

## **PBGC Notice of Failure to Make Required Contributions**

Supplemental reading: ERISA section 303(k)  
PBGC Form 200 and instructions

- PBGC Form 200 must be filed under circumstances when there is a late payment of either the minimum required contribution or a required quarterly contribution.
  - In order for the filing to be required, the funding target attainment percentage (FTAP) for the plan year must be less than 100%, and the total outstanding balance (including interest) of the late contribution must exceed \$1,000,000.
  - The notice to the PBGC must be provided within 10 days of the contribution being late.
  - If the late payment is also a reportable event for which a filing is necessary, then filing Form 200 satisfies the reportable event filing requirement.
  - In order to determine the unpaid balance of a late quarterly contribution, an additional 5 percentage point interest penalty must be used to accumulate the late quarterly contribution from the quarterly due date to the date the outstanding balance is measured. Note that although quarterly contributions are a topic on the EA-2F exam (knowledge of which is not required for this exam), the instructions for PBGC Form 200 include an example in the Appendix that illustrates how that outstanding balance is determined. The information provided in that example is required for purposes of this exam.

- When a required quarterly contribution is made late, add an additional 5% to the plan effective rate for purposes of accumulating the late quarterly contribution to the date it is actually made. So, for example, if the quarterly contribution due (but not made) on each of 4/15/2017 and 7/15/2017 is \$495,000, the plan effective rate for 2017 is 6%, and the outstanding balance must be determined as of 7/15/2017, the \$495,000 from 4/15/2017 is increased for three months with interest using a rate of 11% (6% plus 5%), for a balance of \$508,084. That, combined with the additional \$495,000 due on 7/15/2017 would result in an outstanding balance of \$1,003,084. A PBGC Form 200 filing must be made within 10 days after 7/15/2017.
- Note that the outstanding balance of late contributions is only measured as of the due date – there is no need to measure it at a later date.

## **PBGC Reportable Events**

Supplemental reading: ERISA section 4043  
PBGC Forms 10 and 10-A, and instructions

- Reportable events (ERISA section 4043)
  - The PBGC must be notified of reportable event within 30 days of the plan sponsor discovering the event has occurred or has reason to believe that it will occur. PBGC Form 10 is filed for this purpose.
  - The PBGC must be notified in an advance notice filing for certain reportable events at least 30 days in advance of certain reportable events, on PBGC Form 10-A. Advance filing is only required if certain conditions are met on the date the filing is required.
    - Neither the reporting employer nor any other member of the controlled group to which the event relates is a public company.
    - The plans maintained by the contributing sponsor and any of the other members of the sponsor's controlled group have aggregate unfunded vested benefits of more than \$50,000,000, and an aggregate value of assets that is less than 90% of the premium funding target. The unfunded vested benefits, value of assets, and premium funding target are those used for the variable rate premium filing for the plan year prior to the effective date of the reportable event. Plans with no unfunded vested benefits are ignored for this purpose.

- PBGC Form 200 must be filed in certain cases when there is a failure to timely make a required contribution payment (minimum required contribution or quarterly required contribution).
  - Filing is required when the unpaid balance of the payment, when added to the aggregate balance of any other unpaid payments, exceeds \$1,000,000 (resulting in a lien placed on the employer under IRC section 430(k)).
  - Filing is due within 10 days of the due date of the required payment.
  - The filing must be made by the contributing sponsor, and if the sponsor is a member of a parent-subsidary controlled group, then the filing is required from the ultimate parent of the controlled group. If either the contributing sponsor or the parent makes a filing, the PBGC will consider the filing to have been made by both.
  - The filing is waived in the case of a terminating plan, when all of the plan's assets (other than excess assets) have been distributed on or before the due date of the notice, or if a trustee has been appointed for the plan by the PBGC.
- If the PBGC is notified of an event on Form 10-A or Form 200, then it is not necessary to do a Form 10 notification for the same event.
- Failure to file PBGC Forms 10, 10-A, or 200 timely can result in a penalty of up to \$1,100 per day.

- Notice is waived in the case of some reportable events.
  - Note for exam purposes – be careful whether the question is asking about whether a situation is a reportable event (it is irrelevant whether the reporting to the PBGC is waived for the situation to be a reportable event), or whether it is a reportable event for which the PBGC must be notified. In the latter case, the notification has not been waived. Note that the PBGC issued proposed regulations in the form of PBGC Technical Update 2009-4 in November, 2009 that would modify the waivers for many of the reportable events. It is not likely that this technical update will be added to the syllabus, so these proposed regulations should be ignored for purposes of the EA-2L exam. This outline reflects the current waivers allowed (without regard to the technical update).
- Notice is waived for multiemployer plans.
- The following are reportable events (events for which advance notice is required on Form 10-A are noted – otherwise the filing is on Form 10)
  - Plan is not in compliance with IRC section 401(a) or ERISA Title I.
    - Notice is waived for this reportable event.
  - An amendment is made decreasing the accrued benefit of any participant.
    - Notice is waived for this reportable event.
  - The plan has failed to meet minimum funding standards.
    - This includes failure to make a required quarterly contribution.
    - Notice is waived if the plan had 100 or fewer participants for the prior plan year, for whom a flat-rate premium was required.
    - Notice is waived if the required contribution is made within 30 days of the due date.
    - Notice is waived if the failure was due to a late election to use the funding balances to satisfy the minimum.

- The number of active participants at any time during the plan year is less than 80% of the number at the beginning of the year, or less than 75% of the number at the beginning of the prior year.
  - An active participant is a participant who receives compensation from the employer for work performed, or is on paid or unpaid leave, or has been laid off for less than 30 days, or is absent from work due to a reduction in employment that recurs at least once each year.
  - The number of active participants as of the beginning of a plan year may be determined by using the number of active participants as of the end of the prior plan year; similarly, the number of active participants as of the end of a plan year may be determined by using the number of active participants as of the beginning of the next plan year.
  - Notice is waived if the plan had 100 or fewer participants for the prior plan year, for whom a flat-rate premium was required.
  - Notice is waived if no variable premium is required for the prior year.
  - Notice is waived if the contributing sponsor is a public company.
- The plan has terminated or partially terminated.
  - Notice is waived for this reportable event.
- The plan is unable to pay benefits when due.
  - Notice is waived if the plan is subject to the liquidity shortfall rules for the year (FTAP for the prior year is less than 100%, and there were more than 100 participants during the prior year).

- The plan pays benefits during a year (any 12-month period) of more than \$10,000 to a substantial owner (other than upon death), and after payment, the plan has unfunded vested benefits. In order for this to be considered as a reportable event, either the sum of all distributions to the substantial owner during the 12 month period must be more than 1% of the end of year total assets for each of the last 2 years, or the sum of all distributions to all substantial owners during the 12 month period must be more than 1% of the end of year total assets for each of the last 2 years.
  - Notice is waived if no variable premium is required for the prior year.
  - Notice is waived if the contributing sponsor is a public company.
- There is a merger, transfer or consolidation of plan assets.
  - Notice is waived for this reportable event.
- There is a change in the make-up of the controlled group.
  - Notice is waived for this reportable event if no more than 10% of the group's members will cease to be a part of the controlled group.
  - Notice is waived if each member that will cease to be part of the controlled group is a foreign entity (other than a foreign parent).
  - Notice is waived if the plan had 100 or fewer participants for the prior plan year, for whom a flat-rate premium was required.
  - Notice is waived if no variable premium is required for the prior year.
  - Notice is waived if the contributing sponsor is a public company.
  - There may be a Form 10-A filing required.

- Any member of the plan's controlled group files for liquidation.
  - Notice is waived for this reportable event if the entity or entities liquidating are not contributing sponsors and represent no more than 10% of the controlled group.
  - Notice is waived if each entity involved is a foreign entity (other than a foreign parent).
  - There may be a Form 10-A filing required.
- Any member of the plan's controlled group declares an extraordinary dividend or redeems its own stock.
  - Notice is waived for this reportable event if the member of the controlled group involved represents no more than 10% of the members of the controlled group.
  - Notice is waived if each entity involved is a foreign entity (other than a foreign parent).
  - Notice is waived if the plan had 100 or fewer participants for the prior plan year, for whom a flat-rate premium was required.
  - Notice is waived if no variable premium is required for the prior year.
  - Notice is waived if the contributing sponsor is a public company.
  - There may be a Form 10-A filing required.

- During any 12-month period, at least 3% of the plan's benefit liabilities are transferred outside the controlled group.
  - Notice is waived if the plan had 100 or fewer participants for the prior plan year, for whom a flat-rate premium was required.
  - Notice is waived if no variable premium is required for the prior year.
  - Notice is waived if the contributing sponsor is a public company.
  - There may be a Form 10-A filing required.
- An application is made for a waiver of minimum funding.
  - There may be a Form 10-A filing required.
- With respect to any member of a plan's controlled group, there is a default in a loan repayment for a loan balance greater than \$10,000,000.
  - Notice is waived for this reportable event if the member of the controlled group involved represents no more than 10% of the members of the controlled group.
  - Notice is waived if each entity involved is a foreign entity (other than a foreign parent).
  - There may be a Form 10-A filing required.
- Any member of the plan's controlled group has commenced bankruptcy or insolvency proceedings.
  - Notice is waived for this reportable event if the member of the controlled group involved represents no more than 10% of the members of the controlled group.
  - Notice is waived if each entity involved is a foreign entity (other than a foreign parent).
  - There may be a Form 10-A filing required.

## **Question 184**

Active participant information for defined benefit Plan A:

Total participants as of 1/1/2004: 200  
Total participants as of 1/1/2005: 190  
Smallest number of participants on any day in 2005: 151

Active participant information for defined benefit Plan B:

Total participants as of 1/1/2004: 120  
Total participants as of 1/1/2005: 95  
Smallest number of participants on any day in 2005: 75

Both plans A and B have PBGC variable rate premiums due for both 2004 and 2005.

Which, if any, of plans A and B have a reportable event requiring a notification to the PBGC?

## **Solution to question 184**

A reportable event occurs if either the number of active participants of a plan falls below 75% of the number of active participants as of the first day of the prior year, or 80% of the number of active participants as of the first day of the current year. The notice requirement is waived if the number of participants as of the first day of either year is less than 100.

For Plan A, 75% of the active participants as of 1/1/2004 is 150, and 80% of the active participants as of 1/1/2005 is 152. A notice is due for Plan A since the participant count during 2005 fell below 152.

For Plan B, there is no notice requirement since the number of participants as of the first day of 2005 is less than 100.