

§ 4010.11

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a-5(a)(2) of this title).

(c) *How and where to file.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(e) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[61 FR 34022, July 1, 1996, as amended at 68 FR 61353, Oct. 28, 2003]

§ 4010.11 Waivers and extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

§ 4010.12 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to

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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.

§ 4010.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of ERISA 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. The 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]

§ 4010.14 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.

PART 4011—DISCLOSURE TO PARTICIPANTS

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APPENDIX A TO PART 4011—MODEL PARTICIPANT NOTICE

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

AUTHORITY: 29 U.S.C. 1302(b)(3), 1311.

SOURCE: 61 FR 34026, July 1, 1996, unless otherwise noted.

§ 4011.1 Purpose and scope.

This part prescribes rules and procedures for complying with the requirements of section 4011 of ERISA. This part applies for any plan year beginning on or after January 1, 1995, with

respect to any single-employer plan that is covered by section 4021 of ERISA.

§ 4011.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: contributing sponsor, employer, ERISA, normal retirement age, PBGC, person, plan, plan administrator, plan year, and single-employer plan.

In addition, for purposes of this part: *Participant* has the meaning in § 4041.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of ERISA and this part.

§ 4011.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if a variable rate premium is payable for the plan under section 4006(a)(3)(E) of ERISA and part 4006 of this chapter for that plan year, unless, for that plan year or for the prior plan year, the plan meets the Deficit Reduction Contribution ("DRC") Exception Test in paragraph (b) of this section. The DRC Exception Test may be applied using the Small Plan DRC Exception Test rules in § 4011.4(b), where applicable.

(b) *DRC Exception Test—(1) Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of ERISA for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of ERISA.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of ERISA of up to \$1,100 a day for each day that the failure continues.

[61 FR 34026, July 1, 1996, as amended at 62 FR 36994, July 10, 1997]

§ 4011.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of ERISA for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan's assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan's assets as of the valuation date; and

(ii) The plan's current liability for all participants' total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan's current liability as of the valuation date.

(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of ERISA for a pre-1995 plan year by reason of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of ERISA, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year