

Pension Benefit Guaranty Corporation

§ 4062.6

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding liability under this part. Assets "improperly transferred" include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word *transfer* includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 4062.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to paragraph (b) of this section, the net worth record date, for all purposes under this part, is the plan's termination date.

(b) *Establishment of an earlier net worth record date.* At any time during a termination proceeding, the PBGC, in order to prevent undue loss to or abuse of the plan termination insurance system, may establish as the net worth record date an earlier date during the 120-day period ending with the termination date.

(c) *Notification.* Whenever the PBGC establishes an earlier net worth record date, it shall immediately give liable person(s) written notification of that fact. The written notice may also include a request for additional information, as provided in § 4062.6(a)(3).

§ 4062.6 Net worth notification and information.

(a) *General.* (1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 30 days after the estab-

lishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of its controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 4062.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must