

TECHNICAL UPDATE 13-1

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



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Technical Update 13-1: Reportable Events; Funding-Related Determinations; Missed Quarterly Contributions; Guidance for Plan Years after 2012.

This Technical Update 13-1 provides Pension Benefit Guaranty Corporation (“PBGC”) guidance for plan years beginning after 2012 on compliance with the reportable events requirements of section 4043 of the Employee Retirement Income Security Act of 1974 (“ERISA”) and PBGC’s regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043).

This Technical Update addresses two topics:

- Funding-related determinations for purposes of waivers, extensions, and the advance reporting threshold test.
- Missed quarterly contributions.

Regarding funding-related determinations for purposes of waivers, extensions, and the advance reporting threshold test, this Technical Update provides in general that for purposes of the reportable events regulation, a plan’s unfunded vested benefits (“UVBs”) and the value of its assets and vested benefits are determined for a plan year beginning after 2012 in the same manner as for variable-rate premiums (“VRPs”) for the preceding plan year.

Regarding missed quarterly contributions, this Technical Update provides in general that for purposes of the reportable events regulation, if a required quarterly contribution for a plan year (the “current year”) beginning after 2012 is not timely made to a plan, and financial inability to make the contribution is not the reason for not making the contribution, the reporting requirement under § 4043.25 of the reportable events regulation —

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

(2) if the plan has at least 25 but fewer than 100 participants for the prior year, will be considered satisfied if a simplified notice is filed with PBGC by the time the first missed-quarterly reportable event report not timely made for the current year would otherwise be due.

I. Background

ERISA section 4043 and subparts A through C of the reportable events regulation require that PBGC be notified of certain “reportable events.” In some cases, where (among other things) a “threshold test” is met, advance reporting is required. The reportable events regulation provides for waivers and extensions, some of which (“funding-based” waivers and extensions) are based on quantities used in calculating VRPs — assets, vested benefits, and UVBs (“VRP values”) — for the plan year in which the event occurs or becomes effective, calculated as of the “testing date” for that year.

The Pension Protection Act of 2006 (PPA 2006) modified the way the VRP is determined, and PBGC has implemented those modifications in its premium regulations. Pending amendment of the reportable events regulation to conform to and implement the changes to the VRP determinations under PPA 2006, PBGC has issued a series of Technical Updates to provide temporary guidance about how to apply the advance reporting threshold test and the funding-based waivers and extensions under the reportable events regulation: Technical Update 07-2 (dealing with event years beginning in 2008), Technical Update 09-1 (dealing with event years beginning in 2009), Technical Update 09-4 (dealing with event years beginning in 2010), Technical Update 10-4 (dealing with event years beginning in 2011), and Technical Update 11-1 (dealing with event years beginning in 2012).

One reportable event, described in § 4043.25 of the reportable events regulation, is the failure to timely make a required funding contribution, including a required quarterly contribution. In Technical Updates 09-3, 09-4, 10-4, and 11-1, PBGC provided a waiver of this reporting requirement for certain small plans, and an alternative method of compliance with the reporting requirement for certain other small plans, with respect to quarterly contributions for plan years beginning in 2009, 2010, 2011, and 2012 respectively.

On November 23, 2009, PBGC published (at 74 FR 61248) a proposed rule to amend the reportable events regulation to accommodate the changes to the VRP rules. Public comment on the proposed rule was generally negative. In response to the comments and in the spirit of Executive Order 13563 on Improving Regulation and Regulatory Review, PBGC plans to issue a new proposal that will more effectively target troubled plans and sponsors while reducing burden for those that are financially sound. However, because PBGC has not yet issued a final rule, there is a need for interim guidance for plan years beginning after 2012 as to compliance with the existing (unamended) regulation.

II. Discussion.

To provide interim guidance for plan years beginning after 2012, PBGC in this Technical Update is extending the guidance in Technical Update 11-1, subject to applicable provisions of amendments that PBGC makes to the reportable events regulation.

III. Guidance

Funding-related determinations for purposes of waivers, extensions, and advance reporting. The VRP values (the amount of UVBs and the value of assets and vested benefits) as of the testing date to be used for an event year beginning after 2012 for purposes of subparts A through C of the reportable events regulation are those determined for premium purposes for the plan year preceding the event year under the premium regulations as amended to conform with PPA 2006.¹ For example, in the case of a calendar year plan with a January 1 valuation date, the VRP values determined as of January 1, 2012, for purposes of the 2012 variable rate premium are also used for applying the \$50 million advance-reporting threshold test for events becoming effective in 2013.

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

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

- (1) the name of the plan and the Employer Identification Number and Plan Number most recently reported for the plan in a PBGC premium filing;
- (2) the date the current year began;
- (3) that a quarterly contribution to the plan for the current year has not been (or will not be) timely made;
- (4) that financial inability to make the contribution is not the reason for not making the contribution;
- (5) the last day for satisfying the minimum funding requirement for the plan for the current year (the “final payment date”);

¹ The waiver based on “no variable-rate premium” is unaffected by this Technical Update.

(6) that the filer understands that if the minimum funding requirement for the plan is not satisfied by the final payment date, a reportable event notice must be filed under the reportable events regulation; and

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

Reports must be made either in the manner required for reportable events reports generally or by e-mail to post-event.report@pbgc.gov. See Technical Update 09-3 for sample notice language.

Effect of final rule. As noted above, PBGC plans to issue a new proposed rule to amend the reportable events regulation. When PBGC publishes a final rule amending the reportable events regulation, this Technical Update will be superseded with respect to reportable events to which the final rule applies, except to the extent that the final rule provides otherwise.

IV. Further guidance and other effect

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

This Technical Update has no effect on subpart D of the reportable events regulation, Notice of Failure to Make Required Contributions.

This Technical Update has no effect on the determination of premiums or on any other requirements under other PBGC regulations other than the reportable events regulation.

V. Disclaimer

This guidance represents PBGC's current thinking on this topic. It does not create or confer any rights for or on any person or operate to bind the public. If an alternative approach satisfies the requirements of the applicable statutes and regulations, you can use that approach. If you want to discuss an alternative approach (which you are not required to do), you may contact the PBGC.

VI. PBGC Contact Points

For questions about this Technical Update 13-1, contact Deborah Murphy, Senior Counsel, Office of the General Counsel at (202) 326-4400, ext. 3451, or murphy.deborah@pbgc.gov or Amy Viener, Policy, Research and Analysis Department at (202) 326-4080, ext. 3919, or viener.amy@pbgc.gov.