

# Form 10-Advance Instructions

## Advance 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 C, 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 12 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(b) of the Employee Retirement Income Security Act (ERISA) requires that certain contributing sponsors notify PBGC at least 30 days in advance of the effective date of certain “reportable events.” PBGC’s regulation on Reportable Events (29 CFR Part 4043, Subparts A and C) describes in detail each reportable event and any applicable extension or waiver provisions. The reportable events for which advance reporting is required are:

- A. Change in contributing sponsor or controlled group
- B. Liquidation of contributing sponsor or controlled group member
- C. Extraordinary dividend or stock redemption
- D. Transfer of benefit liabilities
- E. Application for minimum funding waiver
- F. Loan default
- G. Bankruptcy or similar settlement
- H. Adjusted funding target attainment percentage under 60%

Part III of these instructions summarizes the rules for each event.

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-Advance instructions and Form 10-Advance have been changed; the key changes include:

- Elimination of most automatic waivers and filing extensions
- A revised advance reporting threshold test to conform to the PPA 2006 funding rules and PBGC’s new variable-rate premium rules
- 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 1 business day 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 a new advance reportable event based on provisions in PPA 2006 dealing with funding-based benefit limits
- 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
- 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

## **Post-Event Reporting Rule**

Section 4043(a) of ERISA requires that the plan administrator and each contributing sponsor notify PBGC within 30 days after the occurrence of certain reportable events. If an advance notice is filed (using Form-10 Advance), no post-event notice (using Form 10) is required.

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

## **Contributing Sponsors Subject to Advance Reporting**

Certain contributing sponsors are required to notify PBGC at least 30 days before the effective date of certain reportable events unless a waiver or extension applies (29 CFR §4043.61(a)).

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.

## **Who Must Notify PBGC**

Each contributing sponsor subject to advance reporting must notify PBGC that a reportable event will occur using the PBGC Form 10-Advance. If there is a change in contributing sponsor, the reporting obligation applies to the contributing sponsor(s) on the date the advance notice is due.

*Note: An authorized representative may file a reportable event notice on behalf of a contributing sponsor.*

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

## **Reporting Waivers**

Advance notice is automatically waived for certain reportable events in certain circumstances (see Part III of these instructions). Advance 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-Advance 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 "advancereport@pbgc.gov" in the "Recipient Email" field, and attach the files.

## **When To File**

An advance notice of a reportable event must be filed no later than 30 days before the effective date of the reportable event. PBGC has extended the 30-day deadline for some events in certain specified circumstances (see Part III of these instructions).

PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

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 of time 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 1 business day after the filing deadline. Now, all required information must be submitted by the filing deadline.*

## **Filing Date**

The filing date for an advance notice of a reportable event or other required information 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:

[advancereport@pbgc.gov](mailto:advancereport@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 “advancereport@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.)

### **What to File**

A contributing sponsor must use the PBGC Form 10-Advance to file an advance reportable event notice with PBGC, and include with the Form 10-Advance 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-Advance.

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 contributing sponsor submit additional information within 7 days after the date of PBGC’s written request. PBGC may shorten this 7-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. The description or chart may exclude *de minimis* 5-percent segments and foreign entities other than foreign parents.

### **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 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. PBGC will generally assess the full \$1,100 a day penalty for failure to give advance notice (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 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/TDD 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 Part 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 5-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 5% of the controlled group's revenue;
2. Annual operating income not exceeding the greatest of:
  - a. 5% 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. 5% of the controlled group's net tangible assets at the end of the fiscal year(s), or
  - b. \$5 million.

**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).

**Foreign entity** means a member of a controlled group that:

1. Is not a contributing sponsor of a plan;
2. Is not organized under the laws of (or, if an individual, is not a domiciliary of) any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and Wake Island; and
3. For the fiscal year that includes the effective date of the reportable event, meets one of the following tests:
  - a. Is not required to file any United States federal income tax form;
  - b. Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or
  - c. Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax return for employee withholding.

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

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

**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.

## **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 contributing sponsor(s) and of the individual whom PBGC should contact if it has questions about the filing;
- The EIN of the contributing sponsor and the PN of the plan (if the EIN/PN is different from that used in the most recent premium filing with PBGC, enter the EIN/PN previously reported);
- 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. Change in Contributing Sponsor or Controlled Group**  
(see 29 CFR §4043.62)

**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 identify, form, or place of organization, however effected.*

**Examples** - The following examples assume that the contributing sponsors are subject to advance reporting and 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:** No later than 30 days before the effective date of the transaction, Company A (Plan A's contributing sponsor) is required to report that Companies B and C will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) is 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.

### ***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:** There is a reportable event because, as a result of the transaction (*i.e.*, the binding contract), Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. Because Company Q is the contributing sponsor on the 30th day prior to the effective date of the sale, Company Q 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:** No later than 30 days before the effective date of the transaction, Company Z must report that Company Y will cease to be a member of Plan Z's controlled group.

**Reporting Waiver; *de minimis* 5-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* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

### **Required Attachments:**

- Expected effective date of event
- 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.

## **B. Liquidation**

(see 29 CFR §4043.63)

**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 Settlement (see Part III.G).*

### **Required Attachments:**

- Expected effective date of event
- 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

## **C. Extraordinary Dividend or Stock Redemption**

(see 29 CFR §4043.64)

**ERISA Definition** - The reportable event described below replaces the reporting requirement for extraordinary dividends and stock redemptions described in ERISA §4043(c)(11). Reporting of any event described under ERISA §4043(c)(11) is waived, unless the event would otherwise 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* (definition follows), when combined with the net value 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 is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

**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 distributions
- Statement whether the recipient was a member of the plan's controlled group
- Financial statements for all controlled group members unless publicly available

**D. Transfer of Benefit Liabilities**

(see 29 CFR §4043.65)

**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 that section 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.

## **E. Application for Minimum Funding Waiver**

(see 29 CFR §4043.66)

**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).

**Extension of Reporting Deadline** - The notice date is extended until the day the reportable event occurs.

### **Required Attachment:**

- Copy of waiver application, with all attachments

## **F. Loan Default**

(see 29 CFR §4043.67)

**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 10 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.

**Reporting Waiver; Default cured** - Reporting of this event is waived if the default is cured, or waived by the lender, within 10 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 the later of:

**10 days after default:** 10 days after the default occurs (without regard to the time of any other conditions required for the default to be reportable); or

**One day after subsequent event:** 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

**G. Bankruptcy or Similar Settlement**

(see 29 CFR §4043.68)

**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.B).*

**Extension of Reporting Deadline** - The notice date is extended until 10 days after the reportable event has occurred.

**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 bankruptcy Court district where the bankruptcy was filed

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

(see 29 CFR §4043.69)

**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 percent, or

2. Is presumed under Code §436(h) to be less than 60 percent.

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

**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 on the Form 10-Advance