

Pension Benefit Guaranty Corporation

§ 4043.30

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor before the effective date of the transaction is a public company; and

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entities.* With respect to a transaction in which only foreign parents or foreign-linked entities will cease to be members of the plan's controlled group, 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship; and

(3) *Press releases; Forms 10Q.* If the plan's contributing sponsor before the effective date of the transaction is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

(e) *Examples.* The following examples assume that no waivers apply.

(1) *Controlled group breakup.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Com-

pany C. As a result of a transaction, the controlled group will break into two separate controlled groups—one segment consisting of Company A and the other segment consisting of Companies B and C. Both Company A (Plan A's contributing sponsor) and the plan administrator of plan A are required to report that Companies B and C will leave plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A will leave Plan B's controlled group. Company C is not required to report because it is not a contributing sponsor or a plan administrator.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.*, the binding contract), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If, on the 30th day after Company Q and Company R enter into the binding contract, the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become effective by the 30th day, Company R has the reporting obligation.

(3) *Merger/consolidation within a controlled group.* Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives). Company Z and the plan administrator of Plan Z must report that Company Y has ceased to be a member of Plan Z's controlled group.

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

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(1) Is involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member);

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Initial information required.* In addition to the information in § 4043.3(b), the notice shall include—

(1) The name of each member of the plan's controlled group before and after the liquidation and its ownership relationship to other members of that controlled group; and

(2) For each other plan maintained by any member of the plan's controlled group, identification of the plan and its contributing sponsor(s) by name and EIN/PN or EIN, as appropriate.

(c) *Waivers*—(1) *De minimis 10-percent segment.* Notice is waived if—

(i) The person or persons that liquidate represent a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs; and

(ii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(2) *Foreign entity.* Notice is waived if each person that liquidates is a foreign entity other than a foreign parent.

(3) *Plan funding.* Notice is waived if each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation and—

(i) *No variable rate premium.* No variable rate premium is required to be paid for the plan for the event year;

(ii) *\$1 million unfunded vested benefits.* As of the testing date for the event year, the plan has less than \$1 million in unfunded vested benefits; or

(iii) *No unfunded vested benefits.* As of the testing date for the event year, the plan would have no unfunded vested benefits if unfunded vested benefits were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of this chapter.

(4) *Public company/80-percent funded.* Notice is waived if—

(i) The plan's contributing sponsor is a public company;

(ii) As of the testing date for the event year, the fair market value of the plan's assets is at least 80 percent of the plan's vested benefits amount; and

(iii) Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

(d) *Extensions.* The notice date is extended to the latest of—

(1) *Form 1 extension.* 30 days after the plan's variable rate premium filing due date for the event year if a waiver under any of paragraphs (c)(3)(i) through (c)(3)(iii) or (c)(4) of this section would apply if "the plan year preceding the event year" were substituted for "the event year";

(2) *Foreign parent and foreign-linked entity.* 30 days after the plan's first Form 5500 due date after the person required to notify the PBGC has actual knowledge of the transaction and of the controlled group relationship, if the person liquidating is a foreign parent or foreign-linked entity; and

(3) *Press releases; Forms 100.* If the plan's contributing sponsor is a public company, 30 days after the earlier of—

(i) The first Form 10Q filing deadline that occurs after the transaction; or

(ii) The date (if any) when a press release with respect to the transaction is issued.

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend (as defined in paragraph (e)(3) of this section) or redeems its own stock, if the resulting distribution is reportable under this paragraph.

(1) *Cash distributions.* A cash distribution is reportable if—

(i) The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distribution for the preceding fiscal year; and