

*Note: This does not include a failure or inability to pay benefits caused solely by the need to verify a person's eligibility for benefits; the inability to locate the person; or any other administrative delay, if the delay is for less than the shorter of two months or two full benefit payment periods.*

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 are defined in ERISA §303(j)(4)(E) and Code §430(j)(4)(E).

**Reporting Waiver** - Reporting of this event is waived unless the event occurs during a plan year for which the plan is exempt from the liquidity shortfall rules in ERISA §303(j)(4) and Code §430(j)(4) because it is described in ERISA §303(g)(2)(B) and Code §430(g)(2)(B).

#### **Required Attachments:**

- Date of any missed benefit payment and amount of benefit due
- Next date on which the plan is expected to be unable to pay benefits, the amount of the projected shortfall, and the number of plan participants expected to be affected
- Amount of the plan's liquid assets at the end of the most recent quarter, and the amount of its disbursements for the quarter
- Name, address and phone number of plan trustee (and of any custodian)

### **D. Distribution to a Substantial Owner**

(see 29 CFR §4043.27)

A substantial owner (see ERISA §4021(d)) is an individual who owns (or owned within the preceding 60 months):

1. The entire interest in an unincorporated trade or business;
2. Directly or indirectly, more than 10% of the capital or profits interest in a partnership; or
3. Directly or indirectly, more than 10% of the voting stock or the total stock of a corporation.

**Definition of Event** - A reportable event occurs for a plan when:

1. There is a distribution to a substantial owner;
2. The total of all distributions to the substantial owner within the one-year period ending with the date of such distribution exceeds \$10,000;
3. The distribution is for a reason other than the substantial owner's death; and
4. Immediately after the distribution, the plan has unfunded nonforfeitable benefits.

### Value of distribution

The value of a distribution to a substantial owner is determined as of the date of distribution and is the sum of:

1. The cash amounts actually received by the substantial owner,
2. The purchase price of any irrevocable commitment, and
3. The fair market value of any other assets distributed.

### Date of 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.

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.

### **Required Attachments:**

- Name, address and phone number of person(s) receiving the distribution(s)
- Amount, form and date of each distribution

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

(see 29 CFR §4043.29)

**Definition of Event** - A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan's controlled group.

For this purpose, a *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.

*Note: This event does not include a transaction that will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.*

**Examples** - The following examples assume a waiver does not apply.

### ***Controlled Group Breakup***

**Facts:** Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company C. As a result of a transaction, the controlled group will break into two separate controlled groups -- one segment consisting of Company A and the other segment consisting of Companies B and C.

**Reporting:** Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Companies B and C 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 will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

### ***Change in Contributing Sponsor***

**Facts:** 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.

**Reporting:** A reportable event occurs on the date of the transaction (*i.e.*, the binding contract) 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 30th day after Company Q and Company R enter into the binding contract, 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 30th day, Company R has the reporting obligation.

### ***Merger/Consolidation Within Controlled Group***

**Facts:** Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives).

**Reporting:** Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

**Reporting Waiver; *de minimis* 10-percent segment** - Reporting of this event 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.

### **Required Attachments:**

- Description of the plan's old and new controlled group structures, including the name and address of each controlled group member
- Name of each plan maintained by any member of the plan's old and new controlled groups, its contributing sponsor(s) and EIN/PN
- For a change in the controlled group sponsoring the pension plan, financial statements of (i) the plan's controlled group before the change, and (ii) the plan's controlled group after the change.

If a filer is unable with reasonable diligence to obtain any of the following information about a controlled group other than the filer's controlled group—(1) a description of the controlled group structure, (2) information about plans maintained, or (3) a financial statement of a controlled group—the filer may instead file a statement to that effect.

## **F. Liquidation**

(see 29 CFR §4043.30)

**Definition of Event** - A reportable event occurs for a plan when a member of the plan's controlled group:

1. Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);
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.

*Note: An event described above may also be reportable under Bankruptcy or Similar Settlements (see Part III.K).*

**Required Attachments:**

- Description of the plan’s controlled group structure before and after the liquidation, including the name and address of each controlled group member
- Name of each plan maintained by any member of the plan’s controlled group, its contributing sponsor(s) and EIN/PN

**G. Extraordinary Dividend or Stock Redemption**

(see 29 CFR §4043.31)

**ERISA Definition** - The reportable event described below replaces the reporting requirement for extraordinary dividends and stock redemptions described in ERISA §4043(c)(11). Thus, reporting of any event described under ERISA §4043(c)(11) is waived, unless the event would be reportable under this or another reportable event.

**Definition of Event** - A reportable event occurs for a plan when any member of the plan’s controlled group declares a *dividend* (definition follows) or redeems its own stock, if the resulting distribution is a reportable cash distribution, non-cash distribution or combined distribution as described below.

1. **Cash distributions.** A cash distribution is reportable if:
  - a. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the *adjusted net income* (definition follows) of the person making the distribution for the preceding fiscal year; and
  - b. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the *adjusted net income* of the person making the distribution for the four preceding fiscal years.
2. **Non-cash distributions.** A non-cash distribution is reportable if its net value, when combined with the *net value* (definition follows) of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10% of the *total net assets* (definition follows) of the person making the distribution. To determine whether a distribution is reportable, both assets and liabilities must be valued at fair market value.
3. **Combined distributions.** If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the *cash distribution percentage* (definition follows) and the *non-cash distribution percentages* (definition follows) for the fiscal year exceeds 100%.

**Definitions**

**Adjusted net income** means the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

**Cash distribution percentage** means, for a fiscal year, the lesser of:

1. The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income of the person making the distributions for the preceding fiscal year, or

2. The percentage that all cash distributions to one or more shareholders made during that fiscal year and the three preceding fiscal years bears to the adjusted net income of the person making the distributions for the four preceding fiscal years.

**Dividend** means a distribution to one or more shareholders. A payment by a person to a member of its controlled group is treated as a distribution to its shareholder(s).

**Net value of non-cash distribution** means 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. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. 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 shall be deemed to be equal to 200% 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.

**Non-cash distribution percentage** means the percentage that the net value of the non-cash distribution bears to one-tenth of the value of the total net assets of the person making the distribution.

**Total net assets** means, with respect to the person declaring a non-cash distribution:

1. If all classes of the person's securities are publicly traded, the total market value (immediately before the distribution is made) of the publicly-traded securities of the person making the distribution;
2. If no classes of the person's securities are publicly traded, the excess (immediately before the distribution is made) of the book value of the person's assets over the book value of the person's liabilities, adjusted to reflect the net value of the non-cash distribution; or
3. If some but not all classes of the person's securities are publicly traded, the greater of the amounts in (1) or (2) above.

**Reporting Waiver; *de minimis* 5-percent segment** - Reporting of this event 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 date the reportable event occurs.

**Required Attachments:**

- Name and EIN of person making the distribution
- Date and amount of cash distribution(s) during fiscal year
- Description, fair market value, and date(s) of any non-cash distribution(s)
- Statement whether the recipient was a member of the plan's controlled group
- Financial statements for all controlled group members unless publicly available

**H. Transfer of Benefit Liabilities**

(see 29 CFR §4043.32)

**Definition of 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 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% or more of the plan's total benefit liabilities. For this purpose, value both the benefit liabilities transferred and the plan's total benefit liabilities as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with Code §414(l).

The **date of a transfer** of benefit liabilities shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to Code §414(l), the date determined in accordance with Code §414(l) and 26 CFR §1.414(l)-1(b)(11) will be considered the date of transfer.

*Note: For purposes of this reportable event, the payment of a lump sum, or purchase of an irrevocable commitment to provide an annuity, in satisfaction of benefit liabilities is not considered a transfer of benefit liabilities.*

**Required Attachments:**

- Name, contributing sponsor and EIN/PN of the transferor plan and each transferee plan
- Explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, plan assets) transferred
- Estimate of the assets, liabilities, and number of participants whose benefits are transferred
- Financial statements of (i) the transferor's controlled group and (ii) the transferee's controlled group

If a filer is unable with reasonable diligence to obtain any of the following information about a controlled group other than the filer's controlled group—(1) a description of the controlled group structure, (2) information about plans maintained, or (3) a financial statement of a controlled group—the filer may instead file a statement to that effect.

**I. Application for Minimum Funding Waiver**

(see 29 CFR §4043.33)

**Definition of Event** - A reportable event occurs when an application for a minimum funding waiver is submitted for a plan under ERISA §302(c) or Code §412(c).

**Required Attachment:**

- Copy of waiver application, with all attachments

**J. Loan Default**

(see 29 CFR §4043.34)

**Definition of Event** - A reportable event occurs whenever there is a default under a loan agreement by a member of a plan's controlled group with respect to a loan with an outstanding balance of \$10 million or more if:

1. The default results from the debtor's failure to make a required payment when due (unless the payment is made within 30 days after the due date);
2. The lender accelerates the loan; or
3. The debtor receives a written notice of default from the lender (and does not establish that the notice was issued in error) on account of:
  - a. A drop in the debtor's cash reserves below an agreed-upon level,
  - b. An unusual or catastrophic event experienced by the debtor, or

- c. A persisting failure by the debtor to attain agreed-upon financial performance levels.

**Special Notice Date Rule** - For this event, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

**Example** - Company A has a debt with an outstanding balance of \$20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within thirty days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

**Reporting Waiver; Default cured** - Reporting of this event is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

**Extension of Reporting Deadline** - The notice date (for an event that is not waived) is extended to one day after:

1. in the case of a default resulting from the debtor's failure to make a required payment when due, the applicable cure period provided in the loan agreement,
2. in the case of a lender accelerating a loan, the date the loan is accelerated, or
3. in the case of a debtor receiving a written notice of default from the lender, the date the debtor receives written notice of the default.

**Required Attachments:**

- Copy of the relevant loan documents (*e.g.*, promissory note, security agreement)
- Due date and amount of any missed payment
- Copy of any written notice of default or any notice of acceleration from lender
- Financial statements for all controlled group members unless publicly available

**K. Bankruptcy or Similar Settlement**

(see 29 CFR §4043.35)

**Definition of Event** - A reportable event occurs with respect to a plan when any member of the plan's controlled group:

1. Commences a bankruptcy case (under the Bankruptcy Code) or has a bankruptcy case commenced against it;
2. Commences, or has commenced against it, any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);
3. Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;
4. Executes a general assignment for the benefit of creditors; or
5. Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.



*Note: An event described above may also be reportable under Liquidation (see Part III.F).*

**Required Attachments:**

- Name, address and phone number of any trustee, receiver or similar person
- Description of the plan's controlled group structure, including the name and address of each controlled group member
- Name of each plan maintained by any member of the plan's controlled group, its contributing sponsor(s) and EIN/PN
- Docket number of bankruptcy filing and the bankruptcy Court district where the bankruptcy was filed

**L. Adjusted Funding Target Attainment Percentage Under 60%**

(see 29 CFR §4043.36)

**Definition of event** - A reportable event occurs for a plan when the plan's adjusted funding target attainment percentage (AFTAP) under Code §436(j)(2) either —

1. Is certified by an enrolled actuary to be less than 60%, or
2. Is presumed under Code §436(h) to be less than 60%.

**Required Attachment:**

- If an enrolled actuary has certified that the AFTAP is less than 60%, a copy of the enrolled actuary's certification
- If the AFTAP is presumed to be less than 60%, a description of the basis for the presumption, which may be included in the "Brief Description" section

**M. Asset Transfer to Retiree Health Account or Subsequent Reduction in Funding Ratio**

(see 29 CFR §4043.37)

**Definition of event** - A reportable event occurs for a plan when either —

1. The plan makes a qualified future transfer or a collectively bargained transfer under Code §420(f) of \$10 million dollars or more, or
2. On any valuation date of the plan during the transfer period described in Code §420(f)(5) following any transfer described above in this section, 120% of the sum of the funding target and the target normal cost determined under Code §430 for the plan year exceeds the lesser of:
  - a. The fair market value of the plan's assets (reduced by the prefunding balance and funding standard account carryover balance determined under Code §430(f)), or
  - b. The value of plan assets as determined under Code §430(g)(3) after reduction under Code §430(f).

**Required Attachments:**

- For a Code section 420(f) transfer, a calculation demonstrating that the transfer does not reduce pension assets below 120% of liabilities for pension benefits
- For a decrease in funded ratio below 120% following a Code section 420(f) transfer, a calculation demonstrating how pension assets were restored to an amount not less than 120% of liabilities for pension benefits

## Appendix

### **Failure to Make Required Funding Payments (see Part III.B., above)**

#### *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 required<sup>1</sup> 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,<sup>2</sup> 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,<sup>2</sup> 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).

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<sup>1</sup> 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.

<sup>2</sup> 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
<b>Total</b>			\$600,000		\$0	<b>\$600,000</b>

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)
<b>Total</b>			\$1,400,000		\$15,321	<b>\$915,321</b>

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)
<b>Total</b>				\$1,400,000		\$41,350	<b>\$1,441,350</b>

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)
<b>Total</b>				\$1,400,000		\$68,452	<b>\$1,618,452</b>

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.