AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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 compliance 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]