

that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under §§ 4044.41 through 4044.57, does not exceed \$5,000.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal

form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

[61 FR 34052, July 1, 1996, as amended at 63 FR 38306, July 16, 1998]

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Sec.

- 4043.1 Purpose and scope.
- 4043.2 Definitions.
- 4043.3 Requirement of notice.
- 4043.4 Waivers and extensions.
- 4043.5 How and where to file.
- 4043.6 Date of filing.
- 4043.7 Computation of time.
- 4043.8 Confidentiality.

Subpart B—Post-Event Notice of Reportable Events

- 4043.20 Post-Event filing obligation.
- 4043.21 Tax disqualification and title I non-compliance.
- 4043.22 Amendment decreasing benefits payable.
- 4043.23 Active participant reduction.
- 4043.24 Termination or partial termination.
- 4043.25 Failure to make required minimum funding payment.
- 4043.26 Inability to pay benefits when due.
- 4043.27 Distribution to a substantial owner.
- 4043.28 Plan merger, consolidation, or transfer.
- 4043.29 Change in contributing sponsor or controlled group.
- 4043.30 Liquidation.
- 4043.31 Extraordinary dividend or stock redemption.
- 4043.32 Transfer of benefit liabilities.
- 4043.33 Application for minimum funding waiver.
- 4043.34 Loan default.
- 4043.35 Bankruptcy or similar settlement.

Subpart C—Advance Notice of Reportable Events

- 4043.61 Advance reporting filing obligation.
- 4043.62 Change in contributing sponsor or controlled group.
- 4043.63 Liquidation.
- 4043.64 Extraordinary dividend or stock redemption.
- 4043.65 Transfer of benefit liabilities.
- 4043.66 Application for minimum funding waiver.
- 4043.67 Loan default.
- 4043.68 Bankruptcy or similar settlement.

Subpart D—Notice of Failure to Make Required Contributions

- 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

AUTHORITY: 29 U.S.C. 1082(f), 1302(b)(3), 1343.

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Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying the PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 302(f)(4) of ERISA or section 412(n)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying the PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and substantial owner.

In addition, for purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

- (1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greatest of—

- (i) 10 percent of the controlled group's annual operating income;
- (ii) 5 percent of the controlled group's first \$200 million in net tangible assets at the end of the fiscal year(s); or
- (iii) \$5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

- (i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or
- (ii) \$5 million.

De minimis 5-percent segment has the same meaning as a *de minimis* 10-percent segment, except that "5 percent" is substituted for "10 percent" each time it appears.

Event year means the plan year in which the reportable event occurs.

Fair market value of the plan's assets means the fair market value of the plan's assets as of the testing date for the applicable plan year, including contributions attributable to the previous plan year for funding purposes under section 302(c)(10) of ERISA or section 412(c)(10) of the Code if made by the earlier of the due date or filing date of the variable rate premium for the applicable plan year, but not to the extent contributions are used to satisfy the quarterly contribution requirements under section 302(e) of ERISA or section 412(m) of the Code for the applicable plan year.

Foreign entity means a member of a controlled group that—

- (1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

- (i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding \$1,000; or

- (iii) Does not own substantial assets in the United States (disregarding