



**POST-EVENT NOTICE  
OF REPORTABLE EVENTS**

**PAPERWORK REDUCTION ACT NOTICE**

PBGC needs this information, which is required to be filed under Employee Retirement Income Security Act (ERISA) §4043 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 ERISA §4043 is confidential to the extent provided by the Freedom of Information Act, the Privacy Act, and ERISA §4043(f). PBGC estimates that it will take an average of 5.5 hours and \$740 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 and expires on November 30, 2018. 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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## 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 payments
- C. Inability to pay benefits when due
- D. Distribution to a substantial owner
- E. Change in contributing sponsor or controlled group
- F. Liquidation of contributing sponsor or controlled group member
- 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

PBGC recently amended and updated its reportable event regulation. In connection with the amendments, the Form 10 instructions and Form 10 have been changed; key changes include:

- New automatic waivers for low-default-risk plan sponsors, well-funded plans, and, if the event is filed with the SEC, public companies
- Extension of automatic small plan waiver for controlled group change, benefit liability trans-

- fer, and extraordinary dividend events
- Elimination of most filing extensions
- A requirement that filers use PBGC forms to file reportable events notices and that the notices be filed electronically
- Elimination of the “partial electronic filing” provision whereby certain basic information could be submitted on time electronically and followed up within 2 business days with the remaining required information
- A requirement for certain events that filers submit financial statements, including for all controlled group members where specified, to the extent not publicly available
- Reduced reporting of active participant reductions
- Exclusion of bankruptcies under the Bankruptcy Code from reporting and reduced reporting for other insolvency events
- Alternative compliance for distributions to substantial owners in the form of an annuity
- Revisions to accommodate statutory changes made by the Pension Protection Act of 2006 (“PPA 2006”)
- Clarification of requirements dealing with inability to pay benefits when due
- Late funding balance elections for failure to make required contributions
- A limitation on the scope of the benefit-liability-transfer event to exclude cashouts and annuitizations
- Provides that for purposes of controlled group change events, whether an agreement is legally binding is to be determined without reference to any conditions in the agreement

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

### Advance Reporting Rule for Non-Public Companies

ERISA §4043(b) 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.*

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.

*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 ERI-SA §4042(c).*

### 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.

### How to File

All required information must be filed electronically using the Form 10, in accordance with the instructions on PBGC's website. The Form 10 and instructions are posted on PBGC's website ([www.pbgc.gov](http://www.pbgc.gov)). E-mail filings to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov). To request an exemption from e-filing, submit a request to [post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov).

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" in the "Recipient Email" field, and attach the files.

### 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, the filing must be made by the earliest filing deadline.

See 29 CFR § 4000.43 to determine how to compute

any period of time.

*Note: There is no longer a special “partial electronic filing” provision whereby a filer could submit certain required information within 2 business days after the filing deadline. Now, all required information must be submitted by the filing deadline.*

### **Notice Filing Date**

The date when a reportable event notice (or additional information required by PBGC) is considered to have been filed is the date the notice is transmitted to PBGC in accordance with instructions posted on PBGC’s website. See 29 CFR § 4000.29.

### **What to File**

A plan administrator or contributing sponsor must include with the Form 10 certain specified information tailored to the particular event. This information is listed on page 2 and 3 of the Form 10.

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

*ministrative or judicial action or proceeding or for disclosure to either body of Congress or any duly authorized committee or subcommittee of the Congress.*

### **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 ERISA §4043 is not provided within the specified time limit, PBGC may assess against each plan administrator and 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 (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)

TTY/TTD 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.html>.

“5%” is substituted for “10%” each time it appears.

## 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 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 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

**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, and the Wake Island; 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; 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 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 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.

**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.

**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)

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

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 multi-employer plan (as defined in ERISA §4001(a)(3)) 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 entity subject to the personal jurisdiction of the U.S. district court.

**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 under parts 4006 and 4007 of this chapter for the plan year preceding the event year.

### PART III - SPECIFIC INSTRUCTIONS

General Information Required for All Reportable Events; see also 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 if it has 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
- Additional information to be filed for each type of event (check all boxes for information attached to 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 reason for late filing or attrition event extension claimed
- Certification by individual submitting the form

### Specific Information for Particular Events

Where a reportable event requires reporting financial information and/or actuarial information, please include the following:

**Financial Information** - Where a reportable event requires reporting 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 (SEC, company website, etc.).*

**Actuarial Information** - Where a reportable event requires reporting actuarial information, please include the following for each plan maintained by any member of the plan's controlled group:

- Copy of the most recent Actuarial Valuation Report that includes or is supplemented with all of the items described below:
  - The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving pay-

- ment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);
- A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 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;
- The effective interest rate (as defined in ERISA section 303(h)(2)(A) and Code section 430(h)(2)(A));
- The target normal cost calculated pursuant to ERISA section 303 without regard to subsection 303(i)(2) (and Code section 430 without regard to subsection 430(i)(2));
- 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;
- In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to ERISA section 303 as if the plan has been in at-risk status for 5 consecutive years;
- 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;
- The funding standard carryover balance and the prefunding balance (maintained pursuant to ERISA section 303(f)(1) and Code section 430(f)(1)) 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 ERISA section 303(f)(5) or Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);
- A list of amortization bases (shortfall and waiver) under ERISA section 303 and Code

section 430, including the year the base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;

- 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;
  - Expected disbursements (benefit payments and expenses) during the plan year; and
  - 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 (for example, 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 to less than:

1. *Single-cause event.* On the date in a plan year

when, as a result of a single cause — such as a reorganization, the discontinuance of an operation, a natural disaster, a mass layoff, or an early retirement incentive program —the number of active participants is reduced to less than 80 percent of the number of active participants at the beginning of the plan year in which the event occurred or less than 75 percent of the number of active participants at the beginning of the plan year preceding the plan year in which the event occurred.

2. *Attrition event.* On the last day of a plan year if the number of active participants covered by the plan at the end of such plan year is less than 80 percent of the number of active participants at the beginning of such plan year, or less than 75 percent of the number of active participants at the beginning of the plan year preceding 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 part 4006.2) for the next plan year, but in either case is considered to occur on the last day of the plan year.

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 ERISA §4062(e) or to the withdrawal of a substantial employer under ERISA §4063(a), and (2) timely reported to PBGC under ERISA §4063(a).

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 for work performed; (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. The employment relationship described in this paragraph is between the participant and all members of the plan's controlled group.

**Reporting Waivers** - Reporting of this event is waived if:

*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 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 is a public company and the contributing sponsor 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).

**Extension of Reporting Deadline** - 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 ERISA §302 and §303 or Code §412 and §430 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 ERISA §4043 and does not give the Form 200 filing the benefit of the confidentiality protection for reportable event notices under ERISA §4043(f).*

**Reporting Waivers** - Reporting of this event is waived if:

*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 pay-

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

able 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 Code § 436 and ERISA § 206(g) (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 ERISA §303(j)(4)(E) and Code §430(j)(4)(E).

**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 ERISA §303(j)(4) and Code §430(j)(4) because it is described in ERISA §303(g)(2)(B) and Code §430(g)(2)(B).

### **D. Distribution to a Substantial Owner**

(see 29 CFR §4043.27)

A substantial owner (see ERISA §4021(d)) 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.

**Reporting Waivers** - Reporting of this event is waived if:

*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 is a public company and the contributing sponsor 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: 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*

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

*payment, and the duration of the annuity satisfies the requirements of this section with respect to all subsequent payments under the annuity.*

### **E. Change in Contributing Sponsor or 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 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. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement.

*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 a waiver does not 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:** Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Companies B and C 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 will leave Plan B's controlled group. Company C is

not required to report because it is not a contributing sponsor or a plan administrator.

#### **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. The event is not reported before the notice date. If, on the 30th day after Company Q and Company R enter into the binding contract, 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 30th day, Company R has the reporting obligation.

**Reporting Waivers** - Reporting of this event is waived if:

*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; or

*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 is a public company and the contributing sponsor 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).

## F. Liquidation

(see 29 CFR §4043.30)

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

**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 Insolvency or Similar Settlements (see Part III.K).*

**Reporting Waivers** - Reporting of this event is waived if:

*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; or

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

## 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 ERISA §4043(c)(11). Thus, reporting of any event described under ERISA §4043(c)(11) 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 if:

*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 is a public company and the contributing sponsor 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).

## **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

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

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 Code §414(l).

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 Code §414(l), the date determined in accordance with Code §414(l) 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 is waived if:

*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 is a public company and the contributing sponsor 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).

**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 ERISA §302(c) or Code §412(c).

**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:

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

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

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 if:

*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; or

## **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 effect a composition, extension, or settlement with creditors;
3. Executes a general assignment for the benefit of creditors;
4. 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.F).*

**Reporting Waivers** - Reporting of this event is waived if:

*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.