

§ 4043.1

29 CFR Ch. XL (7-1-10 Edition)

- 4043.64 Extraordinary dividend or stock redemption.
4043.65 Transfer of benefit liabilities.
4043.66 Application for minimum funding waiver.
4043.67 Loan default.
4043.68 Bankruptcy or similar settlement.

Subpart D—Notice of Failure To Make Required Contributions

- 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

AUTHORITY: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

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Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner.

In addition, for purposes of this part:

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 greatest of—
 - (i) 10 percent of the controlled group's annual operating income;
 - (ii) 5 percent of the controlled group's first \$200 million in net tan-

gible assets at the end of the fiscal year(s); or

(iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) \$5 million.

De minimis 5-percent segment has the same meaning as a *de minimis* 10-percent segment, except that "5 percent" is substituted for "10 percent" each time it appears.

Event year means the plan year in which the reportable event occurs.

Fair market value of the plan's assets means the fair market value of the plan's assets as of the testing date for the applicable plan year, including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

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 (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or

(iii) 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 returns for employee withholding.

Foreign-linked entity means a person that—

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(1) Is neither a foreign entity nor a contributing sponsor of a plan; and

(2) Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

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

Form 5500 due date means the deadline (including extensions) for filing the annual report under section 103 of ERISA.

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

Participant means a participant as defined in § 4006.2.

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

Testing date means, with respect to a plan year—

(1) The last day of the prior plan year, except as provided in paragraphs (2) or (3) of this definition;

(2) In the case of a new or newly-covered plan (as defined in § 4006.2 of this chapter), the first day of the plan year or, if later, the date on which the plan becomes effective for benefit accruals for future service; or

(3) In the case of a plan described in § 4006.5(e)(2) of this chapter (relating to certain mergers or spinoffs), the first day of the plan year.

Ultimate parent means the parent at the highest level in the chain of corporations and/or other organizations constituting the parent-subsidiary controlled group.

Unfunded vested benefits means unfunded vested benefits determined in accordance with § 4006.4 of this chapter, without regard to the exemptions and special rules in § 4006.5(a)–(c) of this chapter. For purposes of subpart B only, unfunded vested benefits may be determined by subtracting the fair market value of the plan's assets from the plan's vested benefits amount.

Variable rate premium means the portion of the premium determined under section 4006(a)(3)(E) of ERISA and § 4006.3(b) of this chapter.

Vested benefits amount means the vested benefits amount determined under § 4006.4(b)(1) of this chapter.

§ 4043.3 Requirement of notice.

(a) *Obligation to file*—(1) *In general.* Each person that is required to file a notice under this part, or a duly authorized representative, shall submit the information required by this part by the time specified in § 4043.20 (for post-event notice), § 4043.61 (for advance notice), or § 4043.81 (for Form 200 filings). Any information previously filed with the PBGC may be incorporated by reference.

(2) *Multiple plans.* If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(3) *Optional consolidated filing.* A filing by any person will be deemed to be a filing by all persons required to notify the PBGC under this part. If notices are required for two or more events, the notices may be combined in one filing.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice shall provide, by the notice date, the following general information, along with any other information required for each reportable event under subpart B or C of this part:

(1) The name of the plan;

(2) The name, address, and telephone number of the contributing sponsor(s) and of an individual that should be contacted;

(3) The name, address, and telephone number of the plan administrator and of an individual that should be contacted;

(4) The EIN of the contributing sponsor and the EIN/PN of the plan;

(5) A brief statement of the pertinent facts relating to the reportable event;

(6) A copy of the plan document in effect, *i.e.*, the last restatement of the plan and all amendments thereto;

(7) A copy of the most recent actuarial statement and opinion (if any) relating to the plan; and

(8) A statement of any material change in the assets or liabilities of the plan occurring after the date of the