

§ 4000.31

is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable), or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

§ 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a *de minimis* percentage of intended recipients; and

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(c) You resend the issuance to the intended recipient promptly after discovering the error.

§ 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart D—Computation of Time

§ 4000.41 What are these computation-of-time rules about?

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (e.g., for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), § 4050.6(d)(3) of this chapter (payment of designated benefits for missing participants), and § 4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.42 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

§ 4000.43 How do I compute a time period?

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as “the last day” of a plan year or “the fifteenth day” of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special “last-day” rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a cal-

endar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples—(1) Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

Subpart E—Electronic Means of Record Retention

§ 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made