

SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.	
4010.1	Purpose and scope.
4010.2	Definitions.
4010.3	Filing requirement.
4010.4	Filers.
4010.5	Information year.
4010.6	Information to be filed.
4010.7	Identifying information.
4010.8	Plan actuarial information.
4010.9	Financial information.
4010.10	Due date and filing with the PBGC.
4010.11	Waivers and extensions.
4010.12	Alternative method of compliance for certain sponsors of multiple employer plans.
4010.13	Confidentiality of information submitted.
4010.14	Penalties.
4010.15	OMB control number.

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§ 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with PBGC under ERISA section 4010.

[61 FR 34022, July 1, 1996, as amended at 74 FR 11029, Mar. 16, 2009]

§ 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value, IRS, PBGC, person, plan, plan year, and unreduced retirement age (URA).

In addition, for purposes of this part:

At-risk status means, with respect to a plan for a plan year, at-risk status as defined in ERISA section 303(i)(4) and Code section 430(i)(4).

Exempt entity means a person that does not have to file information and about which information does not have to be filed, as described in § 4010.4(c).

Exempt plan means a plan about which actuarial information does not

have to be filed, as described in § 4010.8(c).

Fair market value of the plan's assets means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

Filer means a person who is required to file reports, as described in § 4010.4.

Fiscal year means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

Funding target means, with respect to a plan for a plan year, the funding target as provided under ERISA section 303(d)(1) and Code section 430(d)(1) determined as of the valuation date for the plan year.

Funding target attainment percentage means, with respect to a plan for a plan year, the funding target attainment percentage as determined under § 4010.4(b) for the plan year.

Information year means the information year determined under § 4010.5.

Valuation date means, with respect to a plan for a plan year, the valuation date as determined under ERISA section 303(g)(2) and Code section 430(g)(2).

[61 FR 34022, July 1, 1996, as amended at 74 FR 11029, Mar. 16, 2009]

§ 4010.3 Filing requirement.

(a) *General*. Except as provided in § 4010.8(c) (relating to exempt plans) and except where one or more waivers under § 4010.11 apply, each filer must submit to PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of the filer's controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by PBGC, the information must be submitted electronically in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>.

(b) *Single controlled group submission*. Any filer or other person may submit the information specified in § 4010.6(a)

Pension Benefit Guaranty Corporation

§ 4010.4

on behalf of one or more members of a filer's controlled group.

[70 FR 11544, Mar. 9, 2005, as amended at 74 FR 11029, Mar. 16, 2009]

§ 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group on the last day of the information year is a filer with respect to an information year (unless exempted under paragraph (c) of this section) if—

(1) For any plan (including an exempt plan) maintained by the members of the contributing sponsor's controlled group on the last day of the information year, the funding target attainment percentage for the plan year ending within the information year is less than 80 percent;

(2) Any member of the controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in ERISA section 303(k) and Code section 430(k) have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers under ERISA section 302(c) and Code section 412(c) totaling in excess of \$1 million, and as of the end of the plan year ending within the information year, any portion thereof is still outstanding.

(b) *Funding target attainment percentage—(1) General.* Except as provided in paragraph (b)(3) of this section, the funding target attainment percentage for a plan for a plan year equals the funding target attainment percentage as provided under ERISA section 303(d)(2) and Code section 430(d)(2) determined as of the valuation date for the plan year.

(2) *Prefunding balance and funding standard carryover balance elections.* For purposes of determining the funding target attainment percentage for a plan for the plan year, prefunding balances and funding standard carryover balances must reflect any elections (or deemed elections) under ERISA section 303(f) and Code section 430(f) that affect

the value of such balances as of the beginning of the plan year, regardless of when the elections (or deemed elections) are made.

(3) *Transition rule for plan years beginning before 2008.* For plan years beginning before 2008, the funding target attainment percentage for a plan for the plan year is determined as the fraction (expressed as a percentage), the numerator of which is the net transition plan assets determined under paragraph (b)(4) of this section, and the denominator of which is the plan's current liability determined using the highest rate of interest allowable under Code section 412(1)(7) as of the valuation date for the 2007 plan year.

(4) *Net transition plan assets—(i) In general.* Net transition plan assets for purposes of paragraph (b)(3) of this section are equal to plan assets as determined under paragraph (b)(4)(ii) of this section reduced by any credit balance in accordance with paragraph (b)(4)(iii) of this section.

(ii) *Determination of assets.* Plan assets under this paragraph (b)(4)(ii) are determined under Code Section 412(c)(2) as in effect for the plan year beginning in 2007, except that the value of plan assets before subtracting the plan's funding standard account credit balance described in paragraph (b)(4)(iii) of this section can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year.

(iii) *Subtraction of credit balance.* If a plan has a funding standard account credit balance as of the valuation date for the plan year beginning in 2007, that balance is subtracted from the asset value described in paragraph (b)(4)(ii) of this section as of that valuation date.

(iv) *Effect of funding standard carryover balance reduction for 2008 plan year.* Notwithstanding paragraph (b)(4)(iii) of this section, if, for the plan year beginning in 2008, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with ERISA section 303(f) and Code section 430(f), then the present value (determined as of the valuation

§ 4010.5

29 CFR Ch. XL (7–1–11 Edition)

date for the plan year beginning in 2007 using the valuation interest rate for that plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (b)(4)(iii) of this section.

(c) *Exempt entities.* A person is an exempt entity for an information year if the conditions of paragraphs (c)(1) through (4) of this section are satisfied.

(1) The person is not a contributing sponsor of a plan (other than an exempt plan) as of the last day of the information year.

(2) The person has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the revenue of the person's controlled group for the fiscal year(s) ending within the information year.

(3) The person has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million.

(4) The person has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

(d) *Transition rule; failure to make required contribution; minimum funding waiver.* For plan years beginning before 2008, where the reference is made in paragraph (a)(2) of this section to “ERISA section 303(k) and Code section 430(k)” a reference to “ERISA section 302(f)(1)(A) and (B) and Code section 412(n)(1)(A) and (B)” shall apply in its place, and where the reference is made in paragraph (a)(3) of this section to “ERISA section 302(c) and Code section 412(c)” a reference to “ERISA section 303 and Code section 412(d)” shall apply in its place as those provisions are in effect for plan years beginning before 2008.

(e) *Minimum funding waiver—(1) General.* For purposes of § 4010.4(a)(3), a portion of the minimum funding waiver for a plan is considered outstanding unless prior to the plan year ending within the information year the statutory amortization period has ended, or, as of the valuation date for the plan year ending within the information year, the amortization bases are deemed to be reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5).

(2) *Example.* Company A sponsors Plan X, which received a minimum funding waiver of \$700,000 for the plan year ending December 31, 2004, and another waiver of \$500,000 for the plan year ending December 31, 2008. Assume that the amortization bases of the waivers are not reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5), and the waivers are therefore outstanding for the full five-year statutory amortization period. Also, assume Company A has a calendar information year. For the 2009 information year, Company A must report under ERISA section 4010. However, for the 2010 information year, Company A, assuming no other obligation to report under ERISA section 4010, is not required to report.

(f) *Certain plans to which special funding rules apply.* The provisions of sections 104, 105, 106, and 402(b) of the Pension Protection Act of 2006, Public Law 109–280 (dealing with plans of certain rural cooperatives, certain plans affected by settlement agreements with PBGC, certain plans of government contractors, and certain frozen plans of commercial passenger airlines and airline caterers), are disregarded for purposes of this part, except that these provisions are taken into account in determining the information to be submitted under § 4010.8(i) of this part (in connection with the actuarial valuation report).

[74 FR 11030, Mar. 16, 2009]

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt

Pension Benefit Guaranty Corporation

§ 4010.6

plan (§4010.8(c)), and the due date for submitting the information (§4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year is the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years*— If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year is the calendar year. (If any two members of the controlled group report financial information on the basis of different fiscal years, the determination of whether an entity is an exempt entity is based on a calendar year information year for purposes of this paragraph (c) and §4010.4(c).)

(d) *Examples.* The following examples illustrate the rule in paragraph (c) of this section.

(1) *Example 1.* Companies A and B are the only members of the same controlled group, and both are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year, and Company B has an October 1 fiscal year. The information year is the calendar year. Company A's financial information with respect to its fiscal year ending June 30, 2009, and Company B's financial information with respect to its fiscal year ending September 30, 2009, must be submitted to the PBGC following the end of the 2009 calendar year information year.

(2) *Example 2.* The facts are the same as in Example 1 except that Company B is not a contributing sponsor of a plan and would be an exempt entity using the calendar year as the information year. Because Company B is an exempt entity based on a calendar year information year, it is excluded when determining the information year. Thus, the information year is the July 1 fiscal year. Note that Company B is an exempt entity even if it would not be exempt based on the July information year.

(3) *Example 3.* The facts are the same as in Example 2 except that Company B would not be an exempt entity using the calendar year information year but would be exempt based on an information year that is the July 1 fiscal year. Since Company B is not exempt based on a calendar year information year, it may not be excluded when determining the information year. Therefore, the information year is the calendar year and Company B is not an exempt entity.

(e) *Special rules for certain plan years.* If a plan maintained by the members of the contributing sponsor's controlled group has two plan years that end in the information year or has no plan year that ends in the information year, the last plan year ending on or immediately before the end of information year is deemed to be the plan year ending within the information year.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005; 74 FR 11031, Mar. 16, 2009]

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in §4010.7 (identifying information), §4010.8 (plan actuarial information) and §4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the filer's controlled group, and any other information relating to the information specified in §§4010.7 through 4010.9, as specified in the instructions on PBGC's Web site, <http://www.pbgc.gov>.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period

§ 4010.7

through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005; 74 FR 11031, Mar. 16, 2009]

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>, the following identifying information with respect to each member of the filer's controlled group (excluding exempt entities)—

(1) *Current members.* For an entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation); and

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the day before the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>, the following identifying information with respect to each plan (including exempt plans) maintained

29 CFR Ch. XL (7–1–11 Edition)

by any member of the filer's controlled group (including exempt entities)—

(1) *Current plans.* For a plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed during the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan was not maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year;

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (e.g., service is frozen but pay is not); and

(vi) In the case of a multiple employer plan, a list of the contributing sponsors as of the end of the plan year ending within the filer's information year, including the name, employer identification number, contact information, fiscal year, and a statement as to whether each contributing sponsor is a publicly-traded company; and

(2) *Former plans.* For a plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan (if applicable), and the identifying information required by paragraph (b)(1) of this section as of the day before that date.

[70 FR 11544, Mar. 9, 2005, as amended at 74 FR 11031, Mar. 16, 2009]

§ 4010.8 Plan actuarial information.

(a) *Required information.* Except as provided elsewhere in this part, for each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on PBGC's Web site,

Pension Benefit Guaranty Corporation

§ 4010.8

<http://www.pbgc.gov>, the following actuarial information determined (except as specified below) as of the end of plan year ending within the filer's information year—

- (1) The number of—
 - (i) Retired participants and beneficiaries receiving payments,
 - (ii) Terminated vested participants, and
 - (iii) Active participants;
- (2) The fair market value of the plan's assets (excluding any contributions received after year-end);
- (3) The amount of benefit liabilities under the plan, setting forth separately the amount of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined, for this purpose in accordance with paragraph (d) of this section;
- (4) A description of the actuarial assumptions used to determine the benefit liabilities in paragraph (a)(3) of this section;
- (5) The funding target (as of the valuation date) for the plan year ending within the information year determined in accordance with ERISA section 303(i) and Code section 430(i) as if the plan had been in at-risk status for a consecutive period of at least five plan years;
- (6) The funding target attainment percentage (as of the valuation date) for the plan year ending within the information year;
- (7) The adjusted funding target attainment percentage as defined in ERISA section 206(g)(9)(B) and Code section 436(j)(2) for the plan year ending within the information year;
- (8) Whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) and Code section 436, and, if so, which limitations applied, when such limitations applied, and when (if applicable) they were lifted;
- (9) Whether a required installment or other required payment to the plan was not made, and, as a result, a lien described in ERISA section 303(k) and Code section 430(k) was triggered during the information year, and the required installment or other required

payment was not made within ten days after its due date;

(10) Whether any portion of the total minimum funding waiver(s) in excess of \$1 million granted with respect to such plan is outstanding;

(11) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information for that plan year—

(i) The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1) (and Code section 430 without regard to subsection 430(i)(1)), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving payment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);

(ii) A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 and Code section 430, including the form of payment and benefit commencement date assumptions for all active and deferred vested participants not yet receiving benefits, information on how lump sums are valued (for plans that provide lump sums other than *de minimis* lump sums), and any changes in those assumptions and methods since the previous valuation and the justifications for such changes.

(iii) The effective interest rate (as defined in ERISA section 303(h)(2)(A) and Code section 430(h)(2)(A));

(iv) 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));

(v) For the plan year and each of the four preceding plan years, a statement as to whether the plan was in at-risk status for that plan year;

(vi) In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to ERISA section 303 and Code section 430 as if the plan has been in at-risk status for five consecutive years;

(vii) 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;

(viii) 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 the minimum funding requirement, amounts reduced in accordance with any elections under ERISA section 303(f)(5) and Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);

(ix) A list of amortization bases (shortfall and waiver) under ERISA section 303 and Code section 430, including the year each base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;

(x) 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;

(xi) Expected disbursements (benefit payments and expenses) during the plan year;

(xii) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during the plan year, and the plan's early retirement factors; in the case of a plan that provides lump sums, other than de minimis lump sums, the summary must include information on how annuity benefits are converted to lump sum amounts (e.g., whether early retirement subsidies are reflected); and

(xiii) Any other similar information as specified in instructions on PBGC's Web site, <http://www.pbgc.gov>; and

(12) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be

qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059-1(d).

(b) *Alternative compliance for plan valuation report.* If any of the information specified in paragraph (a)(11) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.11(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(12) of this section) with PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan if the plan satisfies the conditions in paragraph (c)(1) through (3).

(1) The plan—

(i) Has fewer than 500 participants as of the end of the plan year ending within the information year or as of the valuation date for that plan year and has a 4010 funding shortfall (as defined in § 4010.11(c)) for the plan year ending within the information year that is not in excess of \$15 million, or

(ii) Has benefit liabilities as of the end of the plan year ending within the filer's information year, (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets.

(2) The plan has received, by or within ten days after the due dates, all required installments or other payments required to be made during the information year under ERISA sections 302 and 303 and Code sections 412 and 430.

(3) The plan has no outstanding minimum funding waivers (as described in § 4010.4(a)(3)) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year must be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2)

Pension Benefit Guaranty Corporation

§ 4010.8

or, where applicable, (d)(3) of this section.

(1) *Census data—(i) Census data period.* Plan census data must be determined (for all plans for any information year) either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data are not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process are required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities must be determined using the following rules in paragraphs (d)(2)(i) through (iv) of this section:

(i) *Assumptions included in §§ 4044.51 through 4044.57.* Interest, expenses, mortality and retirement assumptions must be as prescribed in §§ 4044.51 through 4044.57 of this chapter.

(ii) *Assumptions not included in §§ 4044.51 through 4044.57.* Assumptions for decrements other than mortality and retirement (such as turnover or disability) used to determine the minimum required contribution under ERISA section 303 and Code section 430 for the plan year ending within the filer's information year may be used, but only if all such assumptions are used. For plans where there is no distinction between termination and retirement assumptions, any termination/retirement rates at ages after the Earliest PBGC Retirement Date (as defined in § 4022.10 of this chapter) must be treated as retirement rates and replaced by expected retirement ages; termination/retirement rates at ages below the Earliest PBGC Retirement Date must be treated as pre-retirement decrements. Assumptions used to determine the minimum required contribution for the plan year ending within the filer's information year, other than assump-

tions for decrements, interest, and expenses (e.g., form of payment, cost-of-living increases, marital status), must be used.

(iii) *Benefits to be valued.* Benefits to be valued include all benefits earned or accrued under the plan as of the end of the plan year ending within the information year and other benefits payable from the plan including, but not limited to, ancillary benefits and retirement supplements, regardless of whether such benefits are protected by the anti-cutback provisions of Code section 411(d)(6).

(iv) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine benefit liabilities) must be included in determining the earliest and unreduced retirement ages used to determine the expected retirement age and in determining an active participant's entitlement to early retirement subsidies and supplements at the expected retirement age. See the examples in paragraph (e) of this section.

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan for an information year, the value of benefit liabilities may be determined by substituting for the retirement age assumptions in paragraph (d)(2) of this section the retirement age assumptions used by the plan for the plan year ending within the information year for purposes of section 303 of ERISA without regard to the at-risk assumption of subsection 303(i) of ERISA and Code section 430 without regard to the at-risk assumption of subsection 430(i).

(e) *Examples.* The following examples demonstrate how XRA is determined and applied for purposes of determining benefit liabilities under paragraph (d) of this section:

(1) *Example 1. (i) Facts.* Plan X has a normal retirement age of 65, but allows benefits to commence as early as age 55 for participants who complete at least 10 years of service before termination. Early retirement benefits are reduced for participants with fewer than 25 years of service. Employee A is an active participant who is age 40 and has

completed 5 years of service. Assume the “medium” XRA look-up table applies, and that for purposes of § 4010.8(d), the filer has decided not to take pre-retirement decrements other than mortality table into account as permitted under § 4010.8(d)(2)(i).

(ii) *Determination of XRA.* If A continues working, the earliest age A could start receiving benefit is age 55. Therefore, A’s earliest retirement age at valuation (ERA) is 55. Because the earliest that A can receive an unreduced benefit is when A completed 25 years of service (at age 60), A’s URA is age 60. Under the medium XRA look-up table, A’s XRA is 58.

(iii) *Determination of Benefit Liabilities.* The benefit liability is the present value of A’s benefit accrued as of the measurement date assuming A retires at age 58 and elects to have benefits commence immediately. Since A will not be eligible to receive unreduced benefits at that time, the accrued benefit is reduced in accordance with the plan’s early retirement reduction provisions, including any subsidies to which A will be entitled under the assumption that A works until age 58.

(2) *Example 2.* Employee B is also an active participant in plan X and is age 40 with 15 years of service. B will complete 25 years of service at age 50. However, because the plan does not allow for benefit commencement before age 55, B’s ERA, URA and thus, XRA are all age 55. The benefit liability is the present value of B’s benefit accrued as of the measurement date assuming B retires at age 55 and elects to commence benefits immediately. Since B will be eligible to receive an unreduced benefit at that time, the full unreduced benefit amount is valued.

(3) *Example 3—(i) Facts.* Assume the same facts as in Example 1, except that for purposes of § 4010.8(d), the filer has decided to take pre-retirement decrements other than mortality into account as permitted under § 4010.8(d)(2)(i). Assume the only pre-retirement decrement other than mortality is turnover. The plan’s turnover rates go from age 21 to age 54, and the retirement rates go from age 55 to age 65.

(ii) *Determination of XRA.* If A terminates employment at or before age 45,

A will not be eligible to receive benefits until age 65. Therefore, the portion of Employee A that is assumed to terminate before age 45 has an ERA, URA, and XRA of age 65. The portion of A that remains in service to age 45, after the application of the applicable turnover decrements, and then terminates at or after age 45, but before age 55, will be entitled to receive a reduced benefit as early as 55. Therefore, the portion of A that is assumed to terminate during this period has an ERA of 55, a URA of 65 and an XRA of 60. Since the turnover rates stop at age 55, the portion of A that remains in service to age 55 is assumed to remain in service until the XRA for that portion of A. For that portion of A, the ERA is 55, the URA is 60 and the XRA is 58. (For purposes of § 4010.8(d), the plan’s assumed retirement rates are replaced by XRAs.)

(iii) *Determination of benefit liabilities.* The benefit liability of A is the sum of the present value of A’s full accrued benefit at age 65 for the portion of A that terminates between age 40 and age 45, the present value of A’s accrued benefit reduced for commencement at age 60 for the portion of A that terminates between age 45 and age 54, and the present value of A’s accrued benefit reduced for commencement at age 58 for the portion of A that remains employed until age 55.

(4) *Example 4.* Assume the same facts as in Example 3, except that Employee B, the sole active participant, is age 40 with 15 years of service. The portion of B that is assumed to terminate before age 50 would be entitled to receive a reduced benefit as early as age 55 or an unreduced benefit at age 65. That portion of B has an ERA of 55, a URA of 65, and an XRA of 60. The benefit liability for that portion of B is the present value of B’s benefit accrued as of the measurement date assuming B commences a reduced benefit at age 60. The portion of B that survives to age 50 would be entitled to receive an unreduced benefit as early as age 55. That portion of B has an ERA, URA and XRA of 55. The benefit liability for this portion of B is the present value of B’s benefit accrued as of the measurement date assuming B retires and commences unreduced payments at age 55.

Pension Benefit Guaranty Corporation

§ 4010.9

(f) *Multiple employer plans.* If, with respect to a multiple employer plan, the actuarial information required under this section 4010 for the plan year ending within the filer's information year has been filed under part 4010 by another filer, the filer may include this actuarial information by reference. The filer must report the name, EIN and plan number of the multiple employer plan and the name of the other filer that submitted this information.

(g) *Previous filing for plan year.* If the actuarial information for the plan year as required under this §4010.8 has been submitted by the filer in a previous 4010 submission, the filing may include that actuarial information by reference to the previous submission.

(h) *Special rules for plan years beginning before 2008.* For plan years beginning before 2008:

(1) The requirements of paragraphs (a) (5) through (8) of this section do not apply.

(2) The references in paragraph (a)(9) of this section to ERISA section 303(k) and Code section 430(k) are replaced with references to sections of ERISA and the Code, as in effect before amendment by the Pension Protection Act of 2006, Public Law 109-280.

(3) Instead of the requirement of paragraph (a)(11) of this section, the actuarial valuation report requirements in §4010.8(a)(5) in effect as of December 31, 2007, apply.

(i) *Plans subject to special funding rules under sections 104, 105, 106 and 402(b) of the Pension Protection Act of 2006.* Instead of the requirements of paragraph (a)(11) of this section:

(1) In the case of a plan year for which the application of new funding rules is deferred for a plan under sections 104, 105, and 106 of the Pension Protection Act of 2006, Pub. L. 109-280 (dealing with plans of certain rural cooperatives, certain plans affected by settlement agreement with PBGC, and certain plans of government contractors), the requirements in §4010.8(a)(5) (in connection with the actuarial valuation report) in effect as of December 31, 2007, apply to the plan.

(2) In the case of a plan year for which a plan is subject to section 402(b) of the Pension Protection Act of 2006, Public Law 109-280 (dealing with cer-

tain frozen plans of commercial passenger airlines and airline caterers), the plan must meet the requirements in connection with the actuarial valuation report in accordance with instructions on PBGC's Web site, <http://www.pbgc.gov>.

[74 FR 11031, Mar. 16, 2009]

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on PBGC's Web site, <http://www.pbgc.gov>, the following financial information for each member of the filer's controlled group (other than an exempt entity)—

(1) Audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) If audited financial statements are not available by the date specified in §4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) If neither audited nor unaudited financial statements are available by the date specified in §4010.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) The audited consolidated financial statements for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in §4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) For each controlled group member included in the consolidated financial statements (other than an exempt entity), the member's revenues and operating income for the information year, and net assets at the end of the information year.

§ 4010.10

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared, if they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements, if prepared must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to PBGC, may include a statement with the other information that is submitted to PBGC indicating when such financial information was made available to the public and where PBGC may obtain it. For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b)(1) of this section may include financial information of persons who are not controlled group members (e.g., joint ventures) or are exempt entities.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11545, Mar. 9, 2005; 74 FR 11034, Mar. 16, 2009]

§ 4010.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer must file the information required under this part with PBGC on or before the 105th day after the close of the filer's information year. The filing deadline is extended to the 106th date after the close of the filer's information year if the 105-day reporting period includes February 29.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to PBGC by the date specified in para-

29 CFR Ch. XL (7-1-11 Edition)

graph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a-5(a)(2) of this title).

(c) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(e) *Computation of time.* PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[61 FR 34022, July 1, 1996, as amended at 68 FR 61353, Oct. 28, 2003; 74 FR 11034, Mar. 16, 2009]

§ 4010.11 Waivers and extensions.

(a) *Aggregate funding not in excess of \$15 million.* Unless reporting is required by § 4010.4(a)(2) or (a)(3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group (disregarding those plans with no 4010 funding shortfall) does not exceed \$15 million.

(b) *Other waiver authority.* PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable due date specified in § 4010.10 of this part, and must state the

facts and circumstances on which the request is based.

(c) *4010 funding shortfall for waivers and exemptions*—(1) *General*. Except as provided in paragraph (c)(2) of this section, a plan's 4010 funding shortfall for a plan year equals the funding shortfall as provided under ERISA section 303(c)(4) and Code section 430(c)(4) determined as of the valuation date for the plan year, except that the value of plan assets is determined without regard to the reduction under ERISA section 303(f)(4)(B) and Code section 430(f)(4)(B) (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

(2) *Transition rule for plan years beginning before 2008*. For plan years beginning before 2008, a plan's 4010 funding shortfall for a plan year equals the excess, if any, of the plan's current liability over the value of plan assets. For this purpose, both current liability and plan assets are determined in the manner provided in § 4010.4(b)(3), except that assets are not reduced by the credit balance in the funding standard account.

(3) *Multiple employer plans*. For purposes of § 4010.8(c) and paragraph (a) of this section, the entire 4010 funding shortfall of any multiple employer plan of which the filer or any member of the filer's controlled group is a contributing sponsor is included.

[74 FR 11034, Mar. 16, 2009]

§ 4010.12 Alternative method of compliance for certain sponsors of multiple employer plans.

(a) *In general*. Subject to paragraph (b) of this section, an eligible contributing sponsor (as defined in paragraph (c) of this section) of a multiple employer plan satisfies the requirements of this part for an information year if any contributing sponsor of the multiple employer plan provides a timely filing under this part for an information year that coincides with or overlaps with the eligible contributing sponsor's information year.

(b) *PBGC request for additional information*. PBGC may request some or all of the information that would otherwise be required under this part from an eligible contributing sponsor that uses the alternative method of compli-

ance in this section. PBGC will make such a request no earlier than the date the information would otherwise have been due. The eligible contributing sponsor must provide the requested information no later than 30 days after PBGC makes the request. The requested information need not be submitted electronically.

(c) *Eligible contributing sponsor*. For purposes of this section, an eligible contributing sponsor of a multiple employer plan is a contributing sponsor that would not be subject to reporting if the plan were disregarded in applying the gateway tests in § 4010.4(a).

[74 FR 11035, Mar. 16, 2009]

§ 4010.13 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and ERISA section 4010(c), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

[61 FR 34022, July 1, 1996. Redesignated and amended at 74 FR 11035, Mar. 16, 2009]

§ 4010.14 Penalties.

If all of the information required under this part is not provided within the specified time limit, PBGC may assess a separate penalty under ERISA section 4071 against the filer and each member of the filer's controlled group (other than an exempt entity) of up to \$1,100 a day for each day that the failure continues. PBGC may also pursue other equitable or legal remedies available to it under the law.

[61 FR 34022, July 1, 1996, as amended at 62 FR 36994, July 10, 1997. Redesignated and amended at 74 FR 11035, Mar. 16, 2009]

§ 4010.15 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0049.

[61 FR 34022, July 1, 1996. Redesignated at 74 FR 11035, Mar. 16, 2009]