



# Compliance Advisory

June 2009

## PBGC issues final regulations on reporting by underfunded plans

ERISA requires sponsors of certain underfunded pension plans and their controlled group members to report financial and actuarial information (“4010 filings”) to the Pension Benefit Guaranty Corporation (PBGC). Before the enactment of the Pension Protection Act of 2006 (PPA), sponsors were required to submit a 4010 filing if their plan’s aggregate unfunded vested benefits exceeded \$50 million (“\$50 Million Gateway Test”) or if there were unpaid contributions or funding waivers exceeding \$1 million.

Effective for information years beginning after December 31, 2007, PPA changed the 4010 reporting requirements by:

- Replacing the \$50 Million Gateway Test with a new test based on the funding target attainment percentage (FTAP) of each plan in the controlled group;
- Revising the information that must be included in the 4010 filing;
- Waiving reporting in certain cases for controlled groups with aggregate underfunding of \$15 million or less; and
- Providing guidance on reporting requirements for sponsors of multiple employer plans.

Recently, the PBGC published final regulations to reflect these changes. In addition, the PBGC published Technical Update 09-2, which provides an alternative assumption when determining benefit liabilities for purposes of the 4010 filing.

### Final PBGC regulations

The final PBGC regulations require the contributing sponsor of a plan and each entity that is a member of its controlled group on the last day of the [information year](#) to submit a 4010 filing if any one of the following gateway tests is satisfied:

- Any plan (including an [exempt plan](#)) maintained by the members of the controlled group on the last day of the information year, has an FTAP for the plan year ending within the information year of less than 80%;
- Any member of the controlled group fails to make a required installment or other required payment to a plan, and as a result, a lien is imposed and the required installment or other required payment is not made within ten days after its due date; or
- Any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers in excess of \$1 million and, as of the end of the plan year ending within the information year, any portion of the waiver is still outstanding.

In general, a plan’s FTAP is the ratio of the value of plan assets for the year, reduced by all credit balances, to the plan’s funding target for the year. The FTAP is determined as of the valuation date for the plan year ending within the information year. For plans subject to 4010 reporting requirements, the valuation date is the first day of the plan year.

[Exempt entities](#) are not required to submit a 4010 filing.

### Information year

Reporting must be based on the information year. In general, the “information year” is the plan sponsor’s fiscal year. However, if two or more members of a controlled group have different fiscal years, the information year is the calendar year.

*For example: Companies A and B are the only members of a controlled group. Both companies are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year. Company B has an October 1 fiscal year. The information year is the calendar year. Company A’s financial information for its fiscal year ending June 30, 2009, and Company B’s*

your Rock for Retirement®



financial information for its fiscal year ending September 30, 2009, must be submitted to the PBGC no more than 105 days after December 31, 2009 (i.e., April 16, 2010).

The final regulations also clarify:

- How the reporting requirements apply to certain unusual situations, such as when a plan has two plan years that end in the information year (e.g., due to a plan year change resulting in a short plan year) or has no plan year that ends in the information year (e.g., a new plan); and
- That the [gateway tests](#) do not apply to plans no longer maintained by the controlled group (e.g., terminated or transferred to a member outside of the controlled group) as of the end of the information year.

### Exempt entity

An entity is an “exempt entity” for an information year if any one of the following conditions is satisfied:

- The entity is not a contributing plan sponsor as of the last day of the information year.
- The entity’s revenue for its fiscal year ending within the controlled group’s information year is five percent or less of the controlled group’s revenue for the fiscal year(s) ending within the information year.
- The entity’s annual operating income for the fiscal year ending within the controlled group’s information year is no more than the greater of (1) five percent of the controlled group’s annual operating income for the fiscal year(s) ending within the information year, or (2) \$5 million.
- The entity’s net assets at the end of the fiscal year ending within the controlled group’s information year is no more than the greater of (1) five percent of the controlled group’s net assets at the end of the fiscal year(s) ending within the information year, or (2) \$5 million.

### Plan actuarial information

Each plan maintained by any member of the filer’s controlled group must include the following actuarial information determined as of the end of the plan year ending within the filer’s information year:

- The number of (1) retired participants and beneficiaries receiving payments, (2) active participants, and (3) terminated vested participants;
- The fair market value of the plan’s assets (excluding any contributions received after the end of the plan year);
- The amount of benefit liabilities;
- A description of the actuarial assumptions used to determine benefit liabilities;
- The funding target of the plan, determined as if the plan has been in “at-risk” status for at least five years and whether the plan was subject to any of the funding based restrictions;
- The FTAP (as of the valuation date) for the plan year ending within the information year;
- Whether any portion of the total minimum funding waiver in excess of \$1 million is outstanding;
- A copy of the actuarial valuation report for the plan year ending within the filer’s information year; and
- A written certification by the plan’s enrolled actuary that to the best of his knowledge and belief, the actuarial information is correct, complete and conforms to all applicable laws and regulations.

However, none of this actuarial information is required for an exempt plan. An “exempt plan” is a plan that:

- Has:
  - Fewer than 500 participants as of the end of the plan year ending within the information year or as of the valuation date for that plan year, and has a funding shortfall that does not exceed \$15 million; or
  - Benefit liabilities as of the end of the plan year ending within the filer’s information year equal to or less than the fair market value of plan assets;
- Received within ten days after the due dates all required installments or other payments required to be made during the information year; and
- No outstanding minimum funding waivers as of the end of the plan year ending within the information year.

### Waivers and extensions

The final regulations waive 4010 reporting in certain cases for controlled groups with a combined funding shortfall of \$15 million or less.

A plan’s funding shortfall is the difference between:

- The plan’s funding target for the plan year; and
- The value of plan assets for the plan year held by the plan on the valuation date, reduced by any credit balance.

However, the waiver does not apply if reporting is required for any [reason](#) other than having a FTAP below 80%.

### Special rules for multiple employer plans

The final regulations provide an alternative compliance method for certain sponsors of multiple employer plans. An eligible contributing sponsor of a multiple employer plan satisfies the 4010 reporting requirements if any contributing sponsor provides a timely filing for an information year. 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](#).

The PBGC may request some or all of the information that would be required from an eligible contributing sponsor that takes advantage of this alternative compliance method. The PBGC may 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 more than 30 days after the PBGC makes the request. However, an eligible contributing sponsor does not have to submit the requested information electronically.

### PBGC Technical Update 09-2

Recently, the PBGC published [Technical Update 09-2](#) to provide additional guidance regarding these filing and reporting requirements. Under this guidance, for information years starting on or after January 1, 2008, filers may determine benefit liabilities for purposes of 4010 filings using the alternative form of payment assumption. This option allows a filer to determine liabilities based on the form of benefit payable when no election is made (i.e., the normal form of payment) for benefits that are not in pay status and for which no valid form of benefit election has been made. Filers that use this alternative form of payment assumption must report this fact to the PBGC in their 4010 filing application.



#### Compliance Advisory by Prudential Retirement

The Compliance Advisory is published by Prudential Retirement, a Prudential Financial business, to provide clients with information on current developments affecting qualified retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

Editor: Mitzi Romano (860) 534-2768