Small Business Guide

Federal Pension Insurance

PBGC'S CUSTOMER SERVICE STANDARDS

As customers, you deserve our best efforts. We are committed to always showing you respect and courtesy when you contact us. We further pledge that:

✓ With only one call from you, we will tell you —

- What can be done immediately or what you should expect if it will take longer;
- When it will be done; and
- Who will handle your inquiry or request.

✓ If it will take longer than expected or anything changes from what we first told you, we will call you with a status report and tell you what will happen next.

✓ During normal business hours (8:00 a.m. to 5:00 p.m. Eastern time), we will have someone available to take your call, as necessary. However, any time you leave a message, we will return your call within one work day.

✓ If you write to us, we will acknowledge your inquiry within one week of receiving your request.

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Introduction

If you have a defined benefit pension plan, it is probably covered by the federal pension insurance program administered by the Pension Benefit Guaranty Corporation. That means the pensions of your workers are protected up to certain limits if you should run into difficulty funding your plan. Each year, you pay an annual insurance premium to PBGC and provide certain information when required. This Guide is intended to help you and your professional consultants understand PBGC requirements.

This Guide is an aid, but it does not replace the statutes and regulations that contain the legal requirements for pension plans. PBGC forms and instructions also provide more detailed guidance.

Defined benefit pension plans also are subject to legal requirements separately administered by the U.S. Department of Labor and the Internal Revenue Service.

I. Overview

The Pension Benefit Guaranty Corporation is the federal corporation that administers the pension insurance program established by the Employee Retirement Income Security Act, the pension law enacted in 1974 to safeguard the pension security of working Americans. PBGC insures workers in most private-sector defined benefit pension plans in the event that their plans do not have sufficient assets to pay benefits if the plans are terminated because of the bankruptcy or other financial distress of the sponsoring employers.

PBGC has an Internet website on the World Wide Web at **http://www.pbgc.gov**. A section called "Business Info" contains information for employers and pension professionals about PBGC premiums, plan terminations, required notices, and related policies. Other areas include information on PBGC's benefit guarantees, regulations, technical releases, and various PBGC forms.

PBGC protects the pensions of about 42 million working men and women in about 45,000 private defined benefit pension plans.

PBGC insures both **single-employer** and **multiemployer** defined benefit plans. A single-employer plan, which may be collectively bargained, provides benefits for workers of one employer; or it may provide benefits to workers of several unrelated employers but not be collectively bargained. Multiemployer plans are collectively bargained plans involving two or more unrelated employers. This Guide covers only single-employer plans.

PBGC insures only private-sector **defined benefit** pension plans. Defined benefit plans provide a specified periodic benefit (usually monthly) at retirement, generally based on salary or a stated dollar amount and years of service. PBGC does not insure **defined contribution** plans, under which contributions are made by or on behalf of employees into individual employee accounts with no promise as to the amount of payouts. Defined contribution plans include 401(k) plans, profit-sharing plans, money-purchase plans, and employee stock ownership plans (ESOPs).

PBGC receives no funds from general tax revenues. Its operations are financed by insurance premiums set by the Congress and paid by defined benefit plans and the employers that sponsor them. PBGC also finances its operations from assets acquired from pension plans that PBGC has taken over as trustee (usually due to employer bankruptcies), any recoveries PBGC has obtained from those bankrupt employers to cover plan underfunding, and investment returns on its assets.

PBGC reports to a Board of Directors consisting of the Secretaries of Labor, Commerce, and Treasury. The Secretary of Labor chairs the Board. An Executive Director administers PBGC's day-to-day operations.

PBGC-insured plans

General. PBGC insures most tax-qualified defined benefit plans.

Exceptions. There are a number of types of defined benefit pension plans that are not covered by PBGC insurance. Several of these may have particular relevance to you as a small business owner.

- Plans established and maintained exclusively for **substantial owners** are not insured. Generally, a substantial owner is an individual who owns the entire interest in an unincorporated business, or a partner or shareholder who owns (directly or indirectly) more than 10 percent of a partnership or corporation.
- Plans of **professional service employers** that have always had 25 or fewer active participants in their plans are not insured. Professional service employers are firms owned or controlled by professional individuals who principally provide professional services. The term "professional individuals" includes physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, lawyers, public accountants, public engineers, architects, draftspersons, actuaries, psychologists, social or physical scientists, and performing artists.
- **Unfunded plans** maintained primarily to provide deferred compensation for a select group of management or highly compensated employees are not insured.

PBGC's role

When, due to financial distress, a company with an underfunded PBGC-insured plan is unable to maintain the plan and the plan must be terminated, PBGC becomes trustee of the plan. As trustee, PBGC uses both its own and the plan's funds to pay pension benefits. When PBGC becomes trustee, all further benefit accruals, vesting, and employer administrative responsibilities for the pension plan cease.

PBGC generally pays benefits to the participants of a terminated plan according to the provisions of their plan up to the legal limits under Title IV of ERISA. Most participants of plans taken over by PBGC receive the full benefit

they would have received under their plan. However, some participants receive less than their full benefit because their plan benefits exceed the PBGC guaranteed benefit limits and their plan has insufficient assets to make up the difference.

PBGC is trustee for more than 2,500 terminated, underfunded pension plans. The agency is responsible for paying retirement benefits to about 500,000 people, about half of whom are already receiving their pensions from PBGC. The other half will receive their benefits when they become eligible to retire in the future.

Guaranteed benefits

Under the law, PBGC guarantees the payment of vested pension benefits up to a certain dollar amount, which is adjusted annually based on changes in the Social Security contribution and benefit base. The guaranteed amount becomes fixed for any terminating plan as of its date of termination. (For example, for plans terminating in 1998, the maximum guaranteed amount is $34,568.16 yearly, or $2,880.68 per month, for a single-life annuity beginning at age 65.) The maximum is less if the benefit begins before age 65 or is paid in a form other than for the participant's life alone, such as a form that provides survivor benefits.

PBGC Maximum Monthly Guarantees
(for a plan terminated in 1998)

Age 65	Age 62	Age 60	Age 55
$2,880.68	$2,275.74	$1,872.44	$1,296.31

PBGC guarantees payment of most pension benefits including normal and early retirement benefits, disability benefits for participants who become disabled before their plan terminates, and certain survivor benefits, all of which are subject to the legal limit on PBGC's maximum guarantee.

PBGC's guarantee does not cover benefits that are not vested, benefits for which a participant has not met all requirements at the time the plan is terminated, or non-pension benefits such as health insurance, life insurance, certain death benefits, vacation pay, or severance pay. PBGC also does not guarantee certain early retirement payments (such as supplemental benefits that stop when a participant becomes eligible for Social Security) that result in an early retirement monthly benefit greater than the monthly amount the participant would receive at the plan's normal retirement age.

In addition, the law puts certain other limits on PBGC's guarantee. Benefit increases and new benefits may not be covered or may be only partially covered by PBGC's guarantee if they result from plan provisions that have been in effect less than 5 years as of the date of plan termination. Additional limits apply to a substantial owner who is a participant in a terminating plan.

Benefits that are not guaranteed will be paid by PBGC to the extent the plan has sufficient funds to pay those benefits when it terminates or as a result of PBGC's recoveries of employer liabilities to terminated plans (in bankruptcy, PBGC becomes a creditor for unfunded benefits, both on its own behalf and on behalf of participants).

Applicable Laws and Regulations

ERISA — ERISA's United States Code citation is 29 USC §§ 1001 et seq. See also Title 26 of the U.S. Code for tax provisions and 26 Code of Federal Regulations for applicable Department of Treasury regulations, 29 CFR Chapter XXV (Parts 2509-2590) for the regulations of the Pension and Welfare Benefits Administration of the Department of Labor, and 29 CFR Chapter XL (Parts 4000-4907) for Pension Benefit Guaranty Corporation regulations.

Pension Insurance Program (Title IV of ERISA) — See ERISA §§ 4001 et seq. (29 USC §§ 1301 et seq.) and 29 CFR Parts 4000 to 4907.

Plans Covered by PBGC — See ERISA § 4021 (29 USC § 1321).

Benefits Guaranteed by PBGC — See ERISA § 4022 (29 USC § 1322) and 29 CFR Part 4022.

II. Premiums to Be Paid to PBGC

Every year the plan administrator of any defined benefit pension plan that is covered by PBGC insurance must file PBGC's Annual Premium Payment Form (PBGC Form 1) with PBGC and pay the premium that is due. Each year, PBGC issues a new Premium Payment Package that includes the relevant forms and detailed instructions for completing the forms.

If you are not sure whether your plan is covered by PBGC insurance, and thus whether you owe premiums, you should promptly request a coverage determination by calling (202) 326-4000 or writing to:

PBGC
Technical Assistance Branch, Suite 930
1200 K Street NW
Washington, DC 20005-4026

A coverage determination request does not extend the due date for any premiums that are due.

For **TTY/TDD users**, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to the appropriate telephone number given in this Guide. Only the TTY/TDD number is toll-free; all other telephone numbers are not toll-free and collect calls cannot be accepted.

Types and amounts of premiums to be paid

General. Single-employer plans pay two kinds of premiums. All single-employer plans pay a **flat-rate premium**; underfunded plans pay an additional **variable-rate premium**.

Flat-rate premium. The annual flat-rate premium is $19 multiplied by the number of participants. Participants generally include any current employee covered by the plan, former employees receiving or entitled to receive benefits in the future, and deceased participants who have one or more beneficiaries entitled to or receiving benefits. The number of participants is measured as of the **premium snapshot date**, which is the last day of the prior plan year in most cases. For example, for calendar year plans, the premium snapshot date is generally December 31 of the prior year.

> **Example**: if your plan has 20 participants on the premium snapshot date, your flat-rate premium is 20 x $19, or $380. If your plan does not have any unfunded vested benefits (see following section), this is your total premium.

Variable-rate premium. The variable-rate premium is $9 per $1000, or fraction thereof, of **unfunded vested benefits** (UVB) as of the premium

For copies of premium forms and other general premium-related inquiries and assistance, including address changes:
Call ..... (202) 326-4242
FAX ..... (202) 326-4250
or write to:
Pension Benefit Guaranty Corporation
P.O. Box 64916
Baltimore, MD 21264-4916

snapshot date. The amount of unfunded vested benefits is the amount by which the present value of the benefits in which participants are vested exceeds the present value of plan assets. The law specifies (and PBGC's Annual Premium Payment Package describes) the interest rate and mortality table to use in calculating the value of UVBs.

> **Example**: if your plan has unfunded vested benefits totaling $200,000 on the premium snapshot date, your variable-rate premium is $9 x ($200,000 ÷ $1,000), or $1,800. Continuing with the previous example, if your plan has 20 participants, your total premium would be the sum of your flat-rate premium ($380) and your variable-rate premium ($1,800), or $2,180.

Plans exempt from variable-rate premiums. Five types of plans are exempt from reporting the value of benefits and assets and paying a **variable-rate premium**:

- Plans with fewer than 500 participants and an actuarial certification that there are no UVBs;
- Plans with a plan administrator certification that there are no vested benefits;
- Insurance contract plans described in section 412(i) of the Internal Revenue Code;
- Plans for which contributions (for the preceding plan year) were at the "full funding limit" defined in section 302(c)(7) of ERISA and section 412(c)(7) of the Internal Revenue Code; and
- Plans that have issued a **Notice of Intent to Terminate** (NOIT) in a **standard termination** (see Chapter V. of this Guide) where the NOIT has a proposed termination date that is on or before the premium snapshot date.

If your plan is exempt, you must still file a Form 1 and include with it a Schedule A with the box for the appropriate exemption checked and zero (0) entered for the variable-rate premium.

General filing rule

Generally, the administrator of any plan with fewer than 500 participants must file the Form 1 (including the Schedule A) and pay the entire premium due by the 15th day of the 8th full calendar month following the month in which the plan year began. The plan year is the annual period for which plan records are kept. For example, if your plan year is the calendar year, your Form 1 is due by September 15th of each year. Photocopied forms are not permitted because the forms are read by computer.

Special filing rules

Large plans (500 or more participants). Plans required to pay premiums for 500 or more participants for the preceding year generally must file an Estimated Premium Payment Form (PBGC Form 1-ES), and pay the **flat-rate premium**, by the last day of the second full calendar month following the close of the preceding plan year. They must then file a Form 1, and pay the **variable-rate premium**, and any unpaid flat-rate premium, by the 15th day of the 8th full calendar month following the month in which the plan year began. For example, if your plan year is the calendar year, your Form 1-ES is due by the last day of February and your Form 1 is due by September 15th of that year.

First year filings; changes of plan year; mergers and spinoffs. Special filing rules apply to a plan that is filing for its first plan year, to a plan that changes its plan year as a result of a plan amendment, and to certain plans involved in yearend mergers and spinoffs. PBGC provides more detailed guidance for these situations in its Annual Premium Payment Packages, which contain copies of the forms and instructions for completing the forms.

If you have a complaint about the premium-related service you have received or still need assistance after calling our general premium telephone number (listed earlier), please contact the Problem Resolution Officer (Premiums):

Call ..... (202) 326-4136
E-mail ..... premiums.pro@pbgc.gov

or write to:

Pension Benefit Guaranty Corporation
Problem Resolution Officer (Premiums)
1200 K Street NW, Suite 670
Washington, DC 20005-4026

Applicable Laws and Regulations

PBGC Premiums — See ERISA §§ 4006 and 4007 (29 USC §§ 1306 and 1307), 29 CFR Parts 4006 and 4007, and PBGC's Annual Premium Payment (Form 1) Package and Estimated Premium Payment (Form 1-ES) Package.

III. Disclosure to Participants

A plan that owes the variable-rate premium and that is less than 90% funded may be required to issue an annual **Participant Notice** about the plan's funding status and the limits on PBGC's guarantee of benefits.

If you have a question about the Participant Notice:
Call ..... (202) 326-4000
or write to:
Pension Benefit Guaranty Corporation
Technical Assistance Branch, Suite 930
1200 K Street NW
Washington, DC 20005-4026

There are special rules that apply to a plan with 100 or fewer participants to determine whether the plan may be exempt from the participant notice requirement. In essence, these rules set out simplified ways for small plans to calculate their funding levels. For purposes of this requirement, all defined benefit plans maintained by the same employer (including its affiliates) are considered to be one plan.

New plans are exempt from the notice requirement for the first plan year in which they are insured by PBGC. This exemption does not apply in the case of a plan resulting from a consolidation or spinoff.

Who must get the notice

The plan administrator must provide the Participant Notice to participants, beneficiaries of deceased participants, alternate payees under **qualified domestic relations orders** (QDROs), and any employee organization that represents participants for collective bargaining purposes. A QDRO is an order issued under state domestic relations law that meets certain requirements of ERISA and gives the alternate payee, usually a former spouse, a right to all or part of a participant's pension benefits.

When to send the notice

The plan administrator must issue the Participant Notice for a given plan year no later than two months after the due date (or extended due date) for the filing of the **Form 5500** for the previous plan year. This is generally the same date by which the plan administrator must provide the plan's Summary Annual Report for the prior plan year to participants.

The Form 5500 is the annual information return/report filed for the Internal Revenue Service, the Department of Labor, and PBGC. It must be filed within 210 days of the close of the plan year (July 31 for calendar year plans), although in certain cases a plan can receive an extension (for calendar

year plans, to September 15 or, in some cases, October 15). The Summary Annual Report is a short summary of the financial information contained on the Form 5500.

> **Example**: a calendar year plan that files the **1997** Form 5500 on its extended due date, October 15, 1998, should issue the **1998** Participant Notice no later than December 16, 1998. (If any due date or extended due date falls on a Saturday, Sunday, or legal holiday, the applicable due date is the next business day.)

Plan administrators must issue the Participant Notice in a manner reasonably calculated to ensure actual receipt by the individuals who are supposed to receive it. Plan administrators may not merely post the Participant Notice (or a notice of its availability) at worksite locations. The Participant Notice may be sent together with other information, including the Summary Annual Report, so long as the Participant Notice and the other information are in separate documents.

Notice contents

The Participant Notice must be written clearly so it is understandable by the average participant and must include:

- Specified identifying information about the plan;
- A statement that the notice is required by law;
- The month and year the notice is issued;
- Certain information on the plan's funding status (including information on certain missed contributions and minimum funding waivers);
- The plan's funding percentage; and
- Certain information on PBGC's guarantee of benefits.

Model Participant Notice

PBGC's regulation provides a model Participant Notice that plan administrators may use. The model Notice satisfies the legal requirements when the required information is filled in. (Special rules apply to plans with specified numbers or percentages of participants who are literate in only the same non-English language.) The model Notice also may be found on PBGC's home page on the Internet.

Applicable Laws and Regulations

Participant Notice Requirements — See ERISA § 4011 (29 USC § 1311) and 29 CFR Part 4011.

IV. Reporting Business and Plan Events to PBGC

Reportable events

ERISA requires that you report to PBGC certain events that may signal problems with your plan or your business. Notice of these events alerts PBGC to situations that may jeopardize workers' pensions or the pension insurance program. PBGC's regulation on these "reportable events" describes the events and notice requirements in greater detail.

> If you have a question about a reportable event or would like copies of the Form 10:
> Call ..... (202) 326-4000
> FAX ..... (202) 326-4072
> or write to:
> Pension Benefit Guaranty Corporation
> Pre-Termination Processing Division, Suite 870
> 1200 K Street NW
> Washington, DC 20005-4026

Generally, you must notify PBGC within 30 days after you know (or should know) the reportable event has occurred, although PBGC has extended the reporting deadline for some events to make it easier for employers to comply. The notice to PBGC must contain certain information about the plan, the plan administrator, contributing employers and any affiliated companies, and a description of the event. PBGC has developed an optional reporting form that you may use (PBGC Form 10), which may be downloaded and/or completed from PBGC's website. PBGC also has available a package that includes the form and detailed instructions on specific events.

Waivers and extensions of reporting requirements

PBGC may waive reporting requirements in particular cases. PBGC has also established general rules for waiving reporting. Many of the general waivers are based on the plan's funding level, using specified actuarial assumptions.

Reportable events most likely to be of concern to small businesses

The following reportable events are the ones that are most likely to impact small businesses. They require notice to PBGC within 30 days after you know (or should know) the event has occurred:

- **Failure to Make Required Minimum Funding Payment**

  General. You must report any failure to make a required minimum funding payment to the plan unless the full payment is made by the time the report is due (30 days after the missed deadline).

  Exception. You need not file a report solely because you missed a quarterly pension contribution if (1) your plan had 100 or fewer participants on each day of the prior plan year, or (2) your plan had 500 or fewer participants on each day of the prior plan year and a Participant Notice (see Chapter III. of this Guide) for the plan (a) is not required for the current plan year or (b) was not required for the prior plan year. In determining the number of participants, all defined benefit plans maintained by the same employer (including its affiliates) are considered to be one plan.

- **Inability to Pay Benefits When Due**

  If your plan had 100 or fewer participants on each day during the preceding plan year, you must report if there is a current or "projected" inability to pay benefits. In determining the number of participants, all defined benefit plans maintained by the same employer (including its affiliates) are considered to be one plan. A "projected" inability exists if the plan's liquid assets at the end of a quarterly period are less than twice the disbursements from the plan for that period. "Liquid assets" means cash, marketable securities, and certain other assets. "Disbursements from the plan" means all disbursements from the trust, including purchases of annuities, payments of benefits including lump-sum distributions, and administrative expenses.

- **Distribution to a Substantial Owner**

  You must notify PBGC whenever total distributions to a substantial owner for the past year exceed the greater of one percent of plan assets or a specified dollar limit. The dollar limit for the year is equal to the maximum annuity benefit that a plan can pay for the year under section 415 of the Internal Revenue Code ($130,000 for 1998). Thus, for example, you must report a $150,000 distribution to a substantial owner in 1998 if the plan's assets total less than $15,000,000.

- **Application for Minimum Funding Waiver**

  You must notify PBGC whenever you file an application with the Internal Revenue Service for a minimum funding waiver.

- **Loan Defaults**

  You must report certain defaults on loans with outstanding balances of $10 million or more.

- **Bankruptcy or Similar Settlement**

  You must report the commencement of any bankruptcy or any other type of insolvency proceeding.

Applicable Laws and Regulations

Reportable Events — See ERISA § 4043 (29 USC § 1343), 29 CFR Part 4043, and PBGC's Form 10.

V. Plan Terminations

You may voluntarily terminate a defined benefit plan that is insured by PBGC only through one of two procedures: a **standard termination** or a **distress termination**. (Under certain circumstances, PBGC may terminate a plan through an **involuntary termination** if necessary to protect the interests of the plan participants or of the insurance program. PBGC must terminate any plan that does not have assets available to pay benefits currently due.)

Filing for a standard termination

You may file a standard termination any time the plan is projected to have sufficient funds to pay all benefits, whether or not vested, as of the proposed distribution date.

If you have a question about a **standard termination** of your plan or would like copies of the standard termination booklet of forms and instructions:
Call ..... (202) 326-4000
FAX ..... (202) 326-4001
or write to:
Pension Benefit Guaranty Corporation
Technical Assistance Branch, Suite 930
1200 K Street NW
Washington, DC 20005-4026

Standard termination procedures

The specific rules and forms for standard terminations can be obtained from PBGC in the "Standard Termination Filing Instructions" booklet. The highlights of the process are described below. (See also Chapter VI. for how to handle missing participants in the standard termination process.)

Form of required notices. In general, PBGC does not require any particular format for required notices (e.g., the NOIT and NOPB) but they must be readable and written in a way calculated to be understood by the average participant. Special rules apply to plans with specified numbers or percentages of participants who are literate in only the same non-English language.

1. NOTICE OF INTENT TO TERMINATE (NOIT)

If you decide to terminate your pension plan, you must send out a Notice of Intent to Terminate (NOIT) to people who will be affected. At least 60 days and no more than 90 days before your proposed termination date, you must issue the NOIT to all plan participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders (QDROs), and any union representing participants. PBGC provides a Model NOIT in its standard termination booklet.

2. STANDARD TERMINATION NOTICE (Form 500)

Deadline for issuance. You must file a Form 500 with PBGC no later than the 180th day after the proposed termination date.

Certification of sufficiency. You must include with the Form 500 a certification by an enrolled actuary (on Schedule EA-S) that the plan's assets are projected to be sufficient as of the proposed distribution date to pay all plan benefits.

3. NOTICE OF PLAN BENEFITS (NOPB)

You must issue an NOPB to all plan participants, beneficiaries of deceased participants, and alternate payees under QDROs no later than the time you file the Form 500 with PBGC. The NOPB tells participants and beneficiaries what their benefit levels will be.

4. PBGC REVIEW PERIOD

Period and purpose of review. PBGC has 60 days from the date of receipt to review the Form 500 for compliance with the law and regulations. If necessary and appropriate, PBGC may provide the plan administrator with additional time to complete a filing. Under certain circumstances, PBGC may issue a **Notice of Noncompliance** (NONC) that cancels the termination and makes the plan an ongoing plan. PBGC is required to take this action if assets will not be sufficient to pay all benefits as of the proposed distribution date. PBGC generally will not take this action for procedural defects if it finds it is not in the interests of participants and beneficiaries to do so.

Extension of review period. PBGC's 60-day review period may be extended by agreement between you and PBGC.

Suspension of review period. The running of PBGC's 60-day (or extended) review period is suspended whenever PBGC asks you to submit additional information.

5. DISTRIBUTION OF PLAN ASSETS

Time for distribution. You must distribute plan assets in satisfaction of all plan benefits within the 180-day (or extended) period after PBGC's 60-day (or extended) review period.

Automatic extension. The period for distribution is automatically extended until the 120th day after you receive a favorable tax-qualification determination letter from the IRS if you submit a complete determination letter request to the IRS on or before the date of filing the Form 500.

Form of distribution. Unless you pay in a lump sum, you must distribute the plan assets in the form of a single-premium, nonsurrenderable annuity contract from an insurer. The contract may be a participating contract only if certain conditions are met. The annuity contract—often referred to as an irrevocable commitment—must retain all the benefit options that were contained in your plan as of the termination date. For married participants, spousal consent is required for all benefit options (other than a qualified joint and survivor annuity) unless the present value of the benefit is ***de minimis***. (The *de minimis* amount must be specified in your plan and cannot exceed $5,000.)

Lump sum payments. Many, and perhaps most, of your distributions will be in the form of lump sums. PBGC has noticed that many small employers make calculation errors in valuing such amounts. Therefore, you (or your actuary) are urged to follow carefully the detailed valuation instructions in PBGC's standard termination booklet.

6. NOTICE OF ANNUITY INFORMATION

Notice of identity of insurer(s). No later than 45 days before distribution, you must send to all participants, beneficiaries of deceased participants, and alternate payees (except those paid *de minimis* lump sums) a notice identifying the insurer or insurers from whom (if known), or (if not yet known) a list of insurers from among whom, the annuity will be purchased. This information must be included in the NOIT if it is known at the time the NOIT is issued.

Notice of State Guaranty Association Coverage. The first time you identify the insurer(s), you must give a Notice of Annuity Information. This Notice must include specified information about state guaranty associations' coverage of annuities issued by insurance companies, and about how the addresses and telephone numbers of these state guaranty associations may be obtained from PBGC.

7. PROVIDING THE ANNUITY CONTRACT

Either you or the insurer (within 30 days after the annuity contract or certificate is available) must provide each participant, beneficiary of a deceased participant, or alternate payee who is receiving a distribution through an annuity contract with a copy of the annuity contract or a certificate identifying the insurer and clearly stating the insurer's obligation to provide the benefit.

If the contract or certificate has not been provided to each participant, beneficiary, or alternate payee by the 90th day after the distribution deadline (including extensions), you must provide each of those people with a notice stating that the obligation for providing their benefits has transferred to the insurer, identifying the insurer and the insurer's contact person, and stating that each person will receive a copy of the contract or a certificate that will also identify the insurer and clearly state the insurer's obligation to provide the person's benefits.

8. POST-DISTRIBUTION CERTIFICATION

While the deadline for filing a Post-Distribution Certification (PBGC Form 501) with PBGC is the 30th day after you complete the distribution of plan assets, PBGC will assess a penalty for a late filing of the Form 501 only to the extent it is filed more than 90 days after the distribution deadline (including extensions).

Filing for a distress termination

You may file for a distress termination only if you and each company affiliated with you satisfy at least one of four statutory distress tests (although each company does not have to satisfy the same test). The four tests are:

- Liquidation under the U.S. Bankruptcy Code or similar federal or state law;
- Reorganization under the U.S. Bankruptcy Code or similar state law, in which the bankruptcy judge determines that you will be unable to pay your debts and continue in business unless the plan is terminated;
- Proving to PBGC's satisfaction that, unless the plan is terminated, you'll be unable to pay your debts and continue in business; or
- Proving to PBGC's satisfaction that the costs of providing pension coverage have become unreasonably burdensome because of the decline in the workforce covered by the plan.

If you have a question about a **distress termination** of your plan or would like copies of the distress termination booklet of forms and instructions:
Call ..... (202) 326-4000
FAX ..... (202) 326-4072
or write to:
Pension Benefit Guaranty Corporation
Pre-Termination Processing Division,
Suite 870
1200 K Street NW
Washington, DC 20005-4026

If you are thinking about a distress termination, you should contact PBGC and get the "Distress Termination Filing Instructions" booklet. The booklet will give you the details of the process. However, you should be aware that, as with a standard termination, the distress termination process begins with the Notice of Intent to Terminate (NOIT). The NOIT must be issued to all plan participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, unions representing plan participants, and PBGC at least 60 days and not more than 90 days before the date you propose to terminate the plan. (PBGC's Form 600 is the NOIT that must be filed with PBGC.) After issuing the NOIT, the plan administrator must submit a distress termination notice (PBGC Form 601) to PBGC that includes data on the number of plan participants and the plan's assets and liabilities.

Applicable Laws and Regulations

Standard Termination — See ERISA § 4041 (29 USC § 1341), 29 CFR Part 4041, and PBGC's Standard Termination Filing Instructions booklet.

Distress Termination — See ERISA § 4041 (29 USC § 1341), 29 CFR Part 4041, and PBGC's Distress Termination Filing Instructions booklet.

VI. Missing Participants Program

The missing participants program was created by the Retirement Protection Act of 1994 to assist employers who are terminating their defined benefit plans in a standard termination. Under this program PBGC provides a clearinghouse for locating participants, beneficiaries of deceased participants, and alternate payees under QDROs whom the employer is otherwise unable to find. The program builds on PBGC's successful efforts to locate missing participants in plans taken over by PBGC because they terminated without sufficient funds to pay all benefits.

If you have a question about the missing participants program or would like copies of the booklet of forms and instructions for the program:

Call ..... (202) 326-4000
FAX ..... (202) 326-4001

or write to:

Pension Benefit Guaranty Corporation
Technical Assistance Branch, Suite 930
1200 K Street NW
Washington, DC 20005-4026

Purpose of the program

An employer choosing to terminate a fully funded pension plan is required to distribute all plan benefits to plan participants and beneficiaries. The funds must be disbursed before the plan is allowed to wind up its affairs. Before the missing participants program, plan administrators had to provide for the benefits owed to missing participants (including beneficiaries of deceased participants) either by purchasing annuities from private insurers in the names of any missing participants or, in some cases, by depositing funds in a financial institution on their behalf. Employers often had difficulty finding an insurance company or financial institution willing to accept the funds in the name of a missing participant. In addition, missing participants who later sought to locate their benefits often had difficulty learning where the benefits were deposited. Now, companies and their workers can turn to the Missing Participants Program for help.

How the program works

Before turning to PBGC, the plan administrator of a terminating fully funded plan is required to conduct a diligent search for missing participants, including using a commercial locator service.

Plan actuaries determine the amount to be sent to PBGC based on plan provisions and specified assumptions in PBGC's Missing Participant regulations. The plan provides PBGC with information about each missing participant and the benefits owed, including the starting date for the benefit and beneficiary information. PBGC then conducts periodic searches for the missing participant.

Instead of sending the money to PBGC, the plan administrator may choose to purchase an annuity for the missing participant, in which case the administrator must give PBGC information identifying both the participant and the insurance company. The plan administrator also must do a diligent search before purchasing an annuity for a missing participant.

A plan administrator must submit the information about missing participants to PBGC on PBGC's form, the Schedule MP, along with the Post-Distribution Certification (PBGC Form 501). The Post-Distribution Certification is used by the plan administrator to tell PBGC that the plan has satisfied benefit promises to all participants. Missing participants' benefits are paid to PBGC at the same time with a PBGC voucher form. The Schedule MP and payment voucher are available in a booklet that also contains detailed filing instructions.

When a missing participant or surviving beneficiary is found, PBGC will pay the pension benefit or provide the participant or survivor with the name of the private insurer holding the participant's annuity.

Pension Search Directory

To help locate missing participants in terminated plans, PBGC has set up the Pension Search Directory on its website at **http://www.pbgc.gov**. The Directory lists missing participants by name, company and state. It is updated quarterly as PBGC receives names of more missing participants. People who find their names in the Directory should contact PBGC immediately to claim their pensions.

Applicable Laws and Regulations

Missing Participants Program — See ERISA § 4050 (29 USC § 1350), 29 CFR Part 4050, and PBGC's Missing Participants Filing Instructions booklet.

VII. Penalties That May Be Assessed

PBGC may assess a **reporting/disclosure penalty** of up to $1,100 a day for failure to provide, within the specified time limit, notices and other information required to be reported to PBGC or other parties. In addition, PBGC may assess a **penalty for late payment of premiums**; the amount of the penalty may not exceed 100% of the amount of the premium that is not timely paid. These penalties may be waived or reduced upon a showing of reasonable cause.

Reporting/disclosure penalty

General. PBGC will generally assess a penalty of $25 a day for the first 90 days of a delinquency, and $50 for each day thereafter. The total penalty for any violation generally will not exceed $100 times the number of plan participants.

Small Plan Rule. For plans with fewer than 100 participants, the daily penalty generally will be proportionately reduced according to the number of participants, subject to a floor of $5 a day.

Exceptions. A larger daily penalty up to $1,100 may be assessed where there is a willful failure to comply, a pattern or practice of failure to report, or substantial harm to participants or PBGC from the lack of information. Under another exception, which generally affects only large employers, PBGC will assess the full $1,100-per-day penalty for failure to report a missed contribution of $1 million or more or to provide advance notice about a reportable event.

Penalty for late payment of premiums

The penalty for late premiums is 5% of the unpaid premium amount for each month (or fraction thereof) that the amount remains unpaid. However, for premiums owed for plan years beginning on or after January 1, 1996, PBGC will assess a penalty of 1% of the unpaid amount for each month that the amount remained unpaid if the premium is paid on or before the date PBGC first issues a written notice to the premium payer that there is or may be a premium delinquency. The PBGC notification may take various forms, including a premium bill, a letter initiating an audit, or a letter questioning a failure to make a premium filing. The minimum total penalty is $25.

Penalty waivers

In general, PBGC may waive all or part of a penalty upon a demonstration of reasonable cause. PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and the violation resulted from circumstances beyond that person's control.

Applicable Laws and Regulations

PBGC Penalties — See ERISA §§ 4007 and 4071 (29 USC §§ 1307 and 1371), 29 CFR Parts 4007 and 4071, and PBGC's Federal Register policy statements at 60 FR 36837 (July 18, 1995), 61 FR 63874 (December 2, 1996), and 61 FR 66338 (December 17, 1996).

VIII. The Law and Pertinent Regulations

ERISA — ERISA's United States Code citation is 29 USC 1001 et seq. See also Title 26 of the U.S. Code for tax provisions and 26 Code of Federal Regulations for applicable Department of Treasury regulations, 29 CFR Chapter XXV (Parts 2509-2590) for the regulations of the Pension and Welfare Benefits Administration of the Department of Labor, and 29 CFR Chapter XL (Parts 4000-4907) for Pension Benefit Guaranty Corporation regulations.

Pension Insurance Program (Title IV of ERISA) — See ERISA §§ 4001 et seq. (29 USC §§ 1301 et seq.) and 29 CFR Parts 4000 to 4907.

Plans Covered by PBGC — See ERISA § 4021 (29 USC § 1321).

Benefits Guaranteed by PBGC — See ERISA § 4022 (29 USC § 1322) and 29 CFR Part 4022.

PBGC Premiums — See ERISA §§ 4006 and 4007 (29 USC §§ 1306 and 1307), 29 CFR Parts 4006 and 4007, and PBGC's Annual Premium Payment and Estimated Premium Payment Packages (which include the relevant forms and instructions).

Participant Notice Requirements — See ERISA § 4011 (29 USC § 1311) and 29 CFR Part 4011.

Form 5500/Annual Reporting Requirements — See the U.S. Department of Labor's regulation at 29 CFR Part 2520 and the instruction package for the Form 5500 for information on the annual information report and other annual reporting obligations.

Reportable Events — See ERISA § 4043 (29 USC § 1343), 29 CFR Part 4043, and PBGC's Form 10.

Standard Termination — See ERISA § 4041 (29 USC § 1341), 29 CFR Part 4041, and PBGC's Form 500 booklet.

Distress Termination — See ERISA § 4041 (29 USC § 1341), 29 CFR Part 4041, and PBGC's Form 600 booklet.

Missing Participants Program — See ERISA § 4050 (29 USC § 1350), 29 CFR Part 4050, and PBGC's Missing Participants Filing Instructions booklet.

PBGC Penalties — See ERISA §§ 4007 and 4071 (29 USC §§ 1307 and 1371), 29 CFR Parts 4007 and 4071, and PBGC's Federal Register policy statements at 60 FR 36837 (July 18, 1995), 61 FR 63874 (December 2, 1996), and 61 FR 66338 (December 17, 1996).

Notes

OTHER PUBLICATIONS OF INTEREST

The PBGC publication "A Predictable, Secure Pension for Life: Defined Benefit Pensions" provides useful information about how traditional defined benefit pension plans operate and the rights and options of the workers covered by them. A free copy of the publication is available from the Consumer Information Center, Dept. 639E, Pueblo, CO 81009.

Another publication with questions and answers about the single-employer insurance program is "Your Guaranteed Pension." A free copy of "Your Guaranteed Pension" is available from the Consumer Information Center, Dept. YGP, Pueblo, CO 81009.

Both of these PBGC publications are on PBGC's Internet website at http://www.pbgc.gov.

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