



February 2016

PENSION ANALYST

Importance indicator - Plan administration and operation



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PBGC issues final reportable event rules

Who's affected

The final reportable event rules affect single-employer and multiple employer defined benefit plans. These final rules do not affect multiemployer, governmental plans or church plans that do not elect to be covered by ERISA ("non-electing church plans").

Background and summary

ERISA requires that plan administrators and sponsors notify the Pension Benefit Guaranty Corporation (PBGC) when certain events, known as "reportable events" occur that may indicate financial problems with a pension plan or the sponsoring employer and could potentially put pensions at risk. Reportable event filings enable PBGC to take action to encourage plan continuation or, if plan termination is called for, to protect plan participants. The PBGC's reportable event rules describe these events and the related notice requirements.

In 2009, the PBGC issued proposed rules that eliminated most automatic waivers for reporting reportable events. Public comments opposed the proposed elimination of most waivers. In 2013, PBGC issued revised proposed rules to incorporate changes made by the Pension Protection Act of 2006 and to include new safe harbor waivers to reduce reporting burdens where possible without depriving PBGC of necessary information.

On September 11, 2015, the PBGC issued final rules that include safe harbor waivers that are simpler and more flexible. In the past, the reportable event rules focused on the funded status of the plan. The final rules are more closely focused on risk of default. The PBGC estimates that if a reportable event occurs, 94 percent of all plans will qualify for at least one waiver under the final rules.

The final rules provide additional guidance regarding:

- Mandatory e-filing;
- Relief for terminating plan; and
- New safe harbor waivers.

Action and next steps

The final rules affect plan administration and operation. These rules are effective October 13, 2015 and apply to reportable events that occur on or after January 1, 2016, and advance reports due on or after that date. Plan sponsors should become familiar with the various reportable events.

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Notice requirements

Unless a waiver or extension applies, plan administrators must file a reportable event notice.

If a reportable event occurs for more than one plan, the filing obligation for each plan is independent of the filing obligation for any other plan. If there are two or more events that require notices, the notices may be combined into a single filing.

The final rules provide timing requirements for post-event and advance notices. Unless a waiver or extension applies, each contributing plan sponsor must notify PBGC no later than 30 days before the effective date of an advance notice reportable event. Post-event notices are required within 30 days after the plan administrator and each contributing sponsor knows or has reason to know that the reportable event has occurred.

If there is a change in the contributing sponsor, any failure to file or a defective filing lies with the person who is the contributing sponsor of the plan on the notice date.

Reportable event forms and instructions will be available on the PBGC website at <http://www.pbgc.gov>.

Electronic filing

The final regulations require electronic filing of reportable event notices. Filers are permitted to email filings with attachments using any one or more of a variety of electronic formats that PBGC is capable of reading as provided in the instructions on PBGC's website available at <http://www.pbgc.gov>. PBGC may grant case-by-case waivers of the electronic filing requirement.

Failure to file

If a notice or any other information is not provided within the specified time limit, PBGC may pursue legal remedies available under the law, including assessing a separate penalty against each individual required to provide a notice. The maximum daily amount of the penalty is \$1,100.

Waivers and extensions

The PBGC has the authority to extend the filing deadline or waive a filing requirement where there is convincing evidence that the waiver or extension is appropriate under the circumstances. PBGC provides automatic waivers for the following:

- Multiemployer plans;
- Terminated plans if the notice date is on or after the date on which:

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- All of the plan's assets (other than any excess assets) are distributed pursuant to a termination; or
- A trustee is appointed for the plan.
- Tax disqualification of the plan as determined by the Secretary of the Treasury;
- The adoption of a plan amendment under which the retirement benefit payable from employer contributions may be decreased;
- A plan termination or partial plan termination; and
- A plan merger, plan consolidation or a transfer of assets or liabilities. However, notice may be required for a controlled group change or a transfer of benefit liabilities.

Small plan waiver

The final rules provide reporting waivers for small plans. A small plan is a plan that had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the "event year." The "event year" is the plan year in which a reportable event occurs.

The small plan waiver applies to the following post-event reportable events:

- Active participant reduction;
- Failure to make timely quarterly contributions;
- Change in contributing sponsor or controlled group;
- Extraordinary dividend or stock redemption; and
- Transfer of benefit liabilities.

Public company waiver

A public company is a person subject to reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934. The public company waiver applies to the following post-event reportable events:

- Active participant reduction;
- Distribution to a substantial owner;
- Change in contributing sponsor or controlled group;
- Extraordinary dividend or stock redemption; and
- Transfer of benefit liabilities.

Foreign entity waiver

Foreign entities are exempt from certain reportable event notice requirements. A foreign entity is an entity that:

- Is not a contributing sponsor of a plan;
- Is not organized under the laws of any state; and
- For the fiscal year that includes the date the reportable event occurs, meets one of the following tests:
 - Is not required to file any United States federal income tax form;
 - Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or
 - Does not own substantial assets in the U.S. (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly U.S. tax returns for employee withholding.

The foreign entity waiver applies to the following post-event reportable events:

- Change in contributing sponsor or controlled group;
- Liquidation;
- Extraordinary dividend or stock redemption;
- Loan default; and
- Insolvency or similar settlement.

De minimis 10-percent waiver

This occurs in connection with a plan's controlled group, if one or more entities in the aggregate for a fiscal year have:

- Revenue not exceeding 10 percent of the controlled group's revenue;
- Annual operating income not exceeding the greater of:
 - 10 percent of the controlled group's annual operating income; or
 - \$5 million; and
- Net tangible assets at the end of the fiscal year(s) not exceeding the greater of:
 - 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or
 - \$5 million.

The de minimis waiver applies to the following post-event reportable events:

- Change in contributing sponsor or controlled group;
- Liquidation;
- Extraordinary dividend or stock redemption;
- Loan default; and
- Insolvency or similar settlement.

New safe harbors

The final rules include the following safe harbors where the reporting obligation is waived:

- **Well-funded plan safe harbor.** A plan satisfies the well-funded plan safe harbor for an event year if no variable-rate premium was required to be paid for the plan year preceding the event year.
- **Low-default risk safe harbor.** A company satisfies this safe harbor if the date of the reportable event falls within the safe harbor period of the company. A "safe harbor period" is a period that (1) begins on a financial information date on which the company satisfies the low-default risk safe harbor and (2) ends 13 months later or if earlier, on the company's next financial information date. A financial information date for a company means one of the following:
 - The date on which the company files on Form 10-K with the Securities and Exchange Commission (SEC) audited financial statements (including balance sheets, income statements, cash flow statements, and notes to the financial statements) for the company's most recent completed fiscal year preceding the date of the filing;
 - The closing date on which the company closes the annual accounting period that results in the production of audited or unaudited financial statements for the company's most recent fiscal year preceding the closing date, if audited financial statements are not required to be filed with the SEC; or
 - A date on which the company files with the IRS an annual federal income tax return or IRS Form 990 for the company's most recent completed fiscal year preceding the date of such filing, if at the time the return is filed there are no annual financial statements for the year of the return.

A company meets the low-default risk safe harbor if the company has adequate capacity to meet its obligations in full and on time. Both the company and the highest level U.S. parent of the plan's controlled group must show that adequate capacity. The final rules set forth criteria to demonstrate adequate capacity.

The [well-funded plan](#) and the [low-default risk safe harbors](#) apply to the following post-event reportable events:

- Active participant reduction;
- Distribution to a substantial owner;
- Change in contributing sponsor or controlled group;
- Extraordinary dividend or stock redemption; and
- Transfer of benefit liabilities.

Post-event reportable events

The final rules require a post-event notification for the following events.

Active participant reduction

The final rules simplify this reportable event so that an active participant reduction occurs:

- When as a result of a single cause, (such as a reorganization, the discontinuance of an operation, a natural disaster, a mass layoff, or an early retirement incentive program) the number of active participants is reduced to less than 80 percent of the number of active participants at the beginning of the plan year or less than 75 percent of the number of active participants at the beginning of the plan year preceding such plan year; or
- At the end of a plan year, if the number of active participants covered by the plan at the end of such plan year is less than 80 percent of the number of active participants at the beginning of such plan year, or less than 75 percent of the number of active participants at the beginning of the plan year preceding such plan year.

Failure to make required minimum contributions

A reportable event occurs when:

- A required funding contribution under ERISA is not made by the due date; or
- Any other contribution required as a condition of a funding waiver is not made when due.

However, a plan sponsor that files a Form 200 for this same failure satisfies the notice requirement.

The following waivers apply:

- 30-day grace period. Notice is waived if the missed contribution is made by the 30th day after its due date.
- Late funding balance election. Notice is waived if the failure to make a required contribution is solely due to the plan sponsor's failure to make a funding balance election.

Inability to pay benefits when due

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.

A reportable event does not occur if the failure to pay is due to:

- Funding-based benefit restrictions;
- The inability to locate a person; or
- Any other administrative delay including the need to verify a person's eligibility for benefits, to the extent the delay is for less than the shorter of two months or two full benefit payment periods.

A waiver applies for plans that are subject to the liquidity shortfall rules.

Distribution to a substantial owner

A reportable event occurs when:

- There is a distribution to a substantial owner of a contributing plan sponsor;
- The total of all distributions to the substantial owner within the one-year period ending with the date of the distribution exceeds \$10,000;
- The distribution is not made due to the substantial owner's death;
- Immediately after the distribution, the plan has unfunded nonforfeitable benefits; and
- Either:
 - The total to any substantial owner is more than 1% of plan assets (as reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year; or

- The total for all substantial owners is more than 5% of plan assets (as reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year.

Change in contributing sponsor or controlled group

A reportable event occurs when there is a transaction that results in one or more person's ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group).

Liquidation

A reportable event occurs when any member of the plan's controlled group:

- Is involved in a transaction to implement its complete liquidation (including liquidation into another controlled group member);
- Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever comes first; or
- Liquidates in a case under the Bankruptcy Code, or under any similar law.

Extraordinary dividend or stock redemption

A reportable event occurs when any member of the plan's controlled group declares a dividend or redeems its own stock and the amount or net value of the distribution when combined with other such distributions during the same fiscal year, exceeds net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles, for the prior fiscal year.

Transfer of benefit liabilities

A reportable event occurs when:

- The plan makes a transfer of benefit liabilities outside the controlled group; and
- The amount of benefit liabilities transferred during any 12-month period is 3% or more of a plan's total benefit liabilities.

Certain distributions such as the payment of lump sums or the purchase of an irrevocable commitment to provide an annuity are not considered a transfer of benefit liabilities.

Loan default

A loan default is a reportable event for a plan when, with respect to a loan with an outstanding balance of \$10 million or more to a member of the plan's controlled group:

- There is an acceleration of payment or a default under the loan agreement; or
- The lender waives or agrees to an amendment of the loan agreement the effect of which is to cure or avoid a breach that would trigger a default.

Insolvency or similar settlement

A reportable event occurs when any member of the plan's controlled group:

- Commences or has commenced against it any insolvency proceeding other than a bankruptcy case under the Bankruptcy Code;
- Commences or has commenced against it a proceeding to effect a composition, extension or settlement with creditors;
- Executes a general assignment for the benefit of creditors; or
- Undertakes to effect any other nonjudicial composition, extension or settlement with substantially all creditors.

Application for minimum funding waiver

A reportable event for a plan occurs when an application for a minimum funding waiver of the plan is submitted to the IRS. There are no waivers for this reporting requirement.

Advance notice of reportable events

The following reportable events require advance notification to the PBGC:

- Change in contributing sponsor or controlled group. Advance notification is waived for the following:
 - Small and mid-size plans. Notice is waived if the transferred plan has fewer than 500 participants.
 - De minimis 5-percent segment. Notice is waived if the person or persons that cease to be members of the controlled group represent a de minimis 5-percent segment of the plan's old controlled group for the most recent fiscal year ending on or before the effective date of the reportable event.
- Liquidation. Notice is waived if the person that liquidates is a de minimis 5-percent segment of the plan's controlled group for the most recent fiscal year ending on or before the effective date of the reportable event and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.
- Extraordinary dividend or stock redemption. Notice is waived if the person making the distribution is a de minimis 5-percent segment of the plan's controlled group for the most recent fiscal year on or before the date of the reportable event.
- Transfer of benefit liabilities. Advance reporting is waived for the following:
 - A complete transfer of all of the benefit liabilities and assets of the transferor plan to another plan;
 - A transfer of less than 3% of the assets of the transferor plan if the value of the transferred assets equals the present value of the accrued benefits being transferred;
 - A transfer of benefit liabilities of 500 or fewer participants using actuarial assumptions for valuing benefits in PBGC trustee plans; or
 - A transfer between a fully-funded transferor plan and a fully-funded transferee plan.
- Application for minimum funding waiver. The notice date is extended until 10 days after the reportable event has occurred.
- Loan default. Advance reporting is required for an acceleration of payment, a default, a waiver or an agreement to an amendment with respect to a loan agreement.
- Insolvency or similar settlement. There is an extension up to 10 days after the reportable event has occurred if a proceeding is not commenced by a member of the plan's controlled group.

Next steps

Plan sponsors should carefully read the information discussed in this newsletter. They should contact their plan's enrolled actuary if they have any questions regarding the impact of the final rules on their plans.

Pension Analyst by Prudential Retirement

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