



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

Office of the Director

The Honorable [*Insert Name*]
[*Insert "Chairman" or "Ranking Member"*]
[*Insert name of applicable committee*]
[*Insert address*]

Re: 2014 ERISA Section 4010 Report

Dear Mr. Chairman:

ERISA Section 4010 requires that sponsors of certain single-employer underfunded qualified defined benefit pension plans provide specified financial and actuarial information to PBGC annually. ERISA Section 4010 was substantially amended by the Pension Protection Act of 2006 (PPA) and, among other changes, now requires PBGC to submit a summary report, in the aggregate, of the information submitted under ERISA Section 4010 to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Finance, the House Committee on Education and the Workforce and the House Committee on Ways and Means. On behalf of the Pension Benefit Guaranty Corporation, I am pleased to transmit the 2014 report.

The enclosed report summarizes, in the aggregate, 4010 information submitted for the seven years since the new PPA rules became effective.

We welcome the opportunity to discuss with you this ERISA Section 4010 report and possible changes to improve Section 4010.

Sincerely,

W. Thomas Reeder
Director

Attachment

2014 PBGC

4010 REPORT

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FREQUENTLY USED ABBREVIATIONS

ERISA	Employee Retirement Income Security Act of 1974 as amended
FTAP	Funding Target Attainment Percentage
MAP-21	The Moving Ahead for Progress in the 21st Century Act, PL. 112-141
PPA	The Pension Protection Act of 2006, PL. 109-280
PBGC	Pension Benefit Guaranty Corporation
80% FTAP gateway test	One of the tests for determining if a 4010 filing is required

2014 PBGC 4010 REPORT

OVERVIEW

Sponsors of certain single-employer qualified defined benefit pension plans with significant underfunding are required to provide specified financial and actuarial information about the plans and employers in the sponsors' controlled group to PBGC under the Employee Retirement Income Security Act (ERISA). ERISA Section 4010(e) requires PBGC to annually submit to the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate and the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives, a summary report in the aggregate of the information submitted to PBGC under Section 4010. This report summarizes 4010 information submitted for information years ending in 2008 through 2014.¹ We refer to this report as the "2014 4010 report" because the most recent filings included relate to information years ending in 2014.

Due to the limitations on who files, the plans for which this information is reported are not representative of the defined benefit plan universe, nor are they representative of PBGC's insurance exposure. Readers are cautioned against extrapolating this information to the much broader population of companies and plans in the defined benefit plan system, or using this information to draw conclusions about historic trends.

WHO FILES 4010 REPORTS?

Reporting under ERISA Section 4010 is required if:

- Any plan sponsored by a member of the controlled group² had a funding target attainment percentage (FTAP), determined without regard to the interest rate stabilization rules,³ below 80% (i.e., the "80% FTAP gateway test");
- Any controlled group member failed to make a required contribution to a plan within 10 days after its due date and such failure met the conditions for imposition of a lien under ERISA Section 303(k) or Internal Revenue Code Section 430(k);⁴ or
- Any plan maintained by a controlled group member has been granted a minimum funding waiver totaling in excess of \$1 million, any portion of which is still outstanding.

The vast majority of filers are required to file because of the 80% FTAP gateway test. In general, only a handful of filers fall into the latter two categories.

¹ The "information year" is generally the employer's fiscal year. Plan related information is measured as of the last day of the plan year ending within the information year.

² The term "controlled group" is defined in ERISA Section 4001(a)(14). In general, a controlled group is a group of two or more corporations or businesses that are under some sort of common control (e.g., parent-subsidiary).

³ The "interest rate stabilization" rules, under which the discount rate used to determine certain liabilities is adjusted to the extent it falls outside a specified corridor, are provided in ERISA Section 303(h)(2)(C)(iv). ERISA Section 4010 provides that the stabilization rules are disregarded for this purpose.

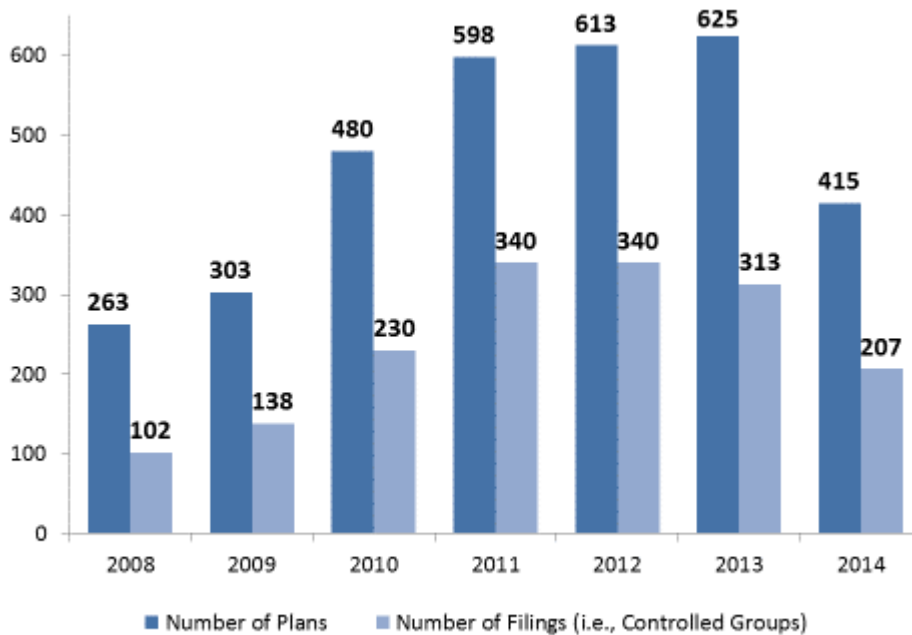
⁴ Generally, aggregate missed contributions in excess of \$1 million trigger this lien.

For the years covered by this report, PBGC waived reporting if aggregate underfunding, determined using stabilized interest rates, is less than \$15 million. The waiver rules have since changed. See section titled “Recent changes to 4010 regulation” for more information.⁵

NUMBER OF FILERS

Figure 1 shows how many filings PBGC has received since 2008.⁶ Because filing is done on a controlled group basis, it is common for one filing to contain information on more than one plan. For that reason, Figure 1 also provides information on the number of plans reported in 4010 filings. These plans generally represent less than 3% of the plans in the PBGC-insured single-employer plan universe.

Figure 1 – Number of 4010 Filers



Plans that are included in reports filed under 4010 tend to be larger than average. For 2008 and 2009, the median number of participants in these plans was just below 3,000. For 2010-2013, the median number of participants was about 2,400, and for 2014, the median number of participants was about 3,100. This contrasts with the universe of PBGC-insured single-employer plans where most plans are much smaller.⁷

⁵ The recent changes first apply to information years beginning on or after January 1, 2016 and thus, won't be reflected in the 4010 Summary Report until the 2016 Report is issued.

⁶ The Pension Protection Act of 2006 (PPA) made several changes to ERISA Section 4010, including adding a requirement to report summary information to Congress. These changes were first effective for 2008 which is why the report shows data starting with 2008.

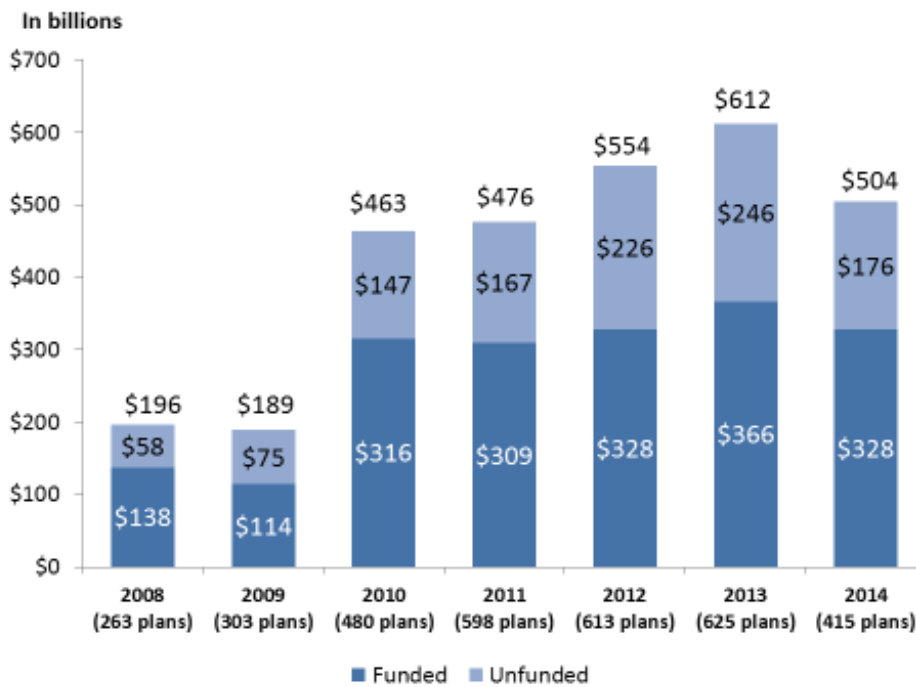
⁷ In 2014, over 60% of plans had less than 100 participants (Table S-31 of PBGC's Databook <http://www.pbgc.gov/documents/2014-data-tables-final.pdf>.) Note that while most plans are small, the majority of all single-employer system participants are in plans that cover more than 10,000 participants, as shown in Table S-30 of PBGC's Databook.

BENEFIT LIABILITIES DETERMINED USING PBGC ASSUMPTIONS AND METHODS

ERISA Section 4010 requires that, for each plan included in a 4010 filing, “the amount of benefit liabilities ... determined using the assumptions used by the corporation in determining liabilities” is reported. Figure 2 shows the total liability and funded liability reported (all plans combined) in each of the seven post-PPA years.

For this purpose, assets are valued at fair market value and liabilities are measured on a termination basis (i.e., using assumptions provided in PBGC’s Section 4044 regulations) and therefore, this amount is commonly called “termination liability.”

Figure 2 – Aggregate Benefit Liabilities (Termination Basis) reported in 4010 Filings



ADDITIONAL REQUIRED ACTUARIAL CALCULATIONS

ERISA Section 4010(d)(1)(C) requires that filers report the funding target attainment percentage (FTAP), determined without regard to the interest rate stabilization rules (see footnote 3).

ERISA Section 4010(d)(1)(B) requires that plans report the funding target of the plan recalculated as if the plan has been in at-risk status for at least 5 plan years as defined in ERISA Section 303(i), also without regard to the interest rate stabilization rules. Calculations under the at-risk rules are the standard ERISA Section 303 assumptions modified for anticipated changes in retirement age and form of payment selection. The resulting liability is then increased by a statutorily prescribed “loading factor.”

A summary of both data elements is shown in Figure 3.

Figure 3 - Additional Actuarial Information Reported in 4010 Filings

Year	Average Funding Target Attainment Percentage ⁸	Aggregate At-Risk Funding Target (in billions)
2008	84%	\$148.0
2009	80%	\$151.2
2010	76%	\$277.3
2011	73%	\$390.1
2012	75%	\$445.7
2013	76%	\$486.6
2014	75%	\$550.3

RECENT CHANGES TO 4010 REGULATION

PBGC recently amended its 4010 regulation to reduce the administrative burden associated with preparing 4010 filings, to better align an existing reporting waiver to PBGC's original intent and to implement additional reporting waivers. A summary of these changes follows:

- *Reducing administrative burden of reporting* – It is burdensome and costly for companies to calculate the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years, as required by ERISA Section 4010(d)(1)(B) (i.e., the data reported in right-most column of Figure 3). And, unless a plan has actually been in at-risk status for at least 5 consecutive plan years (which is very unlikely), the 4010(d)(1)(B) amount is not used for any purpose other than reporting under ERISA Section 4010. PBGC does not typically need this data item because termination liability, which is also reported, is the relevant amount (see Figure 2).

To reduce the administrative burden of preparing a 4010 filing, PBGC amended its regulation to provide that the ERISA Section 4010(d)(1)(B) amount need not be reported as part of a 4010 submission. Rather, if a situation arises where PBGC (or congress) determines it needs that data item from a particular plan (that is subject to 4010 reporting), PBGC may request the plan submit that data item at a later date.

- *Implementing new waivers*
 - Smaller plans — To eliminate the burden of reporting on smaller companies, the regulation now includes a waiver from reporting for plans with controlled groups with fewer than 500 participants, regardless of plan underfunding.

⁸ These amounts represent the average FTAP (i.e., the sum of each plan's reported FTAP divided by the total number of plans). The overall average FTAP can be above 80% for plans reporting information under Section 4010 because all plans sponsored by the employer must file 4010 information if the FTAP for any plan in the controlled group is below 80%.

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- Duplicative reporting — The statute provides that companies file 4010 information if a statutory lien arose as the result of missing more than \$1 million of required contributions or if the plan received a minimum funding waiver for which the outstanding balance exceeds \$1 million. The regulation now waives reporting for companies filing solely because of either of these events if the missed contributions or applications for minimum funding waivers were reported to PBGC under its regulation on Reportable Events and Certain Other Notification Requirements (part 4043) by the due date for the 4010 filing.
 - *Revising existing reporting waiver*—PBGC’s regulation provides a reporting waiver for companies with aggregate underfunding of \$15 million or less. This waiver has been part of the regulation since PPA was implemented. As originally drafted, the regulation provided that the liability used to determine plan underfunding for this purpose was the same liability used to determine funding requirements under ERISA Section 430. At that time, the liability used for purposes of the 80% FTAP gateway test (to determine whether a 4010 filing was required), was the same as the liability determined under Section 430.

However, MAP-21 and subsequent legislation⁹ provided interest rate stabilization rules which result in significantly lower liabilities. The legislation provided that the interest rate stabilization rules do not apply for purposes of the 80% FTAP gateway test, but because of the specific wording of PBGC’s regulation, the stabilization rules continued to apply when determining whether underfunding was less than \$15 million. As a result, many large plans with funding percentages well below 80% (for purposes of the 80% FTAP gateway test) qualified for the \$15 million waiver and thus were not required to submit 4010 information, even though their underfunding was far in excess of \$15 million.

The recent amendments resolve the inconsistency by providing that the liability used to determine whether a 4010 filing is required (i.e., the funding target determined without regard to the stabilization rules) is also used for determining whether the aggregate 4010 funding shortfall exceeds \$15 million.

These changes apply to information years beginning on or after January 1, 2016.

⁹ The Highway Transportation and Funding Act of 2014 (Pub. L. 113-159, enacted August 8, 2014) and the Bipartisan Budget Act of 2015 (Pub. L. 114-74, enacted November 2, 2015).

RECOMMENDATION TO MAKE 4010 MORE EFFECTIVE

4010 filings provide PBGC more current and more useful underfunding information than any other source. They are also the only way that sponsors report plan underfunding on a termination basis, as no other reporting requirement uses this measure, and they are one of the few sources of financial information for all members of a controlled group, not just the plan sponsor. In theory, the 4010 data greatly enhance PBGC's ability to identify and monitor potential risks to the pension insurance system, to focus PBGC resources on situations that pose the greatest risks to the system, to assert appropriate claims in bankruptcy against members of a controlled group of the plan sponsor of a terminated plan, and to prepare PBGC's financial statements.

However, in practice, the 4010 reporting criteria fail to properly target plans as companies that are on the verge of bankruptcy (or even, in bankruptcy) are exempt from reporting simply because their plans were over 80% funded.¹⁰ **In fact, since the PPA changes took effect, PBGC has incurred more than \$4 billion in total claims arising from the termination of plans sponsored by companies that were not required to submit 4010 information.** Better targeting of reporting requirements could take a substantial and unnecessary reporting burden off some companies and help PBGC do its job better. Therefore, PBGC recommends that Section 4010 be amended to revise reporting criteria in ways that minimize burden and improve the usefulness of the data.

¹⁰ Prior to PPA, reporting was required if aggregate underfunding exceeded \$50 million.