

# Form 200 Instructions

## Notice of Failure to Make Required Contributions

### PAPERWORK REDUCTION ACT NOTICE

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

PBGC estimates that it will take an average of 6 hours and \$250 to comply with the requirements described in these instructions. These figures are estimated averages that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

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

This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0041. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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## INTRODUCTION

ERISA §303(k) and Code §430(k) provide that a lien arises in certain cases where there is a failure to make required contributions to a single-employer plan covered under ERISA §4021 whose funding target attainment percentage (as defined in ERISA §303(d)(2) and Code §430(d)(2)) is less than 100 percent. The lien arises, in favor of the plan, upon all property and rights to property (whether real or personal) belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member) if:

- (1) any person fails to make a required contribution payment when due, and
- (2) the unpaid balance of the payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made when due (including interest), exceeds \$1 million.

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

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

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

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

### What's New

PBGC reviewed the current Form 200 and has made the following changes in an effort to reduce burden on the public and obtain relevant information needed to determine whether action is necessary to protect participants and the pension insurance program. The Form 200 instructions and Form 200 have been changed to:

- Streamline the form to two pages and modify the form to look more like the Form 10 and Form 10-A.
- Remove information items PBGC can obtain publicly such as Form 5500s and documents filed with the Securities and Exchange Commission.

- Add a requirement to state the reason for a late contribution so PBGC can better understand the underlying financial health of the sponsor and reasons for missing payments.
- Add an Appendix to these instructions that provides an example of how to describe the aggregate outstanding balance of required funding payments, including interest.

## GENERAL INSTRUCTIONS

### Who Must File

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

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

*Special Rule for Terminating Plans: The fact that a plan is in the process of terminating does not mean that a Form 200 notice need not be filed. However, a notice is waived if the deadline for filing the notice is on or after the date on which (1) all of the plan’s assets (other than any excess assets) are distributed pursuant to a termination or (2) a trustee is appointed for the plan under ERISA §4042(c).*

### How to File

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

#### *Attaching files*

If filing by email, filers may attach electronic files to their submission. Examples of files that may be attached include, but are not limited to, actuarial valuation reports, financial statements, and organizational charts.

If you are filing materials electronically that are larger than 10 megabyte, please use LeapFILE. Enter “pbgc.leapfile.com” in your internet browser, click on “secure upload,” enter “[form200@pbgc.gov](mailto:form200@pbgc.gov)” in the “Recipient Email” field, and attach the files.

### When to File

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

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

### Notice Filing Date

The filing date for a Form 200, including all required documentation and information, is the date it is received by PBGC at the address listed under “Where to File.”

**Special rule for electronic transmission:** An electronic transmission of a reportable event notice will be deemed timely filed if (1) the transmission is received by PBGC on or before the filing deadline (including extensions), (2) the transmission contains the information listed on the Form 200 and (3) the remaining information is received by PBGC at the address listed under "Where to File" by the second regular business day following the filing deadline (including extensions).

**Computation of time:** In computing the 10-day period, the due date of the payment that resulted in the requirement to notify PBGC is not included. Form 200 is due 10 days thereafter unless that day is a Saturday, Sunday, or Federal holiday, in which case the 10-day period runs until the next days that is not a Saturday, Sunday, or Federal holiday. 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  
Corporate Finance and Restructuring Department  
1200 K Street, NW  
Washington, DC 20005-4026

By e-mail (see also "How to File"): [form200@pbgc.gov](mailto:form200@pbgc.gov)

By fax:

202-842-2643 (call 202-326-4070 to confirm that the fax has been received). (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 contributing sponsor must use the PBGC Form 200 to file a notice of a failure to make required contributions. Certain individual items on the form call for additional information.

#### *Attachments*

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

#### *Previously Submitted Information*

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

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

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

### **For Questions or Problems Regarding Form 200**

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

Pension Benefit Guaranty Corporation  
Corporate Finance and Restructuring Department  
1200 K Street, NW  
Washington DC 20005-4026  
Telephone: 202-326-4070  
Email: [form200@pbgc.gov](mailto:form200@pbgc.gov)

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.

Copies of Form 200 and instructions may be obtained from PBGC's website at <http://www.pbgc.gov/prac/forms.html>.

### **Reportable Event**

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

*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 purposes of 29 CFR 4043.25(a). However, Form 10 may also be filed if desired. Choosing to rely on Form 200 to satisfy the Form 10 filing requirement does not make the Form 200 a reportable event filing under ERISA §4043 and does not give the Form 200 filing the benefit of the confidentiality protection for reportable event notices under ERISA §4043(f).*

## **DEFINITIONS**

As used in PBGC Form 200 and these instructions:

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

**Contributing sponsor** means a person that is a contributing sponsor as defined in ERISA §4001(a)(13).

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

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

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

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

**IRS** means the Internal Revenue Service.

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

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

**Required payment** means a required installment or other payment required under ERISA §§ 302 and 303 and Code §§ 412 and 430 or as a result of a funding waiver.

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

**Ultimate Parent** means the parent at the highest level in the chain of corporation and/or other organizations constituting a parent-subsidiary controlled group. (For example, if Corporation A owns all of the stock of Corporation B and Corporation C, and Corporation B owns all of the stock of Corporation X, the contributing sponsor, then the “ultimate parent” of Corporation X is Corporation A.)

## **SPECIFIC INSTRUCTIONS**

### **General Plan Information**

- Complete name of the plan as it appears on the plan document
- Name, address, telephone number, and email address of the individual or the board or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated, enter the name, address, telephone number, and email address of the contributing sponsor.
- The name, title, e-mail address, and phone number of an individual whom PBGC should contact if it has questions about the filing
- The EIN/PN reported should be the EIN/PN most recently reported for a PBGC premium filing (if applicable). If the plan has never made a PBGC premium filing, enter the EIN assigned to the contributing sponsor by the IRS for income tax purposes and the PN assigned by the contributing sponsor

### **Plan Funding Information**

*Note: An enrolled actuary must certify that the information in this section is true, correct, and complete, and conforms to applicable regulatory requirements (see Certification section).*

- Due date of required payment
- The total amount, as of the due date, of the unpaid balance of the required payment and the aggregate unpaid balance of all preceding required payments for which payment was not made when

due (*i.e.*, include in this amount the unpaid balances, including interest, of all required payments for which payment was not made when due). See Appendix for an example of how to compute the total amount.

- Description of how the unpaid balance of required payments was determined. This description must include an attached spreadsheet that shows the details of the calculation (see Appendix for an example of how the required information may be shown).

### **Additional Information to be Filed**

Additional information to be filed (check all boxes for information attached to form; see below for description of Actuarial Information required)

- Description of the plan's controlled group structure, including the name, address, telephone number and EIN of each controlled group member, including the contributing sponsor and the ultimate parent of the controlled group.
- Name, address, telephone number and EIN of each contributing sponsor of the plan
- Reason contribution was not made by due date
- Copy of any IRS letter(s) granting or modifying a funding waiver and/or extension of the amortization period
- Statement describing any pending request(s) for a funding waiver and/or extension of the amortization period
- Copies of audited financial statements (if available) or (if not) unaudited financial statements that were prepared for the contributing sponsor and each other controlled group member individually, including balance sheets, income statements, statements of cash flows, and notes to financial statements and annual reports. However, if financial statements were only prepared on a consolidated basis for more than one controlled group member, consolidated financial statements and consolidating financial statements (if available) and (if not) consolidating trial balances that identify each controlled group member individually may be attached instead. Copies of financial statements for the most recent three fiscal years available, and the most recent available interim financial statement, for each member of the plan's controlled group, including the contributing sponsor and the ultimate parent

Also include an explanation of any information required to be filed but missing from the filing

### **Actuarial Information**

Please include the following:

- Actuarial information for each plan maintained by any member of the plan's controlled group:
  - Copy of the most recent Actuarial Valuation Report that includes or is supplemented with all of the items described below. If the amount of the most recent missed contribution is based on a calculation that is not reflected in the most recent Actuarial Valuation Report, also provide all of the information described below that supports the calculation:
    - o 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;
    - o 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).
- Statement of any material change in liabilities of the plan occurring after the date of the most recent Actuarial Valuation Report
  - Most recent month-end market value of plan assets



- Contact name, telephone number, and employer of the plan actuary if different from that listed on the most recently filed Schedule SB to Form 5500

### **Certifications**

- Certification must be made by an enrolled actuary.
- Contributing Sponsor or Parent Certification must be made by an officer (or an individual of comparable authority in an unincorporated organization) of the contributing sponsor or ultimate parent that is filing the Form 200.

## Appendix

### Example on How to Describe the Aggregate Unpaid Balance of Required Funding Payments

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 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.