

substitute information or the execution of an agreement protective of plan participants and the PBGC. A Filer that seeks a waiver must file its request in writing no less than fifteen days before the applicable due date for required information.

The PBGC invites members of the public to express their views concerning other factors or criteria that could warrant additional exemptions for individual Filers, for classes of Filers, or for plans.

Information To Be Submitted

Section 2628.7 describes the information that Filers must submit to the PBGC. Although each Filer is subject to the obligation to submit information on each controlled group member and plan (to the extent no exemptions apply), the regulation allows for a single consolidated filing for the controlled group.

Identifying Information

Section 2628.7(b) specifies identifying information for each Filer (the Filer's name, address, telephone number, and the Employer Identification Number (EIN), if any, assigned by the IRS) and for each pension plan (the name of the plan, EIN, and the Plan Number assigned by the plan's contributing sponsor). Also, each Filer (or one Filer for the entire controlled group) must identify all members of the controlled group and the legal relationship of each entity to the others (parent, wholly-owned subsidiary, etc.).

Actuarial Information

Section 2628.7(c) specifies the actuarial information that a Filer must provide as follows: (1) The market value of plan assets (without regard to any contributions receivable) at the end of the plan year ending within the Filer's Information Year, (2) the value of benefit liabilities as of the same date, (3) certain participant data, and (4) the actuarial valuation report ("AVR") for that plan year, which must contain or be supplemented by certain required actuarial information. Generally, this actuarial information is developed and maintained by the plan's enrolled actuary for purposes of, among other things, completing Schedule B of the plan's Form 5500. A plan's enrolled actuary must certify that all actuarial information submitted is accurate and complete.

If the AVR or any of the supplementary actuarial information is not available by the due date, § 2628.7(d) allows a Filer to submit the unavailable information by an alternative date—15 days after the

deadline for filing the plan's Form 5500 for the plan year ending within the Filer's Information Year (see 29 CFR 2520.104a-5(a)(2)).

Financial Information

Section 4010(a)(2) of ERISA requires each Filer to provide to the PBGC copies of audited financial statements (or, if not available, unaudited statements). Financial statements include balance sheets, income statements and cash flow statements. Under § 2628.7(e)(1)(iii), if audited or unaudited financial statements are not prepared, the Filer may satisfy the financial information requirement by submitting copies of federal tax returns for the tax year ending within its Information Year.

For most controlled group members whose financial information is combined with that of other group members, the submission of the consolidated financial statement for the group will satisfy the obligation to submit individual financial statements (§ 2628.7(e)(2)(i)). Limited financial information—a group member's revenues and operating income for the Information Year, and its assets as of the end of the Information Year—is required for each contributing sponsor of a non-Exempt Plan included in such a consolidated financial statement (§ 2628.7(e)(2)(ii)).

If the required financial information of a controlled group member has been filed with the Securities and Exchange Commission, or has otherwise been made publicly available, the Filer need not submit it to PBGC. Section 2628.7(e)(3) requires only that the Filer include a statement in its submission to the PBGC indicating when the information was made available to the public and where the PBGC may obtain it.

The PBGC may request additional information from any Filer to determine plan assets and liabilities and a Filer's financial status (§ 2628.7(f)). For example, after a controlled group's parent submits consolidated financial statements in accordance with § 2628.7(e)(2)(i), it proposes to sell one of its subsidiaries. In that instance, the PBGC would normally request financial information relating to the subsidiary that was to be sold. Nothing in this proposed regulation limits the PBGC's authority under section 4003 of ERISA to seek any information from a Filer by any means provided thereunder.

Previously Provided Information

Any information previously submitted to the PBGC need not be resubmitted. Section 2628.7(g) allows the Filer to incorporate the previous

submission by reference. For example, some of the required actuarial information with respect to a Filer's plans may have already been submitted to the PBGC in a reportable event filing; the Filer can make a reference to the reportable event filing in its submission.

When To File

Under § 2628.8(a), a Filer must submit the required information to the PBGC on or before the one hundred and fifth day after the end of the Filer's Information Year. (This due date is designed to be fifteen days after the Securities and Exchange Commission's annual reporting date for public companies.) If a plan's AVR or any of the related supplementary actuarial information is not available by this due date, the Filer may submit the unavailable information by the alternative due date—15 days after the deadline for filing the plan's Form 5500 for the plan year ending within the Filer's Information Year (§ 2628.8(b)).

Filers may submit required information by mail, by overnight and express delivery services, by hand, or by other means that are acceptable to the PBGC. The PBGC invites Filers to offer suggestions regarding procedures to electronically transmit some or all of the required information.

Confidentiality

Generally, required information submitted to the PBGC by a Filer in accordance with this regulation will not be made available or disclosed to the public. This restriction on disclosure shall not apply to publicly available information. For example, if a Filer submits required information to the PBGC, part of which is also publicly available, only that information that is not publicly available will be subject to confidentiality. Further, as provided in section 4010(c) of ERISA, these confidentiality strictures shall not apply to information disclosed by the PBGC in administrative or judicial proceedings or to Congress.

Penalties for Non-Compliance

Failure to provide information to the PBGC in accordance with the requirements of this part would constitute a violation of Title IV of ERISA. Section 4071 authorizes the PBGC to assess a penalty against any person who fails, within the specified time limits, to provide material information to the PBGC. All required information under this regulation is deemed material by the PBGC. The PBGC may assess a penalty on a pension plan's contributing sponsor and on each member of its controlled group of up to