



# Form 10 Instructions

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## POST-EVENT NOTICE OF REPORTABLE EVENTS

The Form 10 is used by a plan administrator or contributing sponsor of a single-employer plan when notifying the Pension Benefit Guaranty Corporation that a reportable event has occurred. For questions regarding this form, contact (202) 326-4070 or [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov).

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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 within 30 days 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 minimum funding payment
- C. Inability to pay benefits when due
- D. Distribution to a substantial owner
- E. Change in controlled group
- F. Liquidation
- G. Extraordinary dividend or stock redemption
- H. Transfer of benefit liabilities
- I. Application for minimum funding waiver
- J. Loan default
- K. Insolvency or similar settlement

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 (which include multiple-employer plans) covered by title IV of ERISA. In these instructions, “plan” always means such a plan.

### What’s New

The Form 10 and instructions have changed to include an additional information requirement for the failure to make a required minimum funding payment: evidence of any amount paid related to the missed contribution (cancelled check, wire transfer, asset statement).

PBGC also intends to no longer accept electronic filing by email as of October 1, 2021. PBGC’s e-filing portal, available for reportable events filings since 2016, offers a secure application for submitting required information. The e-filing portal allows filers to:

- Review filings and generate a list of omissions and inconsistencies prior to submission to ensure that filings are complete.
- Save a partially completed filing.
- Modify information any time prior to submission.
- Pre-populate a filing with data from a previously submitted filing.
- Route the filing as needed to facilitate e-certifications.
- Review prior filings submitted via the e-filing portal.

Notification of future changes to any forms and instructions may be found under “What’s New” on the Employers & Practitioners page at [www.pbgc.gov/prac](http://www.pbgc.gov/prac).

## 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 event is subject to both post-event and advance notice requirements, the notice filed first satisfies both filing requirements.

The advance notice requirement applies only to non-public companies that:

1. Are members of a controlled group whose plans (disregarding plans with no unfunded vested benefits) have:
  - i. aggregate unfunded vested benefits of more than \$50 million and
  - ii. an aggregate funded vested benefit percentage of less than 90 percent; and
2. Are reporting about events relating to themselves or other non-public companies in the controlled group.

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. PBGC does not need a power-of-attorney or any other form prepared to identify an authorized representative.*

A single occurrence (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 (i.e., PBGC does not need multiple filings providing the same information).

*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, no notice is required if the deadline for filing 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 under 29 CFR part 4041 or (2) a trustee is appointed for the plan under section 4042(c) of ERISA.*

## Reporting Waivers

Automatic waivers are provided for certain reportable events in certain circumstances (see Part III of these instructions for waivers by event type).

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.

PBGC may also consider a case specific waiver depending on the facts and circumstances of each situation. A request for a case specific waiver can be submitted to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov). The request should include the name of the plan, EIN/PN, name of the plan sponsor, type of reportable event, and the facts and circumstances on which the request is based.

## How to File

Forms must be filed electronically in one of the following two ways.

- Using the 4043 module of PBGC's e-filing portal. The portal can be accessed using this address: [efilingportal.pbgc.gov](http://efilingportal.pbgc.gov).
- Emailing a completed form and any required attachments to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov). PBGC intends to no longer accept electronic filing by email as of October 1, 2021.

If you are filing materials electronically that are larger than 10 megabytes, please use LeapFILE. Enter "pbgc.leapfile.com" in your Internet browser, click on "secure upload," enter [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov) in the "Recipient Email" field, and attach the files.

To request an exemption from filing electronically, submit a request to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov).

## 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. If the same occurrence 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 (currently only available by email submission), the filing must be made by the earliest filing deadline.

See 29 CFR 4000.43 to determine how to compute any period of time.

## Notice Filing Date

The date a Form 10 is considered to have been filed is the date the notice and all additional information is submitted to PBGC at [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov) or the date submitted through PBGC's e-filing portal. See 29 CFR 4000.29.

## What to File

A plan administrator or contributing sponsor must include with the Form 10 certain required information tailored to the particular event. This information is listed on pages 2 and 3 of the Form 10 or in the e-filing portal.

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

If the same occurrence 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 (i.e., you can submit one Form 10 and check all event type boxes that apply on page 1 of the form if submitting by email) . If a single notice is filed, the notice must include all the required information (or an explanation for why any required information is missing) for each event. Notices for two or more events may be submitted together. (See also "When to File.")

PBGC may require that a plan administrator or contributing sponsor submit additional relevant 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 or any duly authorized committee or subcommittee of the Congress. (See 29 CFR 4043.8 - Confidentiality.)*

## Information on Controlled Group Structure

To comply with any requirement that the reportable event notice include a description of the plan's controlled group structure (see page 2 of the Form 10), the filer may submit a copy of an organization chart or other diagram. The description or chart may exclude de minimis 5-percent segments and foreign entities other than foreign parents.

## Effect of Failure to File

If a notice (or any other required information) under section 4043 of ERISA is not provided by the Notice Due Date, PBGC may assess a penalty under section 4071 of ERISA against each plan administrator and contributing sponsor required to provide the 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, contact:

Pension Benefit Guaranty Corporation  
Corporate Finance and Restructuring Department  
1200 K Street, NW  
Washington, DC 20005-4026

Telephone: 202-326-4070

Email: [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov)

If you are having problems using the e-filing portal, contact PBGC at [efiling.portal@pbgc.gov](mailto:efiling.portal@pbgc.gov).

TTY 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 10 and instructions may be obtained from PBGC's website at <http://www.pbgc.gov/prac/forms>.

**PART II - DEFINITIONS**

**Benefit Liabilities** means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

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

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

**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 percent 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.

**Date of event** means the date described in PBGC regulations for the specific reportable event.

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

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

**Filing extension claimed** means the specific filing extension claimed under the relevant regulation and reflected in the Notice Due Date.

**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, Wake Island, and the Canal Zone; and

3. For the fiscal year that includes the date the reportable event occurs, 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.
  - 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 returns for employee withholding.

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

**Low-default-risk** means the contributing sponsor of a plan or the highest U.S parent of a contributing sponsor has adequate capacity to meet its obligations in full and on time as evidenced by satisfying either: (A) the first two or (B) any four of the following seven criteria:

1. The probability that the company will default on its financial obligations is not more than 4 percent over the next five years or not more than 0.4 percent over the next year, in either case determined on the basis of widely available third party financial information on the company's credit quality.
2. The company's secured debt (with some exceptions) does not exceed 10 percent of its total asset value.
3. The company's ratio of total debt to EBITDA<sup>1</sup> is 3.0 or less.
4. The company's ratio of retained earnings to total assets is 0.25 or more.
5. The company has positive net income for the two most recent completed fiscal years.
6. The company has not experienced any loan default event in the past two years regardless of whether reporting was waived.
7. The sponsor has not experienced a missed contribution event in the past two years unless reporting was waived.

**Notice due date** means the deadline (including extensions) for filing notice of a reportable event with PBGC. If no extension is claimed, the notice due date is 30 days after the date of event. In computing time periods, if for example the due date falls on a weekend or holiday, the date is extended to the next day that is not a weekend or a Federal holiday. (See 29 CFR 4000, subpart D.)

**Notice filing date** means the date the notice of a reportable event is submitted to 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.

<sup>1</sup> Earnings before interest, taxes, depreciation, and amortization.



**Public company** means a person subject to the reporting requirements of section 13 or section 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 section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA) 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.

**U.S. entity** means an entity subject to the personal jurisdiction of the U.S. district courts.

**Well-funded plan safe harbor** means that a plan is in the well-funded plan safe harbor for an event year if no variable-rate premium was required to be paid for the plan for the plan year preceding the event year.

## PART III - SPECIFIC INSTRUCTIONS

Please include the following information for all reportable events. See each reportable event listed below for event-specific information required:

- The name of the plan.
- The name and address of the filer and whether the filer is the plan administrator or contributing sponsor.
- The name, title, e-mail address, and phone number of an individual whom PBGC should contact with 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.
- The type of event that occurred (indicated by marking the appropriate box).
- A brief statement of the pertinent facts relating to the reportable event.
- Information required to be filed for each type of event (check all boxes for information attached to the form).
- An explanation of any information required to be filed but missing from the filing.
- The date of event, notice due date, and notice filing date.
- A brief statement describing the extension claimed (i.e., for notice of an active participant reduction event because of attrition or notice of a liquidation event) or reason for late filing.
- Certification by the individual submitting the form.

### Financial Information

Please include the following for **all** controlled group members (unless publicly available).

- Audited financial statements for the most recent fiscal year (including balance sheet, income statement, cash flow statement, and notes to the financial statements).
- If audited financial statements are not available, unaudited financial statements for the most recent fiscal year.
- If neither audited nor unaudited financial statements are available, copies of federal tax returns for the most recent tax year.

*Note: If the above required financial information is publicly available, please indicate where the financial statements can be obtained (e.g., SEC, company website, and include the exact URL for the webpage).*

### Actuarial Information

Please include the following for **each plan** maintained by any member of the plan's controlled group.

- A copy of the most recent Actuarial Valuation Report that includes or is supplemented with all of the items described below.
  1. The funding target calculated pursuant to section 303 of ERISA without regard to

subsection 303(i)(1) (and section 430 of the Code without regard to subsection 430(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 non-vested benefits separately).

2. A summary of the actuarial assumptions and methods used for purposes of section 303 of ERISA 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.
  3. The effective interest rate (as defined in section 303(h)(2)(A) of ERISA and section 430(h)(2) (A) of the Code).
  4. The target normal cost calculated pursuant to section 303 of ERISA without regard to subsection 303(i)(2) (and section 430 of the Code without regard to subsection 430(i)(2)).
  5. 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.
  6. In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to section 303 of ERISA as if the plan has been in at-risk status for five consecutive years.
  7. 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.
  8. The funding standard carryover balance and the prefunding balance (maintained pursuant to section 303(f)(1) of ERISA and section 430(f)(1) of the Code) 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 section 303(f)(5) of ERISA or section 430(f)(5) of the Code, interest credited to such balances, and excess contributions used to increase such balances).
  9. A list of amortization bases (shortfall and waiver) under section 303 of ERISA and section 430 of the Code, including the year the base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year.
  10. 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.
  11. Expected disbursements (benefit payments and expenses) during the plan year.
  12. 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 (e.g., whether early retirement subsidies are reflected).
- If you are reporting a failure to make a required contribution and the amount of the missed contribution is based on a calculation that is not reflected in the most recent Actuarial Valuation Report, you must also provide all of the information listed above that supports the calculation.
  - 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.

**A. Active Participant Reduction**

(see 29 CFR 4043.23)

**Definition of Event** — A reportable event occurs when the number of active participants under a plan is reduced below 80 percent of the number of active participants at the beginning of the plan year because of a “single-cause event” or an “attrition event” as defined below.

1. *Single-cause event.* A “single-cause event” occurs on each date in a plan year when, as a result of a new single cause, the ratio of the aggregate number of individuals who ceased to be active participants because of that single-cause, to the number of active participants at the beginning of such plan year, exceeds 20 percent.

Examples of single-cause events include a reorganization or restructuring, the discontinuance of an operation or business, a natural disaster, a mass layoff, or an early retirement incentive program.

2. *Attrition event.* An “attrition event” occurs on the last day of a plan year if the sum of the number of active participants covered by the plan at the end of such plan year, plus the number of individuals who ceased to be active participants during the same plan year that are reported to PBGC in a single-cause event report in that plan year, is less than 80 percent of the number of active participants at the beginning of such plan year.

The reduction may be measured by using the number of active participants on either the last day of the plan year or the participant count date (as defined in 29 CFR 4006.2) for the next plan year, but in either case is considered to occur on the last day of the plan year. Although this is called an attrition event, the event may be a result of general attrition and a single cause event that did not meet the threshold for reporting previously (i.e. resulted in a reduction in active participants below 20%).

**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 section 4062(e) of ERISA or to the withdrawal of a substantial employer under section 4063(a) of ERISA, and (2) timely reported to PBGC under section 4062(e) and/or section 4063(a) of ERISA before the timely reporting of an active participant reduction event.

The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year, and the number of active participants at the end of a plan year may be determined by using the number of active participants at the beginning of the next plan year.

An active participant is a participant who (1) is receiving compensation from any member of the plan’s controlled group for work performed for any member of the plan’s controlled group; (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. A participant does not cease to be an “active participant” if the participant leaves employment with one member of the plan’s controlled group to become employed by another controlled group member.

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

### **1. Determining whether a single-cause event occurred**

**Facts:** A calendar-year plan had 1,000 active participants at the beginning of the current plan year. As the result of a business unit being shut down, 160 participants are permanently laid off on July 30. Prior to July 30, and as part of the course of regular business operations, some active participants terminated employment, some retired and some new hires became covered by the plan.

**Reporting:** Because reductions due to attrition are disregarded for purposes of determining whether a single-cause event has occurred, it is not necessary for the sponsor to tabulate an exact active participant count as of July 30. Rather, the relevant percentage for determining whether a single-cause event occurred is determined by dividing the number of active participants laid-off as a result of the business unit shut down to the beginning of year active participant count. Because that ratio is less than 20 percent (i.e.,  $160/1,000 = .16$ , or 16 percent), a single-cause event did not occur on July 30. However, if, as a result of the business unit shutdown, additional layoffs occur later in the same year, a single-cause event may subsequently be triggered (See example 3).

### **2. Determining whether an attrition event occurred in year when a single-cause event occurred**

**Facts:** Assume the same facts as in example 1 except that the number of active participants laid off on July 30 was 230 and thus, a single-cause event occurred. Further, assume that the event was timely reported to PBGC (i.e., on or before August 30). Lastly, assume the active participant count as of year-end is 600.

**Reporting:** To prevent duplicative reporting (i.e., to ensure that the participants who triggered a single-cause reporting requirement do not also trigger an attrition event), the 230 participants who triggered that single-cause reporting requirement are not taken into account for purposes of determining whether an attrition event occurred. This is accomplished by increasing the year-end count by 230. Therefore, the applicable percentage for the attrition determination is 83 percent (i.e.,  $(600 + 230)/1,000 = .83$ ). Because 83 percent is greater than 80 percent, an attrition event has not occurred.

### **3. Single-cause event spread out over multiple dates.**

**Facts:** Assume the same facts as in example 1 except that the layoffs resulting from the business unit shut down are spread out over several months. The following table summarizes the applicable calculations:

<b>Date</b>	<b>Number laid-off</b>	<b>Aggregate Reduction</b>	<b>Applicable Percentage</b>
February 1	50	50	$50/1,000 = 5$ percent
May 15	50	100	$100/1,000 = 10$ percent
September 1	110	210	$210/1,000 = 21$ percent
November 1	40	250	$250/1,000 = 25$ percent

**Reporting:** A single-cause event occurs on September 1 because that is the first time the applicable percentage exceeds 20 percent. This event must be reported by October 1. The November 1 layoff does not trigger a subsequent single-cause event because the layoff is part of the same single-cause event already timely reported to PBGC. However, they will be considered in the determination of whether an attrition event occurs at year-end as explained below.

As illustrated in example 2, for purposes of determining whether an attrition event has occurred, the year-end count is increased by the number of participants that triggered a single-cause event. In this case, that number is 210. The fact that an additional 40 active participants were laid off as a result of the business unit shut down after the single-cause event occurred does not affect the calculation because it was not already reported to PBGC. For example, if the year-end active participant count is 560, the number that gets compared to the beginning-of-year active participant count is 770 (i.e.,  $560 + 210 = 770$ ). Because 770 is less than 80 percent of 1,000, an attrition event has occurred and must be reported.

#### **4. Multiple single-cause events in same plan year.**

**Facts:** Assume the same facts as in example 1 except that the July 30 shutdown of the business unit resulted in 205 layoffs on that date. A single-cause event occurred and is timely reported. Later in the same plan year, the company announces an early retirement incentive program and 210 employees participate in the program with the last employees participating in the program retiring on November 15 of the plan year. A new single-cause event has occurred as of November 15 resulting in a reporting obligation of the active participant reduction due to the retirement incentive program ( $210/1000 = 21$  percent).

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*Small plan.* The plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

*Low-default-risk.* Each contributing sponsor of the plan and the highest-level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

*Special Note for Low-default risk waiver:*

*For reporting to be waived for an event to which the safe harbor applies, both the contributing sponsor and the highest-level U.S. parent of the contributing sponsor must satisfy the company low-default-risk waiver.*

*A company is to determine whether it qualifies for the low-default-risk waiver once during an annual financial reporting cycle (on a “financial information date”). If it qualifies on that financial information date, its qualification remains in place throughout a “waiver period” that ends 13 months later or on the next financial information date (if earlier).<sup>2</sup> If it does not qualify, its non-qualified status remains in place until the next financial information date. The financial information date is the date annual financial statements are filed with the SEC or the closing date of the annual*

<sup>2</sup> Thirteen months allows for some variation from year to year on the date that annual financials are reported.

*accounting cycle. If audited financial information is not available, the date is the date the company files its annual federal income tax returns or IRS Form 990. If an accountant's audit or review report expresses a material adverse view or qualification, the company will not satisfy the low-default-risk standard for the waiver.*

*Well-funded plan.* The plan is in the well-funded plan safe harbor for the event year.

*Public company.* Any contributing sponsor of the plan before the reduction, or the parent company within a parent-subsidary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

*Note: Disclosing the following information is sufficient for the public company waiver to apply:*

- Plan Name.
- Date of the event.
- Type of event.
- Brief description of the pertinent facts relating to each event:
  - **For a single-cause event.** A statement explaining the cause of the reduction, such as a facility shutdown or sale, discontinued operations, winding down of the company, or reduction in force.
  - **For an attrition event.** A statement of factors involved in the attrition such as frozen plan, aging workforce, or improved operational efficiencies that do not require replacing departing active participants.

**Extension of Reporting Deadline for Attrition Events** — For an attrition event, the notice date is extended until the premium due date for the plan year following the event year.

## **B. Failure to Make Required Minimum Funding Payment**

(see 29 CFR 4043.25)

**Definition of Event** — A reportable event occurs when a contribution required under sections 302 and 303 of ERISA or sections 412 and 430 of the Code is not made by the due date for the payment or any other contribution required as a condition of a funding waiver is not made when due.

*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. 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 section 4043 of ERISA and does not give the Form 200 filing the benefit of the confidentiality protection for reportable event notices under section 4043(f) of ERISA.*

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*Small plan.* With respect to a failure to make a required quarterly contribution under section



303(j)(3) of ERISA or section 430(j)(3) of the Code (not an annual catch-up payment), the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

*Note: The small plan waiver does not apply to a minimum required payment due 8 ½ months after the end of the plan year under section 303(j)(1) of ERISA or section 430(j)(1) of the Code.*

**Made-up contribution.** The missed contribution is made by the 30th day after its due date.

**Late funding balance election.** If the failure to make a timely required contribution is solely because of the plan sponsor's failure to timely make a funding balance election.

### 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 a limitation under section 436 of the Code and section 206(g) of ERISA (dealing with funding-based limits on benefits and benefit accruals under single-employer plans); the need to verify the 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 section 303(j)(4)(E) of ERISA and section 430(j)(4)(E) of the Code.

**Reporting Waiver** — Plan is subject to liquidity shortfall rules: Reporting of this event is waived if the event occurs during a plan year for which the plan is subject to the liquidity shortfall rules in section 303(j)(4) of ERISA and section 430(j)(4) of the Code because it is described in section 303(g)(2)(B) of ERISA and section 430(g)(2)(B) of the Code.

### D. Distribution to a Substantial Owner

(see 29 CFR 4043.27)

A substantial owner (see section 4021(d) of ERISA) 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 percent of the capital or profits interest in a partnership; or
3. Directly or indirectly, more than 10 percent 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 of a contributing sponsor;
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.
5. Either —
  - (i) The sum of the values of all distributions to any one substantial owner within the one-year period ending with the date of the distribution is more than one percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or I to Form 5500) for each of the two plan years immediately preceding the event year, or
  - (ii) The sum of the values of all distributions to all substantial owners within the one-year period ending with the date of the distribution is more than five percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or I to Form 5500) for each of the two plan years immediately preceding the event year.

**Value of the 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, determined as of the date of receipt;
2. The purchase price of any irrevocable commitment, determined as of the date on which the obligation to provide benefits passes from the plan to the insurer; and
3. The fair market value of any other assets distributed, determined as of the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

**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.

*Note: In the case of an annuity for a substantial owner, a filing that satisfies the requirements of this section with respect to any payment under the annuity and that discloses the period, the amount of the payment, and the duration of the annuity satisfies the requirements of this section with respect to all subsequent payments under the annuity.*

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*Low-default-risk.* Each contributing sponsor of the plan and the highest-level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

*Special Note for Low-default risk waiver:*

*For reporting to be waived for an event to which the safe harbor applies, both the contributing sponsor and the highest-level U.S. parent of the contributing sponsor must satisfy the company low-default-risk waiver.*

*A company is to determine whether it qualifies for the low-default-risk waiver once during an annual financial reporting cycle (on a “financial information date”). If it qualifies on that financial information date, its qualification remains in place throughout a “waiver period” that ends 13 months later or on the next financial information date (if earlier).<sup>3</sup> If it does not qualify, its non-qualified status remains in place until the next financial information date. The financial information date is the date annual financial statements are filed with the SEC or the closing date of the annual accounting cycle. If audited financial information is not available, the date is the date the company files its annual federal income tax returns or IRS Form 990. If an accountant’s audit or review report expresses a material adverse view or qualification, the company will not satisfy the low-default-risk standard for the waiver.*

*Well-funded plan.* The plan is in the well-funded plan safe harbor for the event year.

*Public company.* Any contributing sponsor of the plan before the transaction or the parent company within a parent-subsidary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

*Note: Disclosing the following information is sufficient for the public company waiver to apply:*

- Plan Name.
- Date of the event.
- Type of event.
- Amount of distribution, the name of the person receiving the distribution, and the reason for the distribution.

<sup>3</sup> Thirteen months allows for some variation from year to year on the date that annual financials are reported.

## E. Change in 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 (including any person who is or was a contributing sponsor) ceasing to be members of the plan’s controlled group (other than by merger involving members of the same 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. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement.

*Note: A “change in controlled group” is not a reportable event if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.*

*A legally binding agreement means an agreement that provides for obligations that are material to and enforceable by and against the parties to the agreement, regardless of whether any conditions of the agreement have been met or satisfied (in other words, an agreement does not fail to be legally binding solely because it is subject to conditions that have not been performed).*

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

### 1. Controlled Group Breakup

**Facts:** Company A (the contributing sponsor of Plan A), and Company B (the contributing sponsor of Plan B) are in the same controlled group with Parent Company AB. On March 31, Parent Company AB and Company C enter into an agreement to sell the stock of Company B to Company C, a company outside of the controlled group. The transaction will close on August 31 and Company B will continue to maintain Plan B.

**Reporting:** Both Company A (Plan A’s contributing sponsor) and the plan administrator of Plan A are required to report that Company B 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 and Parent Company AB are no longer part of Plan B’s controlled group. Both reports are due on April 30, 30 days after they entered into the agreement to sell Company B.

### 2. 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 date the binding contract was executed), 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 notice due date 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 notice due date, Company R has the reporting obligation.

### **3. Dissolution of Controlled Group Member**

**Facts:** Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Pursuant to an asset sale agreement, Company B sells its assets to a company outside of the controlled group. After the sale, Company B will be dissolved and no longer operating.

**Reporting:** Since Company B will no longer be a member of Plan A's controlled group, a reportable event occurs on the date Company B enters into the asset sale agreement. Note that this event may also be required to be reported as a liquidation event under 29 CFR 4043.30.

### **4. Merger of Controlled Group Members**

**Facts:** Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Parent Company AB decides to merge the operations of Company B into Company A.

**Reporting:** Although Company B will no longer be a member of Plan A's controlled group, no report is due given Company B is merging with Company A.

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*De minimis 10-percent segment.* 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.

*Foreign entity.* Each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

*Small plan.* The plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

*Low-default-risk.* Each contributing sponsor of the plan and the highest-level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

*Special Note for Low-default-risk waiver:*

*For reporting to be waived for an event to which the safe harbor applies, both the contributing sponsor and the highest-level U.S. parent of the contributing sponsor must satisfy the company low-default-risk safe harbor.*

*A company is to determine whether it qualifies for the low-default-risk safe harbor once during*

*an annual financial reporting cycle (on a “financial information date”). If it qualifies on that financial information date, its qualification remains in place throughout a “safe harbor period” that ends 13 months later or on the next financial information date (if earlier).<sup>4</sup> If it does not qualify, its non-qualified status remains in place until the next financial information date. The financial information date is the date annual financial statements are filed with the SEC or the closing date of the annual accounting cycle. If audited financial information is not available, the date is the date the company files its annual federal income tax returns or IRS Form 990. If an accountant’s audit or review report expresses a material adverse view or qualification, the company will not satisfy the low-default-risk standard for the safe harbor.*

*Well-funded plan.* The plan is in the well-funded plan safe harbor for the event year.

*Public company.* Any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

*Note: Disclosing the following information is sufficient for the public company waiver to apply:*

- Plan Name.
- Date of the event.
- Type of event.
- Brief description of the pertinent facts relating to the event.
- Description of the change in controlled group structure.
- Name of each plan maintained by any member of the old and new controlled groups, the plan’s contributing sponsor(s), and EIN/PN.

## **F. Liquidation**

(see 29 CFR 4043.30)

**Definition of Event** — A reportable event occurs for a plan under any of the following three scenarios.

1. When a member of the plan’s controlled group resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member’s board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations, sale, or a liquidation, unless the event would be reported under the second or third scenario below.
2. When a member of the plan’s controlled group institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first.
3. When a member of the plan’s controlled group liquidates in a case under the Bankruptcy Code, or under any similar law.

<sup>4</sup> Thirteen months allows for some variation from year to year on the date that annual financials are reported.

*Note: An event described above may also be reportable under “Insolvency or Similar Settlement” (see Part III.K.).*

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

### **1. Liquidation Within a Controlled Group**

**Facts:** Plan A’s controlled group consists of Company A (its contributing sponsor), Company B, Company Q (the parent of Company A and Company B). Company B represents the most significant portion of cash flow for the controlled group. Company B experiences an unforeseen event that negatively impacts operations and results in an increase in debt. The controlled group liquidates Company B by ceasing all operations, settling its debts, and merging any remaining assets into Company Q. (For purposes of this example, it does not matter under what scenario reporting is triggered). The transaction is to be treated as a tax-free liquidation for tax purposes.

**Reporting:** Both Company A (Plan A’s contributing sponsor) and the plan administrator of Plan A are required to report that Company B will liquidate within the controlled group.

### **2. Cessation of Operations**

**Facts:** Plan A is sponsored by Company A. The owners of Company A decide to cease all revenue-generating operations. Certain administrative employees will wind down the business and continue to be employed until the wind down is complete, which could take several months.

**Reporting:** Company A is required to report a liquidation reportable event 30 days after the decision is made to cease all revenue-generating operations.

### **3. Sale of Assets**

**Facts:** Plan A is sponsored by Company A. In a meeting of the Board of Directors of Company A, the Board resolves to sell all the assets of Company A to Company B. Under the asset sale agreement with Company B, Company B will not assume Plan A; Company A expects to undertake a standard termination of Plan A.

**Reporting:** Company A is required to report a liquidation event 30 days after the Board resolved to sell the assets of Company A.

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*De minimis 10-percent segment.* The person or persons that liquidate do not include any contributing sponsor of the plan and represent a de minimis 10-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.

*Foreign entity.* Each person that liquidates is a foreign entity other than a foreign parent.

*Reporting Under Insolvency Event.* Reporting is also required under § 4043.35(a)(3) or (a)(4) and notice has been provided to PBGC for the same event under that section.

**Public Company Reporting Extension** — If any contributing sponsor of the plan, or the parent company within a parent-subsidary controlled group of any such contributing sponsor, is a public company, notice under this section is extended until the earlier of —

- (1) The date the contributing sponsor or parent company timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits); or
- (2) The date when a press release with respect to the liquidation is issued in the U.S. in the English language.

*Note: Additional Information* — Under 29 CFR 4043.3(d), and as noted above under “What to file,” PBGC may request additional information. Items that may be requested for this event include:

1. *The estimated liquidation proceeds and the controlled group’s anticipated allocation of those proceeds to its creditors.*
2. *An itemized list of liquidation expenses the controlled group expects to incur.*
3. *Timing of the expected liquidation of assets, distribution of proceeds, and payment of expenses as detailed in #1 and 2.*
4. *Details of any prior liquidation proceeds already distributed since the controlled group made the decision to liquidate, including the name of the creditor, amount, and type of debt (secured or unsecured).*

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

(see 29 CFR 4043.31)

**ERISA Definition** - The reportable event described below replaces the corresponding event for extraordinary dividends and stock redemptions described in section 4043(c)(11) of ERISA. Thus, reporting of any event described under section 4043(c)(11) of ERISA 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 or redeems its own stock, and the amount or net value of the distribution, when combined with other such distributions during the same fiscal year of the person, exceeds the person’s net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices, for the prior fiscal year. A distribution by a person to a member of its controlled group is disregarded.

**Determination Rules** — For purposes of this event, the net value of a non-cash distribution is 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. 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 is deemed to be equal to 200 percent 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.

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*De minimis 10-percent segment.* The person making the distribution is a de minimis 10-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.

*Foreign entity.* The person making the distribution is a foreign entity other than a foreign parent;  
*Small plan.* The plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

*Low-default-risk.* Each contributing sponsor of the plan and the highest-level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

*Special Note for Low-default risk waiver:*

*For reporting to be waived for an event to which the safe harbor applies, both the contributing sponsor and the highest-level U.S. parent of the contributing sponsor must satisfy the company low-default-risk safe harbor.*

*A company is to determine whether it qualifies for the low-default-risk safe harbor once during an annual financial reporting cycle (on a “financial information date”). If it qualifies on that financial information date, its qualification remains in place throughout a “safe harbor period” that ends 13 months later or on the next financial information date (if earlier).<sup>5</sup> If it does not qualify, its non-qualified status remains in place until the next financial information date. The financial information date is the date annual financial statements are filed with the SEC or the closing date of the annual accounting cycle. If audited financial information is not available, the date is the date the company files its annual federal income tax returns or IRS Form 990. If an accountant’s audit or review report expresses a material adverse view or qualification, the company will not satisfy the low-default-risk standard for the safe harbor.*

*Well-funded plan.* The plan is in the well-funded plan safe harbor for the event year.

*Public company.* Any contributing sponsor of the plan before the transaction or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

<sup>5</sup> Thirteen months allows for some variation from year to year on the date that annual financials are reported.

*Note: Disclosing the following information is sufficient for the public company waiver to apply:*

- Plan Name.
- Date of the event.
- Type of event.
- Brief description of the pertinent facts relating to the event.
- Name and EIN of person making the distribution.
- Date and amount of cash distribution(s) during fiscal year.
- Description, fair market value, and date or dates of any non-cash distributions.
- Statement as to whether the recipient was a member of the controlled group.

## **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 percent 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 §414(l) of the Code.

The **date of a transfer** of benefit liabilities is determined on the basis of the facts and circumstances of the particular situation. For transfers subject to section 414(l) of the Code, the date determined in accordance with section 414(l) of the Code 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.*

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*Small plan.* The plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

*Low-default-risk.* Each contributing sponsor of the plan and the highest-level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

*Special Note for Low-default risk waiver:*

*For reporting to be waived for an event to which the safe harbor applies, both the contributing*

*sponsor and the highest-level U.S. parent of the contributing sponsor must satisfy the company low-default-risk safe harbor.*

*A company is to determine whether it qualifies for the low-default-risk safe harbor once during an annual financial reporting cycle (on a “financial information date”). If it qualifies on that financial information date, its qualification remains in place throughout a “safe harbor period” that ends 13 months later or on the next financial information date (if earlier).<sup>6</sup> If it does not qualify, its non-qualified status remains in place until the next financial information date. The financial information date is the date annual financial statements are filed with the SEC or the closing date of the annual accounting cycle. If audited financial information is not available, the date is the date the company files its annual federal income tax returns or IRS Form 990. If an accountant’s audit or review report expresses a material adverse view or qualification, the company will not satisfy the low-default-risk standard for the safe harbor.*

*Well-funded plan.* The plan is in the well-funded plan safe harbor for the event year.

*Public company.* Any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8-K disclosing the event under an item of the Form 8-K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

*Note: Disclosing the following information is sufficient for the public company waiver to apply:*

- Plan Name.
- Date of the event.
- Type of event.
- Brief description of the pertinent facts relating to the event.
- Name, contributing sponsor, and EIN/PN of the transferee plan.
- Name of the transferor plan and its plan administrator or contributing sponsor.
- Description of the transferor plan’s controlled group structure, including the name of each controlled group member.

## **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 section 302(c) of ERISA or section 412(c) of the Code.

## **J. Loan Default**

(see 29 CFR 4043.34)

**Definition of Event** — A reportable event occurs for a plan when, with respect to a loan with an outstanding balance of \$10 million or more to a member of the plan’s controlled group:

<sup>6</sup> Thirteen months allows for some variation from year to year on the date that annual financials are reported.

1. There is an acceleration of payment or a default under the loan agreement; or
2. The lender waives or agrees to an amendment of any covenant in the loan agreement the effect of which is to cure or avoid a breach that would trigger a default.

*Note – A default on a loan between controlled group members is not excluded from the reporting requirement.*

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*De minimis 10-percent segment.* The debtor is not a contributing sponsor of the plan and represents a de minimis 10-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.

*Foreign entity.* The debtor is a foreign entity other than a foreign parent.

## **K. Insolvency 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 commences or has commenced against it:

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

**Reporting Waivers** — Reporting of this event is waived under any of the following automatic waivers.

*De minimis 10-percent segment:* The controlled group member described above is not a contributing sponsor of the plan and represents a de minimis 10-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.

*Foreign entity:* The controlled group member described above is a foreign entity other than a foreign parent.

*Liquidation event.* Reporting is also required under § 4043.30 and notice has been provided to PBGC for the same event under that section.

*Note: Additional Information — Under 29 CFR 4043.3(d), and as noted above under “What to File,” PBGC may request additional information for this event. Items that may be requested include:*

- 1. The estimated proceeds from the sale of assets and the controlled group’s anticipated allocation of those proceeds to its creditors.*
- 2. An itemized list of asset sale expenses the controlled group expects to incur.*
- 3. Timing of the expected sale of assets, distribution of proceeds, and payment of expenses as detailed in #1 and 2.*
- 4. Details of any prior asset sale proceeds already distributed since the reportable event date, including the name of the creditor, amount, and of debt (secured or unsecured).*

**PAPERWORK REDUCTION ACT NOTICE**

PBGC needs this information, which is required to be filed under section 4043 of the Employee Retirement Income Security Act (ERISA) 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. Information provided to PBGC pursuant to section 4043 of ERISA is confidential to the extent provided by the Freedom of Information Act, the Privacy Act, and section 4043(f) of ERISA. PBGC estimates that it will take an average of 3 hours and

\$745 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, 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 1212-0013. An agency may not conduct or sponsor,