Federal Pension Insurance Guide for Small Business

PBGC

Protecting America's Pensions

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Introduction

If you sponsor or administer a defined benefit pension plan, it is probably covered by the federal pension insurance program administered by the Pension Benefit Guaranty Corporation ("PBGC"). PBGC protects the pensions of your workers up to certain limits set by federal pension law if your plan terminates without sufficient money to pay all benefits. For your part, each year you pay an insurance premium to PBGC and, when required, you provide certain information. PBGC prepared this Guide to help you and your professional advisors understand PBGC requirements.

This Guide is an aid but it does not replace the laws and regulations that contain the legal requirements relating to pension plans. For current information on laws, regulations, forms and instructions, and other guidance, visit PBGC's website, **www.pbgc.gov**. A summary of the most applicable laws, regulations and other guidance can be found in **Chapter VIII. The Law, Pertinent Regulations and Other Guidance**.

PBGC continues to develop regulations and other guidance to implement the Pension Protection Act of 2006. PBGC will post updates to this Guide on its website as necessary.

The U.S. Department of Labor's Employee Benefits Security Administration ("EBSA") and the Internal Revenue Service ("IRS") administer other legal requirements that apply to pension plans. To learn more, visit their websites, **www.dol.gov/ebsa** (EBSA) and **www.irs.gov** (IRS).

To comment on or ask a question about this Guide, please contact:

Pension Benefit Guaranty Corporation

Practitioner Contact Center

1-800-736-2444; Local: 202-326-4242

I Overview

PBGC protects the pensions of about 44 million working men and women in about 29,000 private defined benefit pension plans. These pension plans provide a specified periodic benefit (usually monthly) at retirement, generally based on salary or a stated dollar amount, age, and years of service. PBGC guarantees these benefits subject to limits set by the Employee Retirement Income Security Act ("ERISA"), which established PBGC as a federal corporation in 1974. PBGC operates under its Board of Directors, which consists of the Secretaries of Labor (Chair), Commerce, and Treasury. A Director appointed by the President and confirmed by the Senate administers PBGC's day-to-day operations.

PBGC receives no funds from general tax revenues. Operations are financed by insurance premiums set by Congress and paid by defined benefit plans and the employers that sponsor them. PBGC also finances its operations from assets received from pension plans that PBGC has taken over as trustee (usually due to employer bankruptcies), any recoveries PBGC has obtained from those bankrupt employers to cover plan underfunding, and investment returns on its assets.

PBGC insures both **single-employer** and **multiemployer** defined benefit plans. A single-employer plan (which may be collectively bargained) provides benefits for workers of one employer or to workers of several unrelated employers. Multiemployer plans are collectively bargained plans involving two or more unrelated employers. This Guide covers only single-employer plans.

PBGC does not insure **defined contribution** plans, under which contributions are made by or on behalf of employees into individual employee accounts with no promise as to the amount of payouts. Defined contribution plans include 401(k) plans, profit-sharing plans, money-purchase plans, and employee stock ownership plans (ESOPs).

Go to the Practitioners and Resources pages on **www.pbgc.gov** to learn about PBGC's premium filings, plan terminations, reporting requirements, interest rates, mortality tables, laws, regulations, and informal guidance. Information includes technical updates, disaster relief announcements, FAQs, Opinion Letters, and more. You may also view and download PBGC forms and instructions.

PBGC-insured plans

General. PBGC covers most tax-qualified defined benefit plans, and insures such plans up to a guaranteed maximum benefit set by law and adjusted yearly.

Exceptions. There are a number of types of defined benefit pension plans that are not covered by PBGC. Several of these may have particular relevance to small businesses.

- Plans established and maintained exclusively for **substantial owners** are not insured. Generally, a substantial owner is an individual who, at any time during a 60-month period, owns the entire interest in an unincorporated business or is a partner or shareholder who owns (directly or indirectly) 10 percent or more of a partnership or corporation.
- Plans of **professional service employers** that have always had 25 or fewer active participants in their plans are not insured. Professional service employers are firms owned or controlled by professional individuals who principally provide professional services. "Professional individuals" include physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, lawyers, public accountants, public engineers, architects, draftspersons, actuaries, psychologists, social or physical scientists, and performing artists.
- **Unfunded plans** maintained primarily to provide deferred compensation for a select group of management or highly compensated employees are not insured.

If you have a PBGC-covered plan you are required to pay premiums to PBGC. If you are unsure whether your plan is covered, you should request a coverage determination. Information on how to do this and a detailed discussion of premiums can be found in **Chapter II. Premiums to be Paid to PBGC**. However, if a plan is not covered by PBGC, paying premiums will not cause it to be covered.

If you have a covered plan, you also are required to report to PBGC certain events that may signal problems with your plan or business. Information on reportable events and reporting requirements can be found in **Chapter IV. Reporting Business and Plan Events to PBGC**.

PBGC-covered plans may voluntarily terminate through either a standard termination or a distress termination. Information on voluntary terminations may be found in **Chapter V. Plan Terminations**. Information on required disclosure of information related to underfunded terminations can be found in **Chapter III. Disclosure to Participants**.

PBGC's role

Under certain circumstances, PBGC may take action on its own to terminate a plan. Most terminations initiated by PBGC occur when PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. PBGC can terminate a plan if, for example, a plan will be unable to pay benefits when due. PBGC also must approve any termination initiated by the plan sponsor, whether standard or distress. Upon termination, all further benefit accruals, vesting, and employer administrative responsibilities for the pension plan cease and the employer and the employer's controlled group members become liable to PBGC for unfunded benefit liabilities. If a terminating plan cannot pay all plan benefits and it has unfunded guaranteed benefits, PBGC generally becomes trustee of the plan with responsibility for benefit payments and collecting amounts owed the plan.

As trustee, PBGC uses both its own and the plan's funds to pay the plan's participants their benefits up to the legal limits under Title IV of ERISA. Most participants in a plan taken over by PBGC receive their full plan benefit. However, some participants receive less because their plan benefit exceeds the statutory guarantee limits and the plan's assets are insufficient to pay plan benefits. PBGC offers participants a number of annuity options for their benefit but generally pays benefits in a lump sum only if the total value of a participant's benefit is $5,000 or less.

As trustee for more than 4,000 terminated, underfunded pension plans, PBGC is responsible for paying retirement benefits to more than one million people who either currently receive their pensions from PBGC or will receive their benefits when they become eligible for retirement.

Guaranteed benefits

Pursuant to ERISA section 4022 and PBGC's regulations at 29 CFR Part 4022, PBGC guarantees the payment of pension benefits up to a certain dollar amount, which is adjusted annually based on changes in the Social Security contribution and benefit base. Generally, the guaranteed amount is fixed as of the date of plan termination. However, effective for bankruptcy filing dates on or after September 26, 2006, if a plan terminates while its contributing sponsor is in bankruptcy, the guaranteed amount is fixed on the bankruptcy filing date rather than the termination date. For plans terminating in 2010 or 2011, the maximum guaranteed amount is $54,000 yearly, or $4,500 per month, for a straight-life annuity beginning at age 65. The maximum is less if the benefit begins before age 65 or is paid in a form other than for the participant's life alone, such as a form that provides survivor benefits.

PBGC guarantees payment of most pension benefits, if they are vested and the participant has met all of the requirements for the benefit by the time the plan is terminated (or by the bankruptcy filing date, if applicable). In addition to normal retirement benefits, guaranteed benefits can include early retirement benefits, disability benefits, and certain survivor benefits.

PBGC Maximum Monthly Guarantees (for a plan terminated in 2010 or 2011)			
Age 65	Age 62	Age 60	Age 55
$4,500	$3,555	$2,925	$2,025

PBGC's guarantee does not cover non-pension benefits such as health insurance, life insurance, certain death benefits, vacation pay, or severance pay. PBGC also does not guarantee certain early retirement payments (such as supplemental benefits that stop when a participant becomes eligible for Social Security) that result in an early retirement monthly benefit greater than the monthly amount the participant would receive at the plan's normal retirement age.

In addition to the maximum dollar limit on PBGC's guarantee, the law has certain other limits. Benefit increases and new benefits may not be covered or may be only partially covered by PBGC's guarantee if they result from plan provisions that have been in effect less than five years as of the date of plan termination. For benefit increases resulting from plant shutdowns or other unpredictable contingent events, the five-year period begins on the date of the event (effective for events after July 26, 2005). Additional limits apply to a substantial (10%) owner who is a participant in a terminating plan for which a termination is initiated before January 1, 2006. For terminations initiated on or after January 1, 2006, the additional limits apply only to majority (50%) owners.

Benefits that are not guaranteed will be paid by PBGC to the extent the plan has sufficient funds to pay those benefits when it terminates or from PBGC's recoveries of employer liabilities to terminated plans.

Further information on benefits guaranteed by PBGC is available on PBGC's website at **www.pbgc.gov/wr/benefits/guaranteed-benefits.html**.

Filing and issuance rules

As noted earlier, you must file premiums and may have to submit reports or other material to PBGC. PBGC's regulations at 29 CFR Part 4000 provide guidance on filing methods that may be used for submissions (including payments) to PBGC. These regulations also provide guidance on the methods you may use in providing notices and other information to persons other than PBGC, such as plan participants and beneficiaries. To facilitate the filing and issuance requirements, these regulations also provide information on how to determine filing and issuance dates. The filing and issuance requirements are summarized below.

Filing methods. If you have a PBGC-covered plan you must pay premiums to PBGC. Premium filings must be made electronically using "My Plan Administration Account" ("My PAA"), which is accessed through PBGC's website. Information on electronic filing of premium payment information can be found in **Chapter II. Premiums to be Paid to PBGC**. (Annual Financial and Actuarial Information Reporting under ERISA section 4010 must also be made electronically. However, such filings usually do not apply to small plans or small employers.)

Paper submissions to PBGC may be filed by hand, mail, or commercial delivery service. PBGC's website (**www.pbgc.gov**) contains information on whether electronic filing (such as e-mail or fax) is available for specific types of submissions. In addition, the website contains information on how to meet the technical requirements for electronic filing with PBGC.

Issuance methods. Under certain circumstances you must issue a notice or other information to a third party such as a participant or beneficiary. Any method of issuance that is reasonably calculated to ensure actual receipt by the intended recipient may be used. (Posting is not a permissible method of issuance.) See 29 CFR § 4000.14 for safe-harbor methods for electronic issuances (e.g., e-mail).

Filing or issuance dates. Generally, PBGC treats a submission as filed, or an issuance as provided, on the date it is sent, provided certain requirements are met. The requirements depend on the method used. In general, if a submission or issuance is made via the U.S. Postal Service, the filing or issuance date is the mailing date. If a commercial delivery service is used, the filing or issuance date is the date the filing or issuance is deposited with the commercial delivery service. If a filing is hand-delivered and received at PBGC before 5 p.m. on a business day, the filing date is the date of delivery. If received on a weekend, holiday, or after 5 p.m. (Eastern Time) on a business day, the filing date is the next business day. If a filing or issuance is made by electronic delivery (e.g., e-mail), generally the filing or issuance date is the date the filing or issuance is electronically transmitted. Electronic filings and submissions must comply with any technical requirements set forth on PBGC's website (**www.pbgc.gov**) for the types of submissions or issuances. Certain filings are always treated as filed when received, but such filings generally do not involve small plans or small employers.

Computation of time. In general, to compute time periods under PBGC's regulations, whether counting forwards or backwards, count the day after (or before) the act, event, or default that begins the period as day one, the next day as day two and so on. All days, including weekends and Federal holidays should be counted. However, if the last day counted is a weekend or Federal holiday, the period of time is extended or shortened (whichever is beneficial in complying with the time requirement) to the next business day. For example, for a plan terminating in a standard termination, a Notice of Intent to Terminate must be issued at least 60 days and no more than 90 days before the proposed termination date (see **Chapter V. Plan Terminations**). If the 60th day before the proposed termination date is a Saturday, the notice is timely if issued on the following Monday even though that date is only 58 days before the proposed termination date. Additional information on the computation of time rules and examples are available on PBGC's website (**www.pbgc.gov**).

II Premiums to be Paid to PBGC

ERISA sections 4006 and 4007 require plans covered by PBGC to pay premiums annually to PBGC. PBGC's regulations at 29 CFR Part 4006 and 29 CFR Part 4007 provide guidance on computing and paying premiums.

Types and amounts of premiums to be paid

General. Single-employer plans pay two kinds of premiums. All single-employer plans pay a **flat-rate premium**; underfunded plans pay an additional **variable-rate premium**.

Flat-rate premium. Each year's flat-rate premium is equal to the flat premium rate for the year multiplied by the number of participants. The flat premium rate is adjusted each year for inflation and is programmed into My PAA (PBGC's online premium payment application) and printed in the premium instructions. "Participants" generally include any current employee covered by your plan, former employees receiving or entitled to receive future benefits, and deceased participants who have one or more beneficiaries entitled to or receiving benefits. The number of participants is measured as of the participant count date, which is the last day of the prior plan year in most cases. For

For information on whether a plan is covered by PBGC insurance, and thus whether premiums are owed, and to request a coverage determination:

Call: 800-736-2444 or 202-326-4242

E-mail: standard@pbgc.gov

Write:
Pension Benefit Guaranty Corporation
Insurance Program Office
Technical Assistance Branch
1200 K Street NW
Washington, DC 20005-4026

A coverage determination request does not extend the due date for any premiums that are due.

For TTY/TDD users, call the Federal Relay Service toll-free at 800-877-8339 and ask to be connected to the appropriate number given in this Guide.

Only 800 numbers are toll-free; all other telephone numbers are not toll-free and collect calls cannot be accepted.

example, if your plan is a calendar-year plan, the participant count date is generally December 31 of the prior year.

> **Example**: For plan years beginning in 2011, the per-participant single-employer flat premium rate is $35 (see PBGC's website for any rate increases for subsequent years). If a single-employer plan had 30 participants on the participant count date for the 2011 plan year, the flat-rate premium would be 30 x $35, or $1,050. If the plan does not have any unfunded vested benefits (see following section), this is the total premium.

Variable-rate premium. The variable-rate premium is $9 per $1000, or fraction thereof, of **unfunded vested benefits** (UVBs) as of the **UVB valuation date**. The amount of UVBs is the amount by which the present value of the benefits in which participants are vested exceeds the present value of plan assets. The UVB valuation date is the same as the date used to determine the minimum required contribution. The law specifies (and PBGC's premium payment instructions describe) the rules for calculating UVBs.

> **Example**: If a plan has UVBs of $200,000 on the UVB valuation date, the variable-rate premium is $9 x ($200,000 / $1,000), or $1,800. Continuing with the previous example (for 2011), if the plan has 30 participants, the total premium is the sum of the flat-rate premium ($1,050) and the variable-rate premium ($1,800), or $2,850.

For premium filing instructions and other general premium-related inquiries and assistance, including address changes, call the telephone numbers provided on page 7 or:

Fax: 202-326-4250

E-mail: premiums@pbgc.gov

Write:
Pension Benefit Guaranty Corporation
Dept. 77840
P.O. Box 77000
Detroit, MI 48277-0840

Premium payment forms and instructions are also available on PBGC's website at: **www.pbgc.gov/prac/prem/payment-instructions-and-addresses.html**.

Information on My PAA is available on PBGC's website at: **www.pbgc.gov/prac/prem/online-premium-filing-with-my-paa.html**.

Plans exempt from variable-rate premiums. Three types of plans are exempt from paying a variable-rate premium:

- Plans with no vested participants;
- Insurance contract plans described in section 412(e)(3) of the Internal Revenue Code;
- Plans that have issued a **Notice of Intent to Terminate** (NOIT) in a standard termination (see **Chapter V. Plan Terminations**) where the NOIT has a proposed termination date that is on or before the UVB valuation date.

If your plan is exempt from the variable-rate premium, you must still make a premium filing to claim the exemption.

Cap on variable-rate premium for certain small-employer plans. The amount of the variable-rate premium is capped for a plan if the aggregate number of employees of all employers in the plan's **controlled group** on the first day of the plan year is 25 or fewer. A plan's controlled group includes all contributing sponsors of the plan and all members of the contributing sponsors' controlled groups. If you think your plan may be eligible for this cap please see PBGC's regulations at 29 CFR § 4006.3(b)(2), (3), and (4). If your plan meets these requirements, its variable-rate premium is capped at $5 multiplied by the square of the number of participants.

> **Example**: If a plan is eligible for the cap, and the number of participants in the plan is 20, the variable-rate premium is capped at $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2{,}000$).

General premium filing rules

Small plans (fewer than 100 participants). Generally, if you are required to pay premiums and you have a small plan, you must make a comprehensive premium filing and pay the entire premium due within 4 months after the end of your plan year (or, as stated within the regulation, "by the last day of the 16th full calendar month following the end of the plan year before the premium payment year"). The plan year is the annual period for which your plan's records are kept. For example, if the plan year is the calendar year, your filing for 2011 is due April 30, 2012.

For complaints about the service received or if further assistance is needed after calling our general practitioner telephone number (800-736-2444 or 202-326-4242), please contact the Problem Resolution Officer (Premiums):

Call: 800-736-2444 ext. 4136 or 202-326-4136

E-mail: practitioner.pro@pbgc.gov

Write:
Pension Benefit Guaranty Corporation
Problem Resolution Officer (Practitioners)
1200 K Street NW, Suite 610
Washington, DC 20005-4026

Mid-size plans (100 to 500 participants). Generally, if you are required to pay premiums and you have a mid-size plan, you must make a comprehensive premium filing and pay the entire premium due by the middle of the 10th full calendar month of the plan year. For example, if the plan year is the calendar year, your filing for 2011 would be due by October 15, 2011.

Special premium filing rules

Large plans (500 or more participants). Large plans are not typically sponsored by small businesses. For information on the premium filing rules for large plans see PBGC's regulation at 29 CFR Part 4006.

First year premium filings; changes of plan year; mergers and spinoffs. Special premium filing rules apply if you have a plan that is filing for its first plan year, if your plan changes its plan year as a result of a plan amendment, and possibly if your plan is involved in a year-end merger or spinoff. PBGC provides more detailed guidance for these situations in its Premium Instructions.

III Disclosure to Participants

Disclosure of funding status

The Pension Protection Act of 2006 (PPA) made certain changes to ERISA's funding disclosure rules. Before PPA, section 4011 of ERISA required certain underfunded plans to notify participants of the plan's funding status and the limits on PBGC's guarantee. PPA repealed ERISA section 4011 for plan years beginning after December 31, 2006, and replaced it with new disclosure requirements under ERISA section 101(f). Although ERISA section 101(f) is administered by the Department of Labor, disclosure must still be made to PBGC in certain circumstances.
It is unlikely that a small business will be required to make such disclosures. For detailed information on the new disclosure requirements, including the information that must be provided in the annual funding notice to participants, see Department of Labor Field Assistance Bulletin No. 2009-01 (Feb. 10, 2009), **www.dol.gov/ebsa/pdf/fab2009-1.pdf.**

For information on PBGC requirements regarding the Annual Funding Notice:

Call: 800-736-2444 (ext. 4070) or 202-326-4070

E-mail: **single-employerAFN@pbgc.gov**

Write:
Pension Benefit Guaranty Corporation
Department of Insurance Supervision
and Compliance
ATTN: Single-Employer AFN Coordinator
1200 K Street NW, Suite 270
Washington, DC 20005-4026

Disclosure of termination information

PPA also added sections 4041(c)(2)(D) and 4042(c)(3) to ERISA. These provisions allow an affected party to request information related to a plan termination from the plan administrator in the case of a distress termination under ERISA section 4041, and from the plan administrator, plan sponsor, or PBGC in the case of a PBGC-initiated termination under ERISA section 4042. "Affected party" includes participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders ("QDROs"), and employee organizations representing participants. The disclosure provisions are applicable to any distress or PBGC-initiated termination begun on or after August 17, 2006 (see **Chapter V. Plan Terminations**).

IV Reporting Business and Plan Events to PBGC

Reportable events

ERISA section 4043 requires that you report to PBGC certain events that may signal problems with your plan or your business. Notice of these events alerts PBGC to situations that may jeopardize workers' pensions or the termination insurance program. PBGC's regulation on reportable events and large unpaid contributions (29 CFR Part 4043) describes the events and notice requirements in detail.

You must notify PBGC within 30 days after you know (or should have known) that a reportable event has occurred. (PBGC considers a filing by any person required to report to be a filing by all persons required to report.) PBGC has extended the reporting deadline for some events to make it easier for you to comply. The notice to PBGC must contain certain information about your plan, your plan administrator, contributing employers and any affiliated companies, and a description of the event. You may use Form 10 to notify PBGC of a reportable event. Further information regarding specific reportable events and Form 10 and Form 10 instructions, are available on PBGC's website. (Advance notice of reportable events is required in

For information about reportable events:

Call: 800-736-2444 (ext. 4070) or 202-326-4070

E-mail: post-event.report@pbgc.gov except for 4062(e) events; **4063.report@pbgc.gov** for 4062(e) events

Write:
Pension Benefit Guaranty Corporation
Department of Insurance Supervision
and Compliance
1200 K Street NW, Suite 270
Washington, DC 20005-4026

Information on notices of reportable events and failure to make required contributions is available on PBGC's website at: **www.pbgc.gov/prac/reporting-and-disclosure/reportable-events.html**

Form 10 and Form 10 Instructions are available on PBGC's website at: **www.pbgc.gov/documents/10.pdf** and **www.pbgc.gov/documents/10_instructions.pdf**

Form 200 and Form 200 Instructions are available on PBGC's website at: **www.pbgc.gov/documents/200.pdf** and **www.pbgc.gov/documents/200_instructions.pdf** some cases but generally does not apply to small plans or small employers.)

If you have missed a required contribution or contributions totaling more than $1 million to your pension plan, you must notify PBGC within 10 days after you know (or should have known) that this reportable event had occurred. To report this event, you must use Form 200 rather than the Form 10.

If, as a result of a cessation of operations at any facility, more than 20 percent of your employees who participate in a pension plan you sponsor are separated from employment, a liability may arise under ERISA section 4062(e). Under ERISA section 4063, you are required to notify PBGC of this event within 60 days of its occurrence. PBGC is developing a form for plan sponsors to use; please send a letter or e-mail explaining the event until the form is available.

Waivers and extensions of reporting requirements

PBGC may waive reporting requirements in particular cases. PBGC has also established general waivers. Many of the general waivers are based on plan size or funding level, using specified actuarial assumptions. Some of the waivers have been affected by the Pension Protection Act of 2006. See applicable **Technical Updates** at **www.pbgc.gov/prac/reporting-and-disclosure/reportable-events.html** for guidance.

Reportable events most likely to be of concern to small businesses

The following reportable events are the ones that are most likely to impact small businesses. Further information is available on PBGC's website.

- **Failure to Make Required Funding Payment**

General rule. You must report any failures to make required funding payments to your plan unless full payment is made by the time the report is due (30 days after the missed deadline).

Large Unpaid Contributions. If you have missed a required contribution or contibutions totaling more than $1 million to your pension plan, you must notify PBGC within 10 days after this event has occurred. There is no waiver of, or extension for, reporting this event, for which Form 200 must be used.

Exception for missed quarterlies for small plans for 2011 plan years. Technical Update 10-4 provides relief if you do not make a quarterly contribution for the 2011 plan year as required and the failure to make the contribution is not motivated by financial inability. The Technical Update waives reporting in such a case if your plan has fewer than 25 participants and provides a simplified reporting requirement if your plan has at least 25 but fewer than 100 participants.

♦ Inability to Pay Benefits When Due

If your plan has 100 or fewer participants on each day during the preceding plan year you must report if you have a current or "projected" inability to pay benefits. In determining the number of participants, all defined benefit plans maintained by you (including any affiliates) are considered to be one plan. A "projected" inability exists if your plan's liquid assets at the end of a quarterly period are less than twice the disbursements from your plan for that period. "Liquid assets" means cash, marketable securities, and certain other assets. "Disbursements from your plan" means all disbursements from the trust, including purchases of annuities, payments of benefits including lump-sum distributions, and administrative expenses.

♦ Distribution to a Substantial Owner

You must notify PBGC whenever total distributions to a substantial owner (10% or more ownership) over a one-year period exceed the greater of one percent of plan assets or a specified dollar limit. The dollar limit for the year is equal to the maximum annuity benefit that your plan can pay for the year under section 415 of the Internal Revenue Code ($195,000 for 2011). Thus, for example, a $200,000 distribution to a substantial owner in 2011 must be reported if the plan's assets total less than $20,000,000.

♦ Application for Minimum Funding Waiver

You must notify PBGC whenever you file an application with the Internal Revenue Service for a minimum funding waiver.

♦ Loan Defaults

You must report certain defaults on loans with outstanding balances of $10 million or more.

♦ Bankruptcy or Similar Proceeding

You must report the commencement of any bankruptcies or any other type of insolvency proceedings.

V Plan Terminations

Pursuant to ERISA section 4041 and PBGC's regulations at 29 CFR Part 4041, you may voluntarily terminate your covered defined benefit plan only through one of two procedures: a **standard termination** or a **distress termination**. Under certain circumstances, PBGC may initiate a termination of your plan if necessary to protect the interests of your plan participants or of the insurance program. PBGC is required to terminate any plan that does not have assets available to pay benefits currently due.

Standard terminations

You may terminate your plan in a standard termination if your plan has enough assets to pay all benefits owed participants and beneficiaries as of the termination date.

♦ Termination process

The specific forms and instructions for standard terminations can be obtained from PBGC's website or by contacting PBGC. The highlights of the process are described below. (See also **Chapter VI. Missing Participants Program** for how to handle missing participants.)

Notice format: PBGC does not require any particular format for required notices to parties other than PBGC (e.g., the

For information about standard terminations or to obtain standard termination forms and instructions:

Call: 800-736-2444 or 202-326-4242

E-mail: standard@pbgc.gov

Write:
Pension Benefit Guaranty Corporation
Standard Termination Compliance Division, Suite 930
Processing and Technical Assistance Branch
1200 K Street NW
Washington, DC 20005-4026

Information on standard terminations is available on PBGC's website at: **www.pbgc.gov/prac/terminations/standard-terminations.html**

Standard termination forms and instructions (Form 500 and Form 500 Instructions) are available on PBGC's website at: **www.pbgc.gov/documents/500and501.pdf** and **www.pbgc.gov/documents/500_instructions.pdf**

Notice of Intent to Terminate and **Notice of Plan Benefits** described below) but they must be readable and written in a way calculated to be understood by the average participant. Special rules apply to plans with specified numbers or percentages of participants who are literate only in the same non-English language.

1. *Notice of intent to terminate (NOIT)*

If you decide to terminate a pension plan, you must issue an NOIT, at least 60 days and no more than 90 days before the proposed termination date, to any "affected party" (other than PBGC) as defined in ERISA section 4001(a)(21). Affected parties include participants, beneficiaries of deceased participants, alternate payees under QDROs, and employee organizations representing participants.

PBGC provides a Model NOIT in Appendix B of its standard termination instructions at **www.pbgc.gov/documents/500_instructions.pdf**.

2. *Administration of plan after NOIT issued*

After the NOIT is first issued, you may purchase an annuity or pay a benefit as a lump sum if:

- the participant has separated from service or is otherwise permitted to receive a distribution from your plan;
- the distribution is consistent with your plan's practice; and
- the distribution isn't expected to affect your plan's sufficiency for plan benefits.

3. *Standard termination notice (Form 500)*

Deadline for issuance. You must file a Form 500 with PBGC no later than the 180th day after the proposed termination date.

Certification of sufficiency. The Form 500 includes a certification to be made by your enrolled actuary (on Schedule EA-S) that the plan assets are projected to be sufficient as of the proposed distribution date to pay all of your plan benefits.

4. *Notice of plan benefits (NOPB)*

The NOPB tells participants and beneficiaries what their benefits will be or are estimated to be. You must issue an NOPB to all plan participants, beneficiaries of deceased participants, and alternate payees under QDROs by the time you file the Form 500 with PBGC.

5. *PBGC review period*

Period and purpose of review. PBGC has 60 days from the date of receipt of your Form 500 to review it for compliance with the law and regulations. If necessary and appropriate, PBGC may provide you with additional time to complete a filing. Under certain circumstances, PBGC may issue a **Notice of Noncompliance** (NONC). A NONC nullifies all actions taken to terminate the plan so the plan remains an ongoing plan. PBGC is required to issue a NONC if, as of the distribution date proposed in the standard termination notice, assets will not be sufficient to pay all of the plan benefits. Although PBGC may issue a NONC for procedural defects, PBGC generally will not do so if it finds that issuing a NONC would not be in the interests of participants and beneficiaries.

Extension of review period. PBGC's 60-day review period may be extended by agreement between you and PBGC.

Suspension of review period. The running of PBGC's 60-day (or extended) review period is suspended whenever PBGC asks you to submit additional information.

6. *Distribution of plan assets*

Deadline. You must distribute plan assets in satisfaction of all plan benefits within 180 days (or more, if extended) after the end of PBGC's 60-day (or extended) review period.

Alternative deadline. The period for distribution is automatically extended until the 120th day after you receive a favorable tax-qualification determination letter from the IRS, provided you submitted a complete determination letter request to the IRS on or before the date the Form 500 was filed.

Form of distribution. You must distribute plan assets in satisfaction of plan benefits either by buying annuity contracts or paying in another permitted form, such as lump sums. Annuity contracts must retain all the benefit options that were provided in your plan as of the termination date. For married participants, spousal consent is required for all benefit options other than a qualified joint and survivor annuity, unless the present value of the benefit is *de minimis*. The *de minimis* amount must be specified in your plan and cannot exceed the dollar limit under section 411(a)(11) of the Code ($5,000 for 2011).

Lump sums. Many distributions will be in the form of lump sums. Through its standard termination audit program, PBGC has found that many small employers make errors in calculating the amount of lump sums. See Technical Update 08-4 for guidance on calculating lump sum values in standard terminations at **www.pbgc.gov/res/other-guidance/tu/tu08-4.html.**

7. *Notice of annuity information*

Notice of identity of insurer(s). No later than 45 days before distribution, you must send, to all affected parties who will not receive mandatory cashouts, a notice identifying the insurer or insurers from whom (if known), or a list of insurers from among whom, annuities will be purchased. This information must be included in the NOIT if it is known at the time the NOIT is issued.

Notice of State Guaranty Association Coverage. The first time you identify the insurer(s), you must provide a Notice of Annuity Information. This Notice must include specified information about state guaranty associations' coverage of annuities issued by insurance companies, and about how the addresses and telephone numbers of these state guaranty associations may be obtained from PBGC. A model Notice of State Guaranty Association Coverage of Annuities is available in Appendix C at **www.pbgc.gov/documents/500_instructions.pdf**.

8. *Providing the annuity contract*

If plan benefits are provided through the purchase of an annuity, the plan administrator or the insurer must, within

30 days after it is available, provide the participant or beneficiary with a certificate or a copy of the annuity contract. If the certificate or contract is not provided within 90 days after the distribution deadline, the plan administrator must, by that date, provide the participant or beneficiary with a notice containing the insurer's name, address, and contact information and stating that the obligation for providing the benefit has transferred to the insurer and that the plan administrator or insurer will provide the participant or beneficiary with a certificate or a copy of the annuity contract.

9. *Post-distribution certification*

You must file a **Post-Distribution Certification** (PBGC Form 501) with PBGC. The Post-Distribution Certification tells PBGC that your plan has satisfied benefit promises to all participants and beneficiaries, including those whom you were unable to locate. The deadline for filing Form 501 with PBGC is the 30th day after you complete the distribution of plan assets. PBGC will assess a penalty for a late filing of the Form 501 only to the extent it is filed more than 90 days after the distribution deadline (including extensions).

10. *Audits of completed standard terminations*

PBGC periodically selects plans to audit from among those standard plan terminations that have filed the Form 501 with PBGC. Plans are audited primarily to ensure that participants and beneficiaries have received all benefits they were owed. PBGC selects all plans with a participant count of more than 300 for audit. For plans with a participant count of 300 or fewer, PBGC randomly selects plans to audit. When benefit payment errors are found in an audit, PBGC requires the plan sponsor to correct the errors.

Distress terminations

A plan that does not have enough assets to pay all benefits owed participants and beneficiaries may be terminated in a

For information about distress terminations or to obtain distress termination forms and instructions:

Call: 800-736-2444 (ext. 4100) or 202-326-4242

E-mail: distress@pbgc.gov

Write:
Pension Benefit Guaranty Corporation
Department of Insurance
Supervision and Compliance
1200 K Street NW, Suite 270
Washington, DC 20005-4026

Information on distress terminations is available on PBGC's website at: **www.pbgc.gov/prac/terminations/distress-terminations.html.**

Distress termination forms and instructions (Form 600 and Form 600 Instructions) are also available on PBGC's website at:

www.pbgc.gov/documents/600-601-602.pdf
and
www.pbgc.gov/documents/600_instructions.pdf.

distress termination but only if the plan sponsor and the members of the sponsor's "controlled group" prove that they are financially unable to support the plan. To do so, you, and each member of your controlled group, must satisfy at least one of four statutory distress tests as of the proposed termination date; you and members of your controlled group do not all have to satisfy the same test. The four tests are:

- liquidation in bankruptcy or insolvency proceedings;
- reorganization in bankruptcy or insolvency proceedings where a court determines that your business will be unable to pay debts when due and to continue in business unless a distress termination occurs;
- inability of your business to pay its debts when due and to continue in business unless a distress termination occurs; and
- unreasonably burdensome pension costs due solely to a decline in the number of employees covered by your plan.

The distress termination instructions on PBGC's website provide more detailed information on each test.

♦ Termination process

The specific forms and instructions for distress terminations are available on PBGC's website. (See **Chapter VI. Missing Participants Program** for information on how to handle missing participants.)

As with standard terminations, there is no prescribed form for notices to parties other than PBGC. However, the notices must be readable and written in a way calculated to be understood by the average participant. Special rules apply to plans with specified numbers or percentages of participants who are literate only in the same non-English language.

See **Chapter III. Disclosure to Participants** for information about disclosure of certain distress termination information.

As with a standard termination, the distress termination process begins with the NOIT, which must be issued at least 60 days and no more than 90 days before the proposed termination date to any "affected party" as defined in ERISA section 4001(a)(2).

VI Missing Participants Program

The Missing Participants Program assists employers who voluntarily terminate their defined benefit plans in a standard termination.

If you choose to terminate your pension plan you are required to distribute all plan benefits to plan participants and beneficiaries before your plan is allowed to wind up its affairs. Before the Missing Participants Program was created, plan administrators had to provide for the benefits owed to missing participants (including missing beneficiaries of deceased participants) either by purchasing annuities from private insurers in the names of the missing participants or by depositing funds in a financial institution on their behalf. Employers often had difficulty finding an insurance company or financial institution willing to accept funds in the name of a missing participant. In addition, missing participants who later tried to locate their benefits often had difficulty finding them. The Missing Participants Program was created to address these issues.

For information about the missing participants program or to obtain forms and instructions for the program:

Call: 800-736-2444 or 202-326-4242

E-mail: standard@pbgc.gov or **distress@pbgc.gov**, depending upon type of termination.

Write:
Pension Benefit Guaranty Corporation
Processing and Technical
Assistance Branch, Suite 930
1200 K Street NW
Washington, DC 20005-4026

Information on the Missing Participants Program is available on PBGC's website at: **www.pbgc.gov/prac/terminations/missing-participants.html**.

Missing Participant Forms and instructions are available on PBGC's website at:**www.pbgc.gov/documents/mp_form_092804.pdf** and **www.pbgc.gov/documents/MP_instructions_092804.pdf**.

How the program works

Before you may use PBGC's Missing Participants Program, you are required to conduct a diligent search for all participants and beneficiaries who cannot be located, including using a commercial locator service.

If a participant or beneficiary cannot be located after a diligent search, you may send the value of the individual's benefit to PBGC with information about the individual and the benefits owed, including the individual's earliest retirement date for the benefit and beneficiary information. Instead of sending money to PBGC, however, you may choose to purchase an annuity from a private insurer in that individual's name. In this case you must provide information on the individual and the insurer to PBGC. See PBGC's Missing Participants regulation at 29 CFR Part 4050 for further guidance.

You must submit information about missing participants and beneficiaries to PBGC and make any payment of designated benefits with a voucher form at the time you submit the Post-Distribution Certification (PBGC Form 501 or Form 602). The PBGC forms for missing participants—the Schedule MP, Attachments A and B, and payment voucher—and detailed filing instructions are available on PBGC's website and in a booklet available from PBGC.

PBGC conducts periodic searches for missing participants. When a missing participant is found, PBGC will pay the pension benefit or provide the person with the name of the private insurer holding the person's annuity.

NOTE: The Pension Protection Act of 2006 expanded PBGC's Missing Participants Program to include multiemployer plans, small professional service employer plans (25 or fewer active participants), and individual account plans. This expansion will be effective when PBGC adopts final regulations.

Finding Missing Participants Directory

To help participants and beneficiaries in terminated plans locate pension benefits that may be owed to them, PBGC has set up the Find Missing Participants Directory on its website. The Directory lists missing participants by name, employer and state. It is updated periodically as PBGC receives names of more missing participants. Persons who find their names in the Directory should contact PBGC to claim their pensions.

VII PBGC Penalties

PBGC assesses two types of penalties: (1) an information penalty for failure to provide, within specified time limits, notices and other material information required to be reported to PBGC or other parties; and (2) a premium penalty for late payment of premiums.

Information penalties

Under ERISA section 4071 and PBGC's information penalty regulation (29 CFR Part 4071), PBGC may assess a penalty of up to $1,100 a day if material information is not timely provided. PBGC's Information Penalty Policy provides for a basic penalty amount of $25 per day for the first 90 days of delinquency and $50 per day thereafter. The total potential penalty is capped at $100 times the number of plan participants, and penalties are reduced proportionately for plans with fewer than 100 participants (e.g., if a plan has 25 participants, the penalty will be 25% of the penalties otherwise assessed). The penalty may be adjusted up or down based on the facts and circumstances—for example, willful failure to comply, pattern or practice of violation, or substantial harm to participants or PBGC (generally in situations involving large plans or companies).

Premium penalties

Under PBGC's regulation on Payment of Premiums (29 CFR Part 4007), the amount of the premium penalty is one percent or five percent of the unpaid premium for each month (or fraction of a month) that the premium is late, depending on whether payment is made before the date PBGC first issues a written notice that the premium is or may be late. PBGC's written notice can take any of several forms, such as a premium bill, an audit notice, or a letter questioning a failure to make a premium filing. The penalty may not exceed 100% of the amount of the unpaid premium. Review of premium penalty assessments is covered by PBGC's administrative review regulation (Part 4003). More information regarding penalties for late premiums is available at **www.pbgc.gov/prac/prem/late-payment-charges.html**.

Penalty waivers

PBGC may waive all or part of a penalty on its own initiative, for reasonable cause, and in other specified circumstances. PBGC evaluates each request for a reasonable cause waiver to determine whether the responsible person exercised ordinary business care and prudence and the violation resulted from circumstances beyond that person's control. For more information on premium penalty waivers, see the appendix to 29 CFR Part 4007. Information on premium penalty waivers is also available on PBGC's website at **www.pbgc.gov/prac/prem/late-payment-charges.html**.

VIII The Law, Pertinent Regulations, and Other Guidance

ERISA – ERISA's United States Code citation is 29 U.S.C. 1001 et seq. See also Title 26 of the U.S. Code for tax provisions and 26 Code of Federal Regulations for applicable Department of Treasury regulations, 29 CFR Chapter XXV (Parts 2509-2590) for the regulations of the Employee Benefits Security Administration (EBSA) of the Department of Labor, and 29 CFR Chapter XL (Parts 4000-4907) for Pension Benefit Guaranty Corporation regulations.

Pension Insurance Program (Title IV of ERISA) – See ERISA sections 4001 et seq. (29 U.S.C. 1301 et seq.) and 29 CFR Parts 4000 to 4907.

Plans Covered by PBGC – See ERISA section 4021 (29 U.S.C. 1321).

Benefits Guaranteed by PBGC – See ERISA section 4022 (29 U.S.C. 1322) and 29 CFR Part 4022. Information on PBGC-guaranteed benefits is available on PBGC's website at **www.pbgc.gov/wr/benefits/guaranteed-benefits.html**.

Filing and Issuance Rules – See 29 CFR Part 4000. Information on My PAA premium filing requirements is available on PBGC's website at **www.pbgc.gov/prac/prem/online-premium-filing-with-my-paa.html**.

PBGC Premiums – See ERISA section 4006 (29 U.S.C. 1306) and ERISA section 4007 (29 U.S.C. 1307), 29 CFR Part 4006 and 29 CFR Part 4007. PBGC's Premium Payment Forms and Instructions are available on PBGC's website at **www.pbgc.gov/prac/prem/payment-instructions-and-addresses.html** and information on My PAA (PBGC's online premium application) is available at **www.pbgc.gov/prac/prem/online-premium-filing-with-my-paa.html**.

Participant Notice Requirements – See ERISA section 4011 (29 U.S.C. 1311) and 29 CFR Part 4011. ERISA section 4011 is repealed for plan years beginning after December 31, 2006, and is replaced by new disclosure requirements under ERISA section 101(f). Information on the participant notice requirements under ERISA section 101(f) is available on EBSA's website at **www.dol.gov/ebsa/regs/fab2009-1.html**.

Form 5500/Annual Reporting Requirements – See the U.S. Department of Labor's regulation at 29 CFR Part 2520 and the Form 5500 Instructions for information on the annual information report and other annual reporting obligations. You may view and download the Form 5500 and Form 5500 Instructions on EBSA's website at **www.dol.gov/ebsa/5500main.html**. The Form 5500 must be filed electronically. Information regarding electronic filing is also available on EBSA's website at **www.dol.gov/ebsa/5500main.html**

Reportable Events – See ERISA section 4043 (29 U.S.C. 1343), 29 CFR Part 4043, and PBGC's Form 10, Form 10 Instructions, Form 200, and Form 200 Instructions. Information on notices of reportable events and failure to make required contributions is available on PBGC's website at **www.pbgc.gov/prac/reporting-and-disclosure/reportable-events.html**. Form 10 and Form 10 Instructions are available on PBGC's website at: **www.pbgc.gov/documents/10.pdf** and **www.pbgc.gov/documents/10_instructions**.**pdf** and Form 200 and Form 200 Instructions are available on PBGC's website at: **www.pbgc.gov/documents/200.pdf** and **www.pbgc.gov/documents/200_instructions.pdf**.

Until PBGC finalizes a form to report events subject to ERISA section 4062(e), please send a letter explaining the event by e-mail to **4063.report@pbgc.gov** or by regular mail to the reportable event address on page 12.

Standard Termination – See ERISA section 4041 (29 U.S.C. § 1341), 29 CFR Part 4041, and PBGC's standard termination forms and instructions (Form 500 and Form 500 Instructions). Information on standard terminations is available on PBGC's website at **www.pbgc.gov/prac/terminations/standard-terminations.html**. Form 500 and Form 500 Instructions are available on PBGC's website at **www.pbgc.gov/documents/500and501.pdf** and

www.pbgc.gov/documents/500_instructions.pdf.

Distress Termination – See ERISA section 4041 (29 U.S.C. 1341), 29 CFR Part 4041, and PBGC's distress termination forms and instructions (Form 600 and Form 600 Instructions). Information on distress terminations is available on PBGC's website at **www.pbgc.gov/prac/terminations/distress-terminations.html**. Form 600 and Form 600 Instructions are available on PBGC's website at **www.pbgc.gov/documents/600-601-602.pdf** and **www.pbgc.gov/documents/600_instructions.pdf**.

Missing Participants Program – See ERISA section 4050 (29 U.S.C. 1350), 29 CFR 4050, and PBGC's Missing Participants Program forms and instructions (Schedule MP and Instructions). Information on the Missing Participants Program is available on PBGC's website at: **www.pbgc.gov/prac/terminations/missing-participants.html**. Missing Participants Program forms and instructions are available on PBGC's website at: **www.pbgc.gov/documents/mp_form_092804.pdf** and **www.pbgc.gov/documents/MP_instructions_092804.pdf**.

PBGC Penalties, Relief from Penalties, and Deadline Extensions – See ERISA section 4007 (29 U.S.C. 1307) and ERISA section 4071 (29 U.S.C. 1371), 29 CFR Part 4007 and 29 CFR Part 4071. Information on PBGC penalties for late premium payments under ERISA section 4007 is available on PBGC's website at **www.pbgc.gov/prac/prem/late-payment-charges.html**.

PBGC's Customer Service Pledge

Our *customers deserve our best efforts as well as our respect and courtesy.*

On *the first call from you, our customer, we will say:*

What *can be done immediately and what will take longer,*

When *it will be done, and*

Who *will handle your request.*

We *will call you if anything changes from what we first told you, give you a status report, and explain what will happen next.*

We *will have staff available from 8:00 a.m. - 5:00 p.m. Eastern Time, Monday - Friday to answer your calls. If you leave a message, we will return your call within one work day.*

We *will acknowledge your letters within one week of receipt.*

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