

## SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

### PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.	
4010.1	Purpose and scope.
4010.2	Definitions.
4010.3	Filing requirement.
4010.4	Filers.
4010.5	Information year.
4010.6	Information to be filed.
4010.7	Identifying information.
4010.8	Plan actuarial information.
4010.9	Financial information.
4010.10	Due date and filing with the PBGC.
4010.11	Waivers and extensions.
4010.12	Confidentiality of information submitted.
4010.13	Penalties.
4010.14	OMB control number.

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#### § 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with the PBGC under section 4010 of ERISA. This part applies to filers for any information year ending on or after December 31, 1995.

#### § 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, IRS, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

*Exempt entity* means a person who does not have to file information and about whom information does not have to be filed, as described in § 4010.4(d) of this part.

*Exempt plan* means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c) of this part.

*Fair market value of the plan's assets* means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

*Filer* means a person who is required to file reports, as described in § 4010.4 of this part.

*Fiscal year* means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

*Information year* means the year determined under § 4010.5 of this part.

#### § 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

[70 FR 11544, Mar. 9, 2005]

#### § 4010.4 Filers.

(a) *General.* A contributing sponsor of a plan and each member of the contributing sponsor's controlled group is a filer with respect to an information year (unless exempted under paragraph (d) of this section) if—

(1) The aggregate unfunded vested benefits of all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group exceed \$50 million (disregarding those plans with no unfunded vested benefits);

(2) Any member of a controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in section 302(f)(1)(A) and (B) of ERISA or section 412(n)(1)(A) and (B) of the Code have

**§ 4010.5**

**29 CFR Ch. XL (7–1–05 Edition)**

been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code, totaling in excess of \$1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the \$50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and §4006.4 of this chapter (without reference to the exemptions and special rules under §4006.5 of this chapter).

(2) *Contributions.* For purposes of determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section, contributions made after the end of the plan year ending within the filer's information year are taken into account for that plan year only to the extent that they are—

(i) Paid on or before the filing due date under §4010.10(a) (without regard to the alternative due date under §4010.10(b));

(ii) Attributable to that plan year for funding purposes under ERISA section 302(c)(1) and section 412(c)(10) of the Code; and

(iii) Discounted in accordance with §4006.4(b)(2)(iv) if unfunded vested benefits are determined under §4006.4(b) or in accordance with §4006.4(c)(4) if unfunded vested benefits are determined under §4006.4(c).

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

(1) A credit balance exists in the funding standard account (described in section 302(b) of ERISA and section 412(b) of the Code) that is no less than the outstanding balance of all waivers for the plan;

(2) A waiver condition or contractual obligation requires that a credit balance as described in paragraph (c)(1) continue to be maintained as of the end of each plan year during the remainder of the statutory amortization period for the waiver; and

(3) No portion of any credit balance described in paragraph (c)(1) is used to make any required installment under section 302(e) of ERISA or section 412(m) of the Code for any plan year during the remainder of the statutory amortization period.

(d) *Exempt entities.* A person is an exempt entity if the person—

(1) Is not a contributing sponsor of a plan (other than an exempt plan);

(2) Has revenue for its fiscal year ending within the controlled group's information year that is five percent or less of the controlled group's revenue for the fiscal year(s) ending within the information year;

(3) Has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) \$5 million; and

(4) Has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) \$5 million.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005]

**§ 4010.5 Information year.**

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§4010.4), what information a filer must submit (§§4010.6–4010.9), whether a plan is an exempt plan (§4010.8(c)), and the due date for submitting the information (§4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year shall be the fiscal