

Pension Benefit Guaranty Corporation

§ 4043.29

plan's variable rate premium filing due date for the event year, provided that a waiver under any of paragraphs (c)(2)(i) through (c)(2)(iii) of this section would apply if "the plan year preceding the event year" were substituted for "the event year."

(e) *Determination rules*—(1) *Valuation of distribution*. The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner 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.

(3) *Determination date*. 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.

§ 4043.28 Plan merger, consolidation, or transfer.

(a) *Reportable event*. A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(1) of the Code.

(b) *Waivers*. Notice is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in contributing sponsor or controlled group.

(a) *Reportable 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 purposes of this section, the term "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. A transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

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

(1) The name of each member of the plan's old and new controlled groups and the member's ownership relationship to other members of those groups;

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

(3) A copy of the most recent audited (or if not available, unaudited) financial statements, and the most recent interim financial statements, of the plan's contributing sponsor (both old and new, in the case of a change in the contributing sponsor) and any persons that will cease to be in the plan's controlled group.

(c) *Waivers*—(1) *De minimis 10-percent segment*. Notice is waived if 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.

(2) *Foreign entity*. Notice is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *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.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; 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)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entities.* With respect to a transaction in which only foreign parents or foreign-linked entities will cease to be members of the plan's controlled group, 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor before the effective date of the transaction is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

(e) *Examples.* The following examples assume that no waivers apply.

(1) *Controlled group breakup.* 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. 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.

(2) *Change in contributing sponsor.* 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. A reportable event occurs on the date of the transaction (*i.e.*, the binding contract), 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. 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.

(3) *Merger/consolidation within a controlled group.* Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives). Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

§ 4043.30 Liquidation.

(a) *Reportable 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