Form **10** Instructions

POST-EVENT NOTICE OF REPORTABLE EVENTS

PBGC
Protecting America's Pensions

PAPERWORK REDUCTION ACT NOTICE

Table of Contents — Page

PART I - GENERAL INSTRUCTIONS

Section 4043 of the Employee Retirement Income Security Act (ERISA) requires that plan administrators and contributing sponsors notify PBGC of the occurrence of certain events ("reportable events"). These are:

A. Active participant reduction
B. Failure to make required minimum funding payments
C. Inability to pay benefits when due
D. Distribution to a substantial owner
E. Transfer of benefit liabilities
F. Change in contributing sponsor or controlled group
G. Liquidation of contributing sponsor or controlled group member
H. Extraordinary dividend or stock redemption
I. Application for minimum funding waiver
J. Loan default
K. Bankruptcy or similar settlement

PBGC's regulation on Reportable Events (29 CFR Part 4043, Subparts A and B) describes in detail each reportable event, the contents of the required post-event notice and any applicable reporting waivers or extensions of deadlines. Part III of these instructions summarizes these rules for each event.

The rules in the *Reportable Event*s regulation apply only to reportable events involving single-employer plans covered by title IV of ERISA. In these instructions, "plan" always means such a single-employer plan.

☑ *Note: The Form 10 package may be used for post-event reporting for plans of any size. PBGC Form 10-SP (for plans with fewer than 500 participants) is no longer available.*

Advance Reporting Rule for Non-Public Companies

ERISA also requires that certain contributing sponsors notify PBGC at least 30 days in advance of the effective date of certain reportable events. If an advance notice is filed, no additional notice is required.

The advance notice requirement applies only to non-public companies that (1) are members of a controlled group whose plans have aggregate unfunded vested benefits of more than $50 million and an aggregate funded vested benefit percentage of less than 90 percent; and (2) are reporting about events relating to themselves or other non-public companies in the controlled group.

<u>Form 10 and the rules described in these instructions do not apply to advance reporting</u>. See the Form 10-Advance package and 29 CFR Part 4043, Subparts A and C, for further information about advance reporting.

Who Must Notify PBGC

The plan administrator and each contributing sponsor of a plan for which a reportable event has occurred must file a post-event reportable event notice with PBGC. If there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the plan administrator or contributing sponsor(s) on the date the post-event notice is due.

☑ *Note: An authorized representative may file a reportable event notice on behalf of a plan administrator, a contributing sponsor or both.*

A single event (such as a controlled group break-up) may be a reportable event for more than one plan in the controlled group. In that case, the reporting requirement applies to the plan administrator and each contributing sponsor of each plan. Any filing will be deemed to be a filing by all persons required to notify PBGC.

Reporting Waivers

PBGC has waived post-event reporting for certain reportable events in certain circumstances (see Part III of these instructions). Several of these waivers are based on measures of the plan's unfunded vested benefits. Part IV describes general rules for computing plan assets and vested benefits in order to determine whether any of the funding-based waivers apply.

Post-event reporting is waived for any occurrence that is reportable under more than one reportable event <u>only</u> if the requirements for a waiver for <u>each</u> reportable event are met.

How To File

A reportable event notice may be filed with PBGC by mail, commercial delivery service, hand delivery or electronic transmission (*e.g.,* e-mail or fax).

When To File

A reportable event notice must be filed within 30 days after a plan administrator or contributing sponsor knows or has reason to know that a reportable event has occurred.

PBGC has extended this deadline for some events in certain specified circumstances (see Part III of these instructions).

The filing deadline for any event that is reportable under more than one reportable event will be the earliest deadline for reporting any one of the events.

In computing any period of time, the day of the event from which the period of time begins to run is not included. The last day of the period is included, unless it is a weekend or Federal holiday, in which case the period runs until the end of the next regular business day.

Filing Date

The filing date for a reportable event notice or other required information is --

1. <u>By United States mail</u>: The date of the postmark stamped on the cover in which the information is mailed, if the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly addressed to PBGC at the address listed under "Where to File";

2. <u>By commercial delivery service</u>: The date the information is deposited for delivery to PBGC with a

commercial delivery service, provided it is received by PBGC at the address listed under "Where to File" within two regular business days; or

3. If not meeting the conditions in (1) or (2) above: The date the document is received by PBGC at the address listed under "Where to File".

Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

Special rule for electronic transmission: An electronic transmission of a reportable event notice will be deemed timely filed if (1) the transmission is received by PBGC on or before the filing deadline (including extensions), (2) the transmission contains at least the information listed on the front of the Form 10 and (3) the remaining information is received by PBGC at the address listed under "Where to File" by the second regular business day following the filing deadline (including extensions).

Where to File

By mail, commercial delivery service or hand delivery:

Pension Benefit Guaranty Corporation
Department of Insurance Supervision and Compliance
1200 K Street, N.W.
Washington, D.C. 20005-4026

By electronic mail (e-mail):
post-event.report@pbgc.gov

By facsimile transmission (fax):
(202) 842-2643 (call (202) 326-4070 to confirm that the fax has been received). (For TTY/TTD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to the number above.)

What to File

A plan administrator or contributing sponsor must include with the PBGC Form 10 certain specified information tailored to the particular event. This information is listed on the back of the Form 10.

If any required information has previously been submitted to PBGC, the filer may instead refer to the previous submission.

If the same event is reportable under more than one reportable event, the notice must include all the required information for each event.

If notices are required for two or more events, the notices may be combined in one filing.

PBGC may require that a plan administrator or contributing sponsor submit additional information within 30 days after the date of PBGC's written request. PBGC may shorten this 30-day period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

Note: Any non-public information submitted to PBGC as part of a reportable event notice shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosure to either body of Congress.

Information on Controlled Group Structure

To comply with any requirement that the reportable event notice include a description of the plan's controlled group structure (see the reverse side of the Form 10), the filer may submit a copy of an organization chart or other diagram. The description or chart may exclude de minimis 5-percent segments and foreign entities other than foreign parents.

Special Rule for Terminating Plans

A reportable event notice is required for a plan in the process of terminating. This notice is waived if the deadline for filing the notice is on or after the date on which (1) all of the plan's assets (other than any excess assets) are distributed pursuant to a termination or (2) a trustee is appointed for the plan under ERISA §4042(c).

Effect of Failure to File

If a notice (or any other required information) is not provided within the specified time limit, PBGC may assess against each plan administrator and contributing sponsor required to provide the notice a separate penalty under ERISA §4071 of up to $1,100 a day for each day for which the notice or other information is overdue (see 29 CFR Part 4071 and PBGC's Statement of Policy on Assessment of Penalties for Failure to Provide Required Information (60 FR 36837, July 18, 1995)). PBGC may pursue any other equitable or legal remedies available to it under the law.

For Questions, Problems, Copies of Forms

If you have questions or problems regarding reportable events or you need copies of this package, the Form 10-Advance package or the Form 200 package, contact:

Pension Benefit Guaranty Corporation
Department of Insurance Supervision and Compliance
1200 K Street, N.W.
Washington, D.C. 20005-4026
Telephone: (202) 326-4000

For TTY/TTD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to the number above.

PART II - DEFINITIONS

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means a person who is a contributing sponsor as defined in ERISA §4001(a)(13).

Controlled group means, in connection with any person, a group consisting of that person and all other persons under common control with that person (generally 80% ownership; see 29 CFR Part 4001.3). Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

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% of the controlled group's revenue;
2. Annual operating income not exceeding the greatest of:
   a. 10% of the controlled group's annual operating income,
   b. 5% of the controlled group's first $200 million in net tangible assets at the end of the fiscal year(s), or
   c. $5 million; and
3. Net tangible assets at the end of the fiscal year(s) not exceeding the greater of:
   a. 10% of the controlled group's net tangible assets at the end of the fiscal year(s), or
   b. $5 million.

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

EIN/PN means the nine-digit employer identification number assigned by the Internal Revenue Service to a person and the three-digit plan number assigned to a plan.

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

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 of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island and the Canal Zone; and
3. For the fiscal year that includes the date the reportable event occurs, meets one of the following tests:
   a. Is not required to file any United States federal income tax form;
   b. Has no income reportable on any United States federal income tax form other than passive income not exceeding $1,000; or
   c. Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax return for employee withholding.

Foreign-linked entity means a person that:

1. Is neither a foreign entity nor a contributing sponsor of a plan; and
2. Is a member of the plan's controlled group only because of ownership interests in or by foreign entities.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor.

Notice date means the deadline (including extensions) for filing notice of the reportable event with PBGC.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

Public company means a person subject to the reporting requirements of §13 or §15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Single-employer plan means any defined benefit plan (as defined in ERISA §3(35)) that is not a multiemployer plan (as defined in ERISA §4001(a)(3)) and that is covered by title IV of ERISA.

Variable rate premium means the portion of the single-employer premium based on a plan's unfunded vested benefits (see ERISA §4006(a)(3)(E) and 29 CFR §4006.3(b)).

PART III - SPECIFIC INSTRUCTIONS

A. Active Participant Reduction

(see 29 CFR §4043.23)

Definition of Event - A reportable event occurs when the number of active participants under a plan is reduced to less than:

1. 80% of the number of active participants at the beginning of the plan year; or

2. 75% of the number of active participants at the beginning of the previous plan year.

For purposes of this reportable event:

The filer may substitute the number of active participants at the end of the previous plan year for the number of active participants at the beginning of the current plan year.

An active participant is a participant who (1) is receiving compensation for work performed; (2) is on paid or unpaid leave granted for a reason other than a layoff; (3) is laid off from work for a period of time that has lasted less than 30 days; or (4) is absent from work due to a recurring reduction in employment that occurs at least annually.

Reporting Waivers - Reporting of this event is waived if:

Small plan: The plan has fewer than 100 participants at the beginning of either the current or the previous plan year; or

Funding-based waivers: For the event year:

- No variable rate premium (see Part IV.B);
- Less than $1 million in unfunded vested benefits (see Part IV.C);
- No unfunded vested benefits (see Part IV.D); or
- No facility closing event/80% funded: The plan is at least 80% funded for vested benefits (see Part IV.E) <u>and</u> the active participant reduction would not be reportable if only those participant reductions resulting from cessation of operations at one or more facilities were taken into account.

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to the latest of:

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year;

Form 5500 extension: 30 days after the plan's Form 5500 due date that next follows the date the reportable event occurs, provided the event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

PBGC Form 1-ES extension: The due date for the Form 1-ES for the plan year following the event year if:

1. The plan is required to file a PBGC Form 1-ES for the plan year following the event year (*i.e.*, the plan has 500 or more participants for the event year),

2. The event would not be reportable counting only those participant reductions resulting from cessation of operations at a single facility; and

3. The participant reduction represents no more than 20% of the total active participants (at the beginning of the plan year(s) in which the reduction occurs) in all plans maintained by any member of the plan's controlled group.

B. Failure to Make Required Minimum Funding Payments

(see 29 CFR §4043.25)

Definition of Event - A reportable event occurs when a payment required under ERISA §302 or Code §412 is not made by the due date for the payment. Required payments include required quarterly contributions under ERISA §302(e) or Code §412(m) and payments required as a condition for a funding waiver under ERISA §303 or Code §412(d).

☑ *Note: In the case of a payment needed to avoid a deficiency in the plan's funding standard account, the due date is the latest date such payment may be made under ERISA §302(c)(10)(A) or Code §412(c)(10)(A).*

Reporting Waivers - Reporting of this event is waived if:

Payment by 30th day: The required minimum funding payment is made by the 30th day after the payment is due; or

Small plan waiver: There are 500 or fewer participants in the employer's defined benefit plans on each day of the plan year preceding the plan year for which the contribution is owed; except that the 500 participant limit is reduced to 100 if a Participant Notice is required for the plan under §4011 of ERISA for both the plan year for which the contribution is owed and the prior plan year. The number of participants must be determined in a manner consistent with §302(d)(6) of ERISA. For more information, see PBGC Technical Update 97-6 (which is on the PBGC's web site at http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/index.html).

☑ *Note: If a contributing sponsor or controlled group member files a complete Form 200 with PBGC within 10 days of the due date of the payment in accordance with 29 CFR §4043.81, the Form 200 filing shall satisfy the notice requirement for this event. A reportable event notice under this section is not a substitute for the Form 200.*

C. Inability to Pay Benefits When Due

(see 29 CFR §4043.26)

Definition of Event - A reportable event occurs when a plan is currently unable, or projected to be unable, to pay benefits.

A plan is <u>currently unable</u> to pay benefits if the plan fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due.

☑ *Note: This does not include a failure or inability to pay benefits caused solely by the need to verify the person's eligibility for benefits; the inability to locate the person; or any other administrative delay, if the delay is for less than the shorter of two months or two full benefit payment periods.*

A plan is <u>projected to be unable</u> to pay benefits when, as of the last day of any quarter of a plan year, the plan's liquid assets are less than two times the amount of the disbursements from the plan for such quarter. Liquid assets and disbursements from the plan are defined in ERISA §302(e)(5)(E) and Code §412(m)(5)(E).

Reporting Waivers - Reporting of this event is waived unless the reportable event occurs during a plan year for which the plan is described in ERISA §302(d)(6)(A) or Code §412(l)(6)(A).

☑ *Note: Reporting is waived for a plan year for a plan that has more than 100 participants on each day of the preceding plan year. (Reporting may be waived for a plan with 100 or fewer participants based on the aggregation rule described in ERISA §302(d)(6)(C) or Code §412(l)(6)(C).)*

D. Distribution to a Substantial Owner

(see 29 CFR §4043.27)

A substantial owner (see ERISA §4022(b)(5)(A)) is an individual who owns (or owned within the preceding 60 months):

1. The entire interest in an unincorporated trade or business;
2. Directly or indirectly, more than 10% of the capital or profits interest in a partnership; or
3. Directly or indirectly, more than 10% of the voting stock or the total stock of a corporation.

Definition of Event - A reportable event occurs for a plan when:

1. There is a distribution to a substantial owner;
2. The total of all distributions to the substantial owner within the one-year period ending with the date of such distribution exceeds $10,000;
3. The distribution is for a reason other than the owner's death; and
4. Immediately after the distribution, the plan has unfunded nonforfeitable benefits.

The value of a distribution to a substantial owner is the sum of:

1. The cash amounts actually received by the substantial owner, determined as of the date of receipt;
2. The purchase price of any irrevocable commitment, determined as of the date on which the obligation to provide benefits passes from the plan to the insurer; and
3. The fair market value of any other assets distributed, determined as of the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

Reporting Waivers - Reporting of this event is waived if:

Distribution up to §415 limit: The total of all distributions to the substantial owner within the one-year period ending with the date of the distribution does not exceed the limitation (as of the date the reportable event occurs) under Code §415(b)(1)(A) (as adjusted in accordance with Code §415(d)). For this purpose, the §415 limit is expressed as an annual benefit in the form of a straight life annuity to a participant at ages 62 through 65. (For example, for calendar year 2006, the limit was $175,000.);

Funding-based waivers: For the event year:

– No variable rate premium (see Part IV.B);

– No unfunded vested benefits (see Part IV.D); or

– 80% funded for vested benefits (see Part IV.E); or

Distribution up to 1% of assets: The sum of the values of all distributions to the substantial owner within the one-year period ending with the date of the distribution is 1% or less of the end-of-year current value of the plan's assets (as required to be reported on the plan's Form 5500) for either of the two plan years immediately preceding the event year.

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to:

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year.

E. Transfer of Benefit Liabilities

(see 29 CFR §4043.32)

Special Filing Rule - For this event, only the plan administrator and contributing sponsor of the transferor plan are required to file a reportable event notice. Notice by any other plan administrator or contributing sponsor is waived.

Definition of Event - A reportable event occurs for a plan when:

1. The plan or any other plan maintained by any member of 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
2. 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% or more of the plan's total benefit liabilities. For this purpose, value both the benefit liabilities transferred and the plan's total benefit liabilities as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with Code §414(l).

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

Reporting Waivers - Reporting is waived if:

Complete plan transfer: <u>All</u> of the transferor plan's benefit liabilities and assets are transferred to one other plan. (Note: This event may be reportable if it involves a change in contributing sponsor or controlled group (see Part III.F));

De minimis transfer: The value of assets being transferred:

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

2. In conjunction with other assets transferred during the same plan year, is less than 3% of the assets of the transferor plan as of at least one day in that year;

§414(l) safe harbor: The transfer complies with Code §414(l) using the actuarial assumptions prescribed for valuing benefits in terminated PBGC-trusteed plans under 29 CFR §4044.51-57; or

Fully-funded plans: The transfer complies with Code §414(l) and, after the transfer, the transferor and transferee plans are fully funded (using the actuarial assumptions prescribed for valuing benefits in terminated PBGC-trusteed plans under 29 CFR §4044.51-57).

F. Change in Contributing Sponsor or Controlled Group

(see 29 CFR §4043.29)

Definition of Event - A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan's controlled group.

For this purpose, a *transaction* includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights.

☑ *Note: This event does not include a transaction that will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.*

Examples - The following examples assume no waivers apply.

Controlled Group Breakup

Facts: Plan A's controlled group consists of Company A (its contributing sponsor), Company B (which maintains Plan B), and Company 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.

Reporting: 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.

Change in Contributing Sponsor

Facts: 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.

Reporting: 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.

Merger/Consolidation Within Controlled Group

Facts: Company X and Company Y are subsidiaries of Company Z, which maintains Plan Z. Company Y merges into Company X (only Company X survives).

Reporting: 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.

Reporting Waivers - Reporting of this event is waived if:

De minimis 10-percent segment: The person or persons that will cease to be members of the plan's controlled group represent a de minimis 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs;

Foreign entity: Each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent; or

Funding-based waivers: For the event year:

- No variable rate premium (see Part IV.B);
- Less than $1 million in unfunded vested benefits (see Part IV.C);
- No unfunded vested benefits (see Part IV.D); or
- Public company/80% funded: The plan's contributing sponsor before the effective date of the transaction is a public company and the plan is at least 80% funded for vested benefits (see Part IV.E).

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to the latest of:

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year;

Foreign parent and foreign-linked entities: If the only persons ceasing to be members of the plan's controlled group are foreign parents or foreign-linked entities, 30 days after the plan's first Form 5500 due date after the person required to notify PBGC has actual knowledge of the transaction and of the controlled group relationship; and

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 (1) the first Form 10Q filing deadline that occurs after the transaction, or (2) the date (if any) when a press release with respect to the transaction is issued.

G. Liquidation

(see 29 CFR §4043.30)

Definition of Event - A reportable event occurs for a plan when a member of the plan's controlled group:

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.

☑ *Note: An event described above may also be reportable under Bankruptcy or Similar Settlements (see Part III.K).*

Reporting Waivers - Reporting of this event is waived if:

De minimis 10-percent segment: 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 each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation;

Foreign entity: Each person that liquidates is a foreign entity other than a foreign parent; or

Funding-based waivers: Each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group and, for the event year:

- No variable rate premium (see Part IV.B),
- Less than $1 million in unfunded vested benefits (see Part IV.C), or
- No unfunded vested benefits (see Part IV.D); or
- Public company/80% funded: The plan's contributing sponsor is a public company; the plan is at least 80% funded for vested benefits (see Part IV.E); and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group after the liquidation.

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to the latest of:

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year;

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

Press releases; Forms 10Q: If the plan's contributing sponsor is a public company, 30 days after the earlier of (1) the first Form 10Q filing deadline that occurs after the transaction, or (2) the date (if any) when a press release with respect to the transaction is issued.

H. Extraordinary Dividend or Stock Redemption

(see 29 CFR §4043.31)

ERISA Definition - The reportable event described below replaces the reportable event on extraordinary dividends and stock redemptions described in ERISA §4043(c)(11). Thus, reporting of any event described under ERISA §4043(c)(11) is waived, unless the event would be reportable under this or another reportable event.

Definition of Event - A reportable event occurs for a plan when any member of the plan's controlled group declares a *dividend* (definition follows) or redeems its own stock, if the resulting distribution is a reportable cash distribution, non-cash distribution or combined distribution as described below.

1. Cash distributions. A cash distribution is reportable if:
    a. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year, exceeds the *adjusted net income* (definition follows) of the person making the distribution for the preceding fiscal year; and

    b. The distribution, when combined with any other cash distributions to shareholders previously made during the fiscal year or during the three prior fiscal years, exceeds the *adjusted net income* of the person making the distribution for the four preceding fiscal years.

2. Non-cash distributions. A non-cash distribution is reportable if its net value, when combined with the *net value* (definition follows) of any other non-cash distributions to shareholders previously made during the fiscal year, exceeds 10% of the *total net assets* (definition follows) of the person making the distribution. To determine whether a distribution is reportable, both assets and liabilities must be valued at fair market value.

3. Combined distributions. If both cash and non-cash distributions to shareholders are made during a fiscal year, a distribution is reportable when the sum of the *cash distribution percentage* (definition follows) and the *non-cash distribution percentages* (definition follows) for the fiscal year exceeds 100%.

Definitions

Adjusted net income means the net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles and practices.

Cash distribution percentage means, for a fiscal year, the lesser of:

1. The percentage that all cash distributions to one or more shareholders made during that fiscal year bears to the adjusted net income of the person making the distributions for the preceding fiscal year, or

2. 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 of the person making the distributions for the four preceding fiscal years.

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).

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% 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.

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 of the person making the distribution.

Total net assets means, with respect to the person declaring a non-cash distribution:

1. 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;

2. 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

3. If some but not all classes of the person's securities are publicly traded, the greater of the amounts in (1) or (2) above.

Reporting Waivers - Reporting is waived if:

De minimis 5-percent segment: The person making the distribution is a de minimis 5-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;

Foreign entity: The person making the distribution is a foreign entity other than a foreign parent;

Foreign parent: The person making the distribution is a foreign parent and the distribution is made solely to other members of the plan's controlled group; or

Funding-based waivers: For the event year:

- No variable rate premium (see Part IV.B);
- Less than $1 million in unfunded vested benefits (see Part IV.C);
- No unfunded vested benefits (see Part IV.D); or
- 80% funded for vested benefits (see Part IV.E).

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to the latest of:

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year;

Foreign parent and foreign-linked entities: If the person making the distribution is a foreign parent or foreign-linked entity, 30 days after the plan's first Form 5500 due date after the person required to notify PBGC has actual knowledge of the distribution and of the controlled group relationship; and

Press releases; Forms 10Q: If the plan's contributing sponsor is a public company, 30 days after the earlier of (1) the first Form 10Q filing deadline that occurs after the distribution, or (2) the date (if any) when a press release with respect to the distribution is issued.

I. Application for Minimum Funding Waiver

(see 29 CFR §4043.33)

Definition of Event - A reportable event occurs when an application for a minimum funding waiver is submitted for a plan under ERISA §303 or Code §412(d).

J. Loan Default
(see 29 CFR §4043.34)

Definition of Event - A reportable event occurs whenever there is a default by a member of a 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 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 that the notice was issued in error) on account of:
   a. A drop in the debtor's cash reserves below an agreed-upon level,
   b. An unusual or catastrophic event experienced by the debtor, or
   c. A persisting failure by the debtor to attain agreed-upon financial performance levels.

Special Notice Date Rule - For this event, the notice date is 30 days after the person required to report knows or has reason to know of the occurrence of the default, without regard to the time of any other conditions required for the default to be reportable.

Example - Company A has a debt with an outstanding balance of $20 million, for which a payment is due on October 1. Under the terms of the loan, the default may be cured within 10 days. Company A does not make the payment until October 31. Because Company A has made the payment within thirty days of the due date, no reportable event has occurred. If Company A does not make the payment by October 31, a reportable event will have occurred on October 1, and notice will be due by October 31.

Reporting Waivers - Reporting of this event is waived if:

Default cured: 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;

Foreign entity: The debtor is a foreign entity other than a foreign parent; or

Funding-based waivers: For the event year:

- No variable rate premium (see Part IV.B);

- Less than $1 million in unfunded vested benefits (see Part IV.C);

- No unfunded vested benefits (see Part IV.D); or

- 80% funded for vested benefits (see Part IV.E).

Extension of Reporting Deadline - The notice date (for an event that is not waived) is extended to the latest of:

Cure period extensions: One day after:

1. The applicable cure period provided in the loan agreement,

2. The date the loan is accelerated, or

3. The date the debtor receives written notice of the default;

PBGC Form 1 extension: 30 days after the plan's variable rate premium filing due date for the event year, provided the plan would have satisfied any of the funding-based waivers for this event had the funding determination been made for the plan year preceding the event year rather than the event year; and

Foreign parent and foreign-linked entities: With respect to a loan default involving <u>only</u> a foreign parent or a foreign-linked entity, 30 days after the plan's first Form 5500 due date after the person required to notify PBGC has actual knowledge of the default and of the controlled group relationship.

K. Bankruptcy or Similar Settlement
(see 29 CFR §4043.35)

Definition of Event - A reportable event occurs with respect to a plan when any member of the plan's controlled group:

1. Commences a bankruptcy case (under the Bankruptcy Code) or has a bankruptcy case commenced against it;

2. Commences, or has commenced against it, any other type of insolvency proceeding (including, but not limited to, the appointment of a receiver);

3. Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

4. Executes a general assignment for the benefit of creditors; or

5. Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

☑ *Note: An event described above may also be reportable under Liquidation (see Part III.G).*

Reporting Waivers - Reporting of this event is waived if the controlled group member described above is a foreign entity other than a foreign parent.

Extension of Reporting Deadline - If the controlled group member described above is not a contributing sponsor, the notice date is extended until 30 days after a person required to notify PBGC has actual knowledge of the reportable event.

PART IV – FUNDING-BASED WAIVERS AND EXTENSIONS

A. General

Certain waivers and filing extensions depend on the plan's funding level. For waivers, plan funding is determined as of the same date used in calculating the plan's unfunded vested benefits when determining the plan's variable rate premium obligation for the event year (see PBGC's regulation on *Payment of Premiums* (29 CFR Part 4006)). That date is the last day of the prior plan year, subject to exceptions for new and newly-covered plans and plans involved in certain mergers or spinoffs (see the definition of "testing date" in 29 CFR §4006.2). For extensions, plan funding is generally determined as of the last day of the second preceding plan year.

Sections B through E below describe each of the funding-based waivers, including the required assumptions for valuing assets and vested benefits. Section F below describes funding-based extensions.

B. Waiver If No Variable Rate Premium

This waiver applies to a plan that is not required to pay a variable rate premium for the event year in accordance with 29 CFR §4006.4 and 4006.5. A plan may qualify for this waiver because it is exempt from the variable rate premium under §4006.5 or because it has no unfunded vested benefits (using either the general rule or the alternative calculation method) under §4006.4(b).

Note: The "Required Interest Rate" under section 4006(a)(3)(E)(iii)(II) of ERISA, which is used for calculating variable rate premiums, is the "applicable percentage" (currently 85 percent) of the annual yield on 30 year Treasury securities for the calendar month preceding the calendar month in which the plan year begins. (The "applicable percentage" becomes 100 percent beginning with the first plan year to which the first new mortality tables issued under Code §412(l)(7)(C)(ii)(II) apply).

The Pension Funding Equity Act of 2004 ("PFEA") temporarily changed the Required Interest Rate for a plan year beginning in 2004 or 2005 by substituting, for the annual yield on 30 year Treasury securities, the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long term investment grade corporate bonds. PFEA does not apply for plan years beginning in 2006. We will make updated information about the Required Interest Rate available as we get it: check our web site (http://www.pbgc.gov) or call or write us (at the address and phone numbers on page 4) for more information.

On or about the 15th of each month, the PBGC publishes in the Federal Register a list of the Required Interest Rates for the preceding 12 months. In addition, for your convenience, the Required Interest Rate is posted on the PBGC's Web site. The Required Interest Rate also can be obtained by calling (202) 326- 4041.

C. Waiver If Less Than $1 Million in Unfunded Vested Benefits

This waiver applies to a plan that has less than $1 million in underfunding. Underfunding can be measured in either of two ways:

1. Determine unfunded vested benefits using the rules that apply in calculating premiums under 29 CFR §4006.4, without regard to the exemptions and special rules in 29 CFR §4006.5(a)-(c); or

2. Subtract the plan's vested benefits amount determined in accordance with 29 CFR §4006.4(b)(1) from the fair market value of the plan's assets (see 29 CFR §4043.2), *i.e.,* use the general rule of 29 CFR §4006.4(a), but substitute the fair market value of the plan's assets for the actuarial value of the plan's assets.

D. Waiver If No Unfunded Vested Benefits

This waiver applies if the plan would have no unfunded vested benefits if determined in the following manner:

1. Use the general rule under 29 CFR §4006.4(a);

2. Substitute the fair market value of the plan's assets for the actuarial value of the plan's assets; and

3. Value vested benefits using (a) an interest rate equal to 100% of the 30-year Treasury Securities Rate (as reported in the Weighted Average Interest Rate Table under the topic "Published Guidance" in the "Retirement Plans" contents section of the IRS Web site (see www.irs.gov/retirement)), for the calendar month preceding the calendar month in which the event year begins, and (b) the mortality assumptions presented in 29 CFR §4044.53.

Note: For this purpose, unfunded vested benefits are determined in accordance with the optional assumptions under 29 CFR §4010.4(b)(2) as in effect before April 8, 2005. Although that paragraph was removed from the regulations (see 70 FR 11540, March 9, 2005), filers may continue to use the optional assumptions (described above) to determine if the plan meets a reporting waiver under 29 CFR Part 4043 based on having no unfunded vested benefits.

E. Waiver If At Least 80% Funded

This waiver applies if the fair market value of the plan's assets is at least 80% of the plan's vested benefits amount (see 29 CFR §4043.2), *i.e.,* use the general rule of 29 CFR §4006.4(a), but substitute the fair market value of the plan's assets for the actuarial value of the plan's assets).

F. FUNDING-BASED EXTENSION

Certain extensions of the filing deadline for certain reportable events also depend on the plan's funding level. Plan funding is determined for each of the applicable funding-based waivers as described above, except that the determination is made as of the testing date for the plan year before the event year (*i.e.,* generally, as of the last day of the second preceding plan year).

Example - The PBGC premium for a calendar year plan for 2007 is due October 15, 2007. The VRP portion of the premium is generally based on underfunding as of the last day of the prior plan year (*i.e.*, as of December 31, 2006).

Assume a reportable event occurs for a calendar year plan on May 1, 2007. The reportable event notice is due May 31, 2007, unless a waiver or extension applies. The information needed to determine underfunding as of December 31, 2006, may not be available by the notice due date, since the plan has not yet determined its underfunding for premium purposes. To determine whether an extension applies, the plan could determine underfunding using information as of December 31, 2005.