

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-Event filing obligation.

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred are required to notify the PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies. If there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.

§ 4043.21 Tax disqualification and title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waivers.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waivers.* Notice is waived for this event.

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs when the number of active participants under a plan is reduced to less than 80 percent of the number of active participants at the beginning of the plan year, or to less than 75 percent of the number of active participants at the beginning of the previous plan year.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) A statement explaining the cause of the reduction (e.g., facility shutdown or sale); and

(2) The number of active participants at the date the reportable event occurs, at the beginning of the plan year, and at the beginning of the prior plan year.

(c) *Waivers*—(1) *Small plan.* Notice is waived if the plan has fewer than 100 participants at the beginning of either the current or the previous plan year.

(2) *Plan funding.* Notice is waived if—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(3) *No facility closing event/80-percent funded.* Notice is waived if—

(i) The active participant reduction would not be reportable if only those active participant reductions resulting from cessation of operations at one or more facilities were taken into account; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) or (c)(3) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Form 5500 extension.* 30 days after the plan's Form 5500 due date that next follows the date the reportable event occurs, provided the event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(3) *Form 1-ES extension.* The due date for the Form 1-ES for the plan year following the event year if—

(i) The plan is required to file a Form 1-ES for the plan year following the event year;

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(ii) The event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

(iii) The participant reduction represents no more than 20 percent of the total active participants (at the beginning of the plan year(s) in which the reduction occurs) in all plans maintained by any member of the plan's controlled group.

(e) *Determination of the number of active participants*—(1) *Determination date.* 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.

(2) *Active participant.* “Active participant” means a participant who—

(i) Is receiving compensation for work performed;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waivers.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

(a) *Reportable event.* A reportable event occurs when a required installment or a payment required under section 302 of ERISA or section 412 of the Code (including a payment required as a condition of a funding waiver) is not made by the due date for the payment. In the case of a payment needed to avoid a deficiency in the plan's funding standard account, the due date is the latest date such payment may be made under section 302(c)(10)(A) of ERISA or section 412(c)(10)(A) of the Code.

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(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The due date and amount of the required minimum funding payment that was not made and of the next payment due;

(2) The name of each member of the plan's controlled group and its ownership relationship to other members of that controlled group; and

(3) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waiver.* Notice is waived if the required minimum funding payment is made by the 30th day after its due date.

(d) *Form 200 filed.* If, with respect to the same failure, a Form 200 has been completed and submitted in accordance with § 4043.81, the Form 200 filing shall satisfy the requirements of this section.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it 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. A plan shall not be treated as being currently unable to pay benefits if its failure to pay is caused solely by 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.

(2) *Projected inability.* 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 have the same meaning as under section 302(e)(5)(E) of ERISA and section 412(m)(5)(E) of the Code.