

Form 10-Advance Instructions



ADVANCE NOTICE OF REPORTABLE EVENT

PAPERWORK REDUCTION ACT NOTICE

PBGC needs this information, which is required to be filed under ERISA §4043 and 29 CFR Part 4043, Subparts A and C, so that it can take action to protect participants and the termination insurance program in appropriate cases. PBGC estimates that it will take an average of 10.5 hours and \$3,675 to comply with these requirements. If you have any comments concerning the accuracy of this estimate or suggestions for improving this form, please send your comments to the Pension Benefit Guaranty Corporation, Legislative and Regulatory Department, 1200 K Street, NW, Washington, DC 20005-4026. This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0013. Under the Paperwork Reduction Act, 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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CAUTION — THE LAW HAS CHANGED

The Pension Protection Act of 2006 made changes to ERISA's rules on plan funding and premiums. Some of those changes have been implemented by amendments to PBGC's regulations. PBGC has not yet amended the reportable events regulation or the reportable events forms and instructions to reflect the changes in the law. Until the regulation is amended and the forms and instructions are updated, reportable events filers and potential filers should refer to the following PBGC Technical Updates, which are accessible through the Practitioners Page on PBGC's Web site (www.pbgc.gov):

09-1 (Reportable Events; Funding-Related Determinations for Threshold Test, Waivers, and Extensions; Effect of the Pension Protection Act of 2006; Guidance for 2009 Plan Years)

08-2 (*For 2008 contributions only*) (Waiver for Small Employer Reporting of Missed Quarterly Contributions)

07-2 (Funding-Related Determinations for Reporting Under Parts 4010 and 4043; Effect of the Pension Protection Act of 2006; Transitional Guidance)

07-1 (Effect of Treasury Mortality Tables on PBGC Requirements)

06-4 (Use of Corporate Bond Rate for Certain PBGC Purposes)

Other useful information may be found under "What's New" on the Practitioners Page.

PART I – GENERAL INSTRUCTIONS

Section 4043 of the Employee Retirement Income Security Act (ERISA) requires that certain contributing sponsors notify PBGC before the occurrence of certain events (“reportable events”). These events are:

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

PBGC’s regulation on *Reportable Events* (29 CFR Part 4043, Subparts A and C) describes in detail each reportable event and any applicable reporting waivers or extensions of deadlines. Part III of these instructions summarizes these rules for each event.

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

Post-Event Reporting Rule

ERISA also requires that the plan administrator and each contributing sponsor notify PBGC within 30 days after the occurrence of certain reportable events. If an advance notice is filed, no additional notice is required.

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

Contributing Sponsors Subject to Advance Reporting

A contributing sponsor of a plan is subject to advance reporting if:

1. Neither the contributing sponsor nor the member of the plan’s controlled group to which the event relates is a public company; and
2. The contributing sponsor is a member of a controlled group maintaining one or more plans that, in the aggregate (disregarding plans with no unfunded vested benefits) have:

- a. Unfunded vested benefits of more than \$50 million, and
- b. A funded vested benefit percentage of less than 90 percent.

Who Must Notify PBGC

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



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

A single event (such as a controlled group break-up) may be a reportable event for more than one plan in the controlled group. In that case, the advance reporting requirement applies to each contributing sponsor of each plan. Any filing will be deemed to be a filing by all persons required to notify PBGC.

Reporting Waivers

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

Advance reporting is waived for any occurrence that is reportable under more than one reportable event only if the requirements for a waiver for each reportable event are met.

How To File

A reportable event notice may be filed with PBGC by mail, commercial delivery service, hand delivery or electronic transmission (e.g., e-mail or fax).

When To File

An advance notice of a reportable event must be filed no later than 30 days before the effective date of the reportable event.

PBGC has extended the 30-day deadline for some events in certain specified circumstances (see Part III of these instructions).

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

The filing deadline for any event that is reportable under more than one reportable event will be the earliest deadline for reporting any one of the events.

In computing any period of time, the day of the event from which the period of time begins to run is not included. The last day of the period is included, unless it is a weekend or Federal holiday, in which case the period runs until the end of the next regular business day.

Filing Date

The filing date for an advance notice of a reportable event or other required information is the date it is received by PBGC at the address listed under “Where to File.”

Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

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 at least the information listed on the front of the Form 10-Advance and (3) the remaining information is received by PBGC at the address listed under “Where to File” on the first regular business day following the filing deadline (including extensions).

Where to File

By mail, commercial delivery service or hand delivery:

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

By e-mail: advancereport@pbgc.gov

By fax:

202-842-2643 (call 202-326-4070 to confirm that the fax has been received). (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to the number above.)

What to File

A contributing sponsor must include with the Form 10-Advance certain specified information tailored to the particular event. This information is listed on page 2 of the Form 10-Advance.

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

If the same event is reportable under more than one reportable event, the notice must include all the required information for each event.

If notices are required for two or more events, the notices may be combined in one filing.

PBGC may require that a contributing sponsor submit additional information within 7 days after the date of PBGC’s written request. PBGC may shorten this 7-day period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

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

Information on Controlled Group Structure

To comply with a requirement that the reportable event notice include a description of the plan’s controlled group structure (see page 2 of the Form 10-Advance), 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.

Special Rule for Terminating Plans

The fact that a plan is in the process of terminating does not mean that reportable events notices 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).

Effect of Failure to Timely File

If a notice (or any other required information) is not provided within the specified time limit, PBGC may assess against each contributing sponsor required to provide the notice a separate penalty under ERISA §4071 of up to \$1,100 a day for each day for which the notice or other information is overdue. PBGC will generally assess the full \$1,100 a day penalty for failure to give advance notice (see 29 CFR Part 4071 and PBGC’s Statement of Policy on

Assessment of Penalties for Failure to Provide Required Information (60 FR 36837, July 18, 1995)). PBGC may pursue any other equitable or legal remedies available to it under the law.

For Questions, Problems, Copies of Forms

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

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

For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to the number above.

PART II - DEFINITIONS

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

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

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

De minimis 5-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year:

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

3. Net tangible assets at the end of the fiscal year(s) not exceeding the greater of:
 - a. 5% of the controlled group's net tangible assets at the end of the fiscal year(s), or
 - b. \$5 million.

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

Foreign entity means a member of a controlled group that:

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

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

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

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

Public company means a person subject to the reporting requirements of §13 or §15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

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

PART III - SPECIFIC INSTRUCTIONS

A. Change in Contributing Sponsor or Controlled Group

(see 29 CFR §4043.62)

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

For this purpose, a *transaction* includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.



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

Examples - The following examples assume that the contributing sponsors are subject to advance reporting and that no waivers apply.

Controlled Group Breakup

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

Reporting: No later than 30 days before the effective date of the transaction, Company A (Plan A's contributing sponsor) is required to report that Companies B and C will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) is required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor.

Change in Contributing Sponsor

Facts: Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with

Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q.

Reporting: There is a reportable event because, as a result of the transaction (*i.e.*, the binding contract), Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. Because Company Q is the contributing sponsor on the 30th day prior to the effective date of the sale, Company Q has the reporting obligation.

Merger/Consolidation Within Controlled Group

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

Reporting: No later than 30 days before the effective date of the transaction, Company Z must report that Company Y will cease to be a member of Plan Z's controlled group.

Reporting Waivers - Reporting of this event is waived if:

Small plan: The event involves a change in the contributing sponsor and the transferred plan has 500 or fewer participants; or

De minimis 5-percent segment: The person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

B. Liquidation

(see 29 CFR §4043.63)

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

1. Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);
2. Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or
3. Liquidates in a case under the Bankruptcy Code, or under any similar law.

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

Reporting Waiver; de minimis 5-percent segment - Reporting of this event is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

C. Extraordinary Dividend or Stock Redemption

(see 29 CFR §4043.64)

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

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

1. **Cash distributions.** A cash distribution is reportable if:
 - a. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the *adjusted net income* (definition follows) of the person making the distribution for the preceding fiscal year; and
 - b. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the *adjusted net income* of the person making the distribution for the four preceding fiscal years.
2. **Non-cash distributions.** A non-cash distribution is reportable if its *net value* (definition follows), when combined with the *net value* of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10% of the *total net assets* (definition follows) of the person making the distribution. To determine whether a distribution is reportable,

both assets and liabilities must be valued at fair market value.

3. **Combined distributions.** If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the *cash distribution percentage* (definition follows) and the *non-cash distribution percentages* (definition follows) for the fiscal year exceeds 100%.

Definitions

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

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

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

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

Net value of non-cash distribution means the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution shall be deemed to be equal to 200% of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

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

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

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

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

D. Transfer of Benefit Liabilities

(see 29 CFR §4043.65)

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

1. The plan or any other plan maintained by any member of the plan's controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and
2. The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3% or more of the plan's total benefit liabilities. For this purpose, value both the benefit liabilities transferred and the plan's total benefit liabilities as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with Code §414(I).

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

Reporting Waivers - Reporting is waived if:

Complete plan transfer: *All* of the transferor plan's benefit liabilities and assets are transferred to one other plan. (Note: This event may be reportable if it involves a change in contributing sponsor or controlled group (see Part III.A));

***De minimis* transfer:** The value of assets being transferred:

1. Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with Code §414(I), and
2. In conjunction with other assets transferred during the same plan year, is less than 3% of the assets of the transferor plan as of at least one day in that year;

Fully-funded plans: The transfer complies with Code §414(I) and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in terminated PBGC-trusted plans under 29 CFR §4044.51-57); or

Small transfer:

1. The benefit liabilities of 500 or fewer participants are transferred; and
2. The transfer complies with Code §414(I) using the actuarial assumptions prescribed for valuing benefits in terminated PBGC-trusted plans under 29 CFR §4044.51-57.

E. Application for Minimum Funding Waiver

(see 29 CFR §4043.66)

Definition of Event - A reportable event occurs when an application for a minimum funding waiver is submitted for a plan.

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

F. Loan Default

(see 29 CFR §4043.67)

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

1. The default results from the debtor's failure to make a required payment when due (unless the payment is made within 10 days after the due date);
2. The lender accelerates the loan; or
3. The debtor receives a written notice of default from the lender (and does not establish that the notice was issued in error) on account of:
 - a. A drop in the debtor's cash reserves below an agreed-upon level,
 - b. An unusual or catastrophic event experienced by the debtor, or
 - c. A persisting failure by the debtor to attain agreed-upon financial performance levels.

Reporting Waiver; default cured - Reporting of this event is waived if the default is cured, or waived by the lender, within 10 days or, if later, by the end of any cure period provided by the loan agreement.

Extension of Reporting Deadline - The notice date is extended to the later of:

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

Cure period extensions: One day after:

1. The applicable cure period provided in the loan agreement,
2. The date the loan is accelerated, or
3. The date the debtor receives written notice of the default.

G. Bankruptcy or Similar Settlement

(see 29 CFR §4043.68)

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

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

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

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