

gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

(2) *Cash distribution percentage* means, for a fiscal year, the lesser of—

(i) The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the preceding fiscal year, or

(ii) The percentage that all cash distributions to one or more shareholders made during that fiscal year and the three preceding fiscal years bears to the adjusted net income (as defined in paragraph (e)(1) of this section) of the person making the distributions for the four preceding fiscal years.

(3) *Dividend* means a distribution to one or more shareholders. A payment by a person to a member of its controlled group is treated as a distribution to its shareholder(s).

(4) *Net value of non-cash distribution* means the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. A distribution of stock that one controlled group member holds in another controlled group member is disregarded. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution shall be deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(5) *Non-cash distribution percentage* means the percentage that the net value of the non-cash distribution bears to one-tenth of the value of the total net assets (as defined in paragraph (e)(6) of this section) of the person making the distribution.

(6) *Total net assets* means, with respect to the person declaring a non-cash distribution—

(i) If all classes of the person's securities are publicly traded, the total market value (immediately before the distribution is made) of the publicly-traded securities of the person making the distribution;

(ii) If no classes of the person's securities are publicly traded, the excess (immediately before the distribution is made) of the book value of the person's assets over the book value of the person's liabilities, adjusted to reflect the net value of the non-cash distribution; or

(iii) If some but not all classes of the person's securities are publicly traded, the greater of the amounts in paragraphs (e)(6)(i) or (ii) of this section.

§ 4043.32 Transfer of benefit liabilities.

(a) *Reportable event*—(1) *In general.* A reportable event occurs for a plan when—

(i) The plan or any other plan maintained by a person in the plan's controlled group makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(ii) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities shall be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(1) of the Code.

(2) *Date of transfer.* The date of transfer shall be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(1) of the Code, the date determined in accordance with 26 CFR 1.414(1)-1(b)(11) will be considered the date of transfer.

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

(1) Identification of the transferee(s) and each contributing sponsor of each

Pension Benefit Guaranty Corporation

§ 4043.34

transferee plan by name and EIN/PN or EIN, as appropriate;

(2) An explanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, the value of plan assets) for each transfer; and

(3) An estimate of the amounts of assets and liabilities being transferred, and the number of participants whose benefits are transferred.

(c) *Waivers*—(1) *Complete plan transfer*. Notice is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets*. Notice is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(l) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor*. Notice is waived if the transfer complies with section 414(l) of the Code using the actuarial assumptions prescribed for valuing benefits in trustee plans under § 4044.51–57 of this chapter.

(4) *Fully funded plans*. Notice is waived if the transfer complies with section 414(l) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in trustee plans under § 4044.51–57) of this chapter.

(d) *Who must file*. Only the plan administrator and contributing sponsor of the plan that made the transfer described in paragraph (a)(1) of this section are required to file a notice of a reportable event under this section. Notice by any other contributing sponsor or plan administrator is waived.

§ 4043.33 Application for minimum funding waiver.

(a) *Reportable event*. A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section

303 of ERISA or section 412(d) of the Code.

(b) *Initial information required*. In addition to the information in § 4043.3(b), the notice shall include a copy of the waiver application, including all attachments.

§ 4043.34 Loan default.

(a) *Reportable event*. A reportable event occurs for a plan whenever there is a default by a member of the plan's controlled group with respect to a loan with an outstanding balance of \$10 million or more, if—

(1) The default results from the debtor's failure to make a required loan payment when due (unless the payment is made within 30 days after the due date);

(2) The lender accelerates the loan; or

(3) The debtor receives a written notice of default from the lender (and does not establish the notice was issued in error) on account of:

(i) A drop in the debtor's cash reserves below an agreed-upon level;

(ii) An unusual or catastrophic event experienced by the debtor; or

(iii) A persisting failure by the debtor to attain agreed-upon financial performance levels.

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

(1) A copy of the relevant loan documents (*e.g.*, promissory note, security agreement);

(2) The due date and amount of any missed payment;

(3) A copy of any notice of default from the lender; and

(4) A copy of any notice of acceleration from the lender.

(c) *Waivers*—(1) *Default cured*. Notice is waived if the default is cured, or waived by the lender, within 30 days or, if later, by the end of any cure period provided by the loan agreement.

(2) *Foreign entity*. Notice is waived if the debtor is a foreign entity other than a foreign parent.

(3) *Plan funding*. Notice is waived if—

(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