PBGC TOPICS

MISCELLANEOUS

PBGC MISC TOPICS SUMMARY

Standard versus Distress termination

Variable rate premium calculations

Employer liability

Asset allocation at plan termination

PC4 versus guaranteed benefits for M. O.

Asset reversion, excise taxes

Benefits for missing participants

Reportable Events

TYPES OF TERMINATION

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1. **STANDARD: Assets cover all benefit liabilities**

2. **DISTRESS: Assets insufficient, sponsor wants to terminate the plan**

3. **INVOLUNTARY: PBGC terminates plan - one of these reasons:**

   a) **MFSA is deficient**
   b) **Plan unable to pay benefits when due**
   c) **Unfunded vested benefits exist after substantial owner receives distribution**
   d) **Long term loss to PBGC is likely if plan remains in operation**

§4006.3 PREMIUM RATES

2017 Flat Rate Premium:

Multi-employer = $ 28 per participant

Others = $ 69 per participant, plus Variable Rate Premium

2017 Variable Rate Premium (VRP):

- $34 for each $1,000 (or fraction thereof) of the unfunded vested benefits.
- Cap is $517 per participant for all plans
- Cap is $5 per (participant)^2 for small plans

All premium rates get COLA each year (except for $5 small plan cap), round result to $1

§4006.4 PREMIUM RATES
UNFUNDED VESTED BENEFITS (UVB)

UVB = Excess of Premium Funding Target over fair market value of assets

- **Both items are defined for premium payment year**
- **UVB must be determined at the plan's UVB valuation date**
- **Use plan provisions and plan population at plan's UVB valuation date**

MARKET VALUE OF ASSETS

- Can not use IRC 430(g) averaging technique

- Handling of receivable contributions
  - Include prior year contributions that are received by the date the premium is filed
  - Include present value in assets
  - Present value based on "effective rate of interest" from prior plan year valuation
  - If MAP-21 segment rates used for 2012, then effective rate also reflects MAP-21

PREMIUM FUNDING TARGET

General rule

- Premium Funding Target is the "vested benefits portion" of IRC 430 Funding Target
- Interest rates used are different

Interest rates

- Use three segment rates under IRC 430, without averaging over 24 months
- Rates based on calendar month prior to the month the plan year starts
- Premium funding target ignores effect of MAP-21 on IRC 430 segment interest rates

ALTERNATIVE PREMIUM FUNDING TARGET

Alternative PFT is the "vested benefits portion" of the IRC 430 Funding Target, with the <u>same</u> interest rates (24 month averaging)

Election to use Alternative PFT can NOT be revoked for five plan years

Must ignore effect of MAP-21 on IRC 430 segment interest rates

PBGC PREMIUM PAYMENT INSTRUCTIONS 2013 PREMIUM FUNDING TARGET

Table from instructions shows comparison of assumptions used

	ERISA section 303	Standard Premium Funding Target	Alternative Premium Funding Target
Benefits reflected in calculation	All benefits earned or accrued as of the beginning of the plan year	Vested portion of benefits included in ERISA § 303 Funding Target	Vested portion of benefits included in ERISA § 303 Funding Target
Discount rate basis	3 segments based on 24-month average of high-quality corporate bond yield curve phased-in over 3 years (subject to 10% corridor under MAP-21) Option - Use full yield curve, with no 10% corridor and no averaging	3 segments based on high-quality corporate bond yield curve with no 10% corridor and no averaging	ERISA § 303, with no 10% corridor
Which month's rates?	January 2013, December 2012, November 2012, October 2012, September 2012 Full yield curve: December 2012	December 2012	ERISA § 303

§4006.4 PREMIUM RATES
PREMIUM FUNDING TARGET

<u>Vested Benefit Definition</u>
Includes death benefits

- **Pre-retirement:**
  - **QPSA**
  - **Return of mandatory employee contributions**

- **Post-retirement:**
  - **QJSA**
  - **Certain and Life annuity**

§4006.4 PREMIUM RATES
PREMIUM FUNDING TARGET

Vested Benefit Definition

- **Regulation examples**
  - **QPSA after 5 years service**
  - **Supplement for retirements between ages 55 and 62**
  - **Not treated like typical valuation of vested benefits**

§4006.4 PREMIUM RATES
PREMIUM FUNDING TARGET

Benefits Not Vested

- **Pre-retirement lump sum death benefit other than return of EECWI**

- **Disability benefit**

§4006.5 PREMIUM RATES
VARIABLE RATE PREMIUM EXEMPTION

Must meet one of these based on plan status at the premium snapshot date

- **Plans with no vested participants**
- **Section 412(e)(3) plans**
- **Standard plan terminations**
  NOIT already issued, and termination date prior to UVB valuation date

NOTES

- **NO small plan exemption**
- **NO variable rate premium for multiemployer**

§4006.5 PREMIUM RATES PARTICIPANT COUNT DATE

- **General rule – last day of prior plan year**
- **For newly covered plan, use 1st day of plan year**
- **For new plan, use 1st day of plan year starting on the effective date**

§4006.6 PREMIUM RATES
DEFINITION OF PARTICIPANT

General rule

On a given date, plan has benefit liabilities with respect to individual on that date

Loss of benefit

- **Participant with no vested accrued benefit**
  - **After 1 year break in service**
  - **After "deemed zero-dollar" cash out under terms of plan**
  - **After death**
- **Participant with vested accrued benefit**
  - **After irrevocable commitment from insurer**
  - **After all benefit liabilities are distributed**

§4006.7 PREMIUM RATES
PLAN TERMINATION PREMIUM

Applies to termination dates after 2005

- **Single employer distress terminations**
- **Involuntary terminations**

Premium rate is $1,250 per participant (on day prior to DOPT) for three years after termination

For certain airline industry plans, premium rate is $2,500 per participant

PBGC VARIABLE RATE PREMIUM CAP FOR SMALL PLANS

If 25 or less employees on 1st day of plan year, per participant VRP is capped at (5 * count):

Participant Count	Per participant VRP CAP	Total VRP CAP
1	5	5
2	10	20
10	50	500
20	100	2,000
25	125	3,125
30	150	4,500
35	175	6,125

Employee count

Based on all employees of all employers in the controlled group

PBGC VARIABLE RATE PREMIUM CAP FOR SMALL PLANS

Participant count can exceed 25, due to inactive participants

Plans which pay variable rate premium equal to the cap are exempt from reporting UVB under 4006.4

PBGC PREMIUM PAYMENT INSTRUCTIONS
FILING DATES

Filing dates for calendar plan years

Flat-rate Premium	Variable-rate Premium	Reconciliation of estimated Variable-rate Premium
October 15th during year	October 15th during year	April 30th after year-end

Before 2015, dates varied by plan size:

- **Small Plans**
  Prior year Participant Count < 100
- **Mid-size Plans**
  99 < prior year Participant Count < 500
- **Large Plans**
  Prior year Participant Count – 500 or more

PBGC PREMIUM PAYMENT INSTRUCTIONS
PENALTIES - LATE PAYMENTS

If you file a premium payment after the due date, PBGC bills the plan for late charges. The late charges include both interest and penalty charges.

Late Payment Interest Charges:

Interest accrues at the rate imposed under section 6601(a) of the Code (the rate for late payment of taxes) and is compounded daily

PBGC PREMIUM PAYMENT INSTRUCTIONS
PENALTIES - LATE PAYMENTS

Late Payment Penalty Charges:

Penalty is a percentage of the unpaid amount for each month (or portion) it remains unpaid. The monthly rate is higher or lower depending on whether the premium underpayment is "self-corrected."

- **.5% per month if payment is made on or before the date that PBGC issues a written notification indicating possible premium delinquency. Penalty can not exceed 25% of the unpaid premium amount.**

- **2.5% per month applies to payment made after the PBGC notification date. Penalty can not exceed 50% of the unpaid premium amount.**

ERISA 101(f) PPA 06
ALL DEFINED BENEFIT PLANS – FUNDING NOTICE

Must disclose funded status and PBGC guarantee limitations. Notice includes

- Plan name
- Address and phone number of plan administrator
- Plan sponsor's EIN
- Plan number
- Statement whether funded current liability percentage is at least 100%. If not, show FCL%.
- Market value of assets, asset valuation date, benefit payments for plan year, and ratio of assets to benefit payments for the plan year
- Summary of rules for insolvent multiemployer plans, including potential benefit reductions and suspensions
- Description of benefits which are guaranteeable by PBGC
- Explanation of limitations on PBGC guaranteed benefits
- Any additional information provided must follow prior items, and be labeled as "Additional Explanation"

ERISA 101(f) HATFA
DEFINED BENEFIT PLANS – FUNDING NOTICE

Additional disclosure required for plans that meet these criteria, for plan years beginning before January 1, 2020

- Plan had 50 or more participants on any day in prior plan year, and
- Using "adjusted interest rates" (with 25-year averaging of segment rates), funding target is less than 95% of result using regular segment rates, and
- Using regular segment rates, funding shortfall ≥ 500,000

Additional disclosures

- Plan is using "adjusted interest rates" to determine present values
- Using "adjusted interest rates", plan sponsor may contribute less money to the plan than when interest rates are at historical lows
- Data values for current and prior two plan years, both with and without "adjusted interest rates":
  - Funding target attainment percent
  - Funding shortfall
  - Minimum required contribution

PBGC ALLOCATIONS ON §4044 BASIS

Assume PBGC termination liability consists of multiple priority categories:

PC1	20,000
PC2	0
PC3	40,000
PC4	60,000
PC5	20,000
PC6	40,000
Total	180,000

To allocate assets on PBGC (or §4044) basis, must define allocation rule. Apply assets towards each priority category in order from PC1 (highest priority) to PC6 (lowest priority):

If MVA=	Then allocation rule is
50,000	MVA = 100%(PC1 ì PC2) + 3/4 PC3
100,000	MVA = 100%(PC1 ì PC3) + 2/3 PC4
150,000	MVA = 100%(PC1 ì PC5) + 1/4 PC6

EMPLOYER LIABILITY

- PPA ’87 definition very simple, includes all benefit liabilities (PC1 – PC6), plus O/S balance of waived deficiencies

- PBGC can obtain lien up to 100% of employer’s net worth to collect the employer liability

PAYMENTS BY PBGC

1. Employer is liable for all benefit obligations

2. If employer net worth = ZERO, PBGC pays guaranteed benefits to all participants

3. Asset allocation may provide additional non-guaranteed benefits in PC3 which exceed guaranteed benefits

Summary of payments to participants:

- Guaranteed benefits
- Additional benefits from 4044 asset alloc.
- Other benefits - lien against sponsor

ASSET ALLOCATION EXAMPLE

		Smith	Brown	Total
PC3	Benefit	50,000	10,000	XXXXX
	Liability	500,000	100,000	
Guaran.	Benefit	26,000	13,000	XXXXX
	Liability	260,000	130,000	
PC4	Benefit	-0-	3,000	XXXXX
	Liability	-0-	30,000	

		Smith	Brown	Total
Market Value	Alloc. Rule	Allocated assets / Unfunded G.B.		
-0-				
300,000				
400,000				
600,000				

MANDATORY EMPLOYEE CONTRIB

Must allocate portion of reversion to employees upon termination

Total reversion	=	MVA less	ϕ (PC1 | PC6)
EE share of Reversion	=	Total Reversion *	$\frac{\phi PC2}{\phi(PC2 \mid PC6)}$
Individual's Reversion	=	EE Share Reversion *	$\frac{PC2}{\phi PC2}$
	=	Total Reversion *	$\frac{PC2}{\phi(PC2 \mid PC6)}$

Add back distributions for 3 years prior to DOPT to both the MVA, and various priority categories

BENEFIT AT PLAN TERMINATION MAJORITY OWNER

PPA 06

- **Guaranteed Benefit:**
  Based on 10 year pro-rate of 5 year phase-in for majority owners (M.O.)

- **Priority Category 4 benefit:**
  Based on 5 year phase-in for <u>everyone</u>

BENEFIT AT PLAN TERMINATION MAJORITY OWNER

PPA 06

Assets cover PC1 ➔ PC4?	
NO	YES
At least the M. O. Guaranteed benefit	100% PC4 benefit = Full guaranteed benefit under 5 year phase-in
	Exceeds the M. O. Guaranteed benefit

BENEFIT AT PLAN TERMINATION MAJORITY OWNER

PPA 06

When assets < PC4, have new allocation rule under PPA 2006.

Allocate assets to cover guaranteed benefits first, then to (PC4 benefit minus guaranteed benefit) for majority owners.

PC4 BENEFIT – MAJORITY OWNER

Liability in PC1, PC2, PC3 = zero

		M.O. Actuary	Other Actuary	Total
Guaran.	Benefit	560/mo	200/mo	XXXXX
	Liability	56,000	20,000	
PC1-PC4	Benefit	800/mo	200/mo	XXXXX
	Liability	80,000	20,000	

		M.O.	Other	
Market Value	Alloc. Rule	Allocated Assets / Unfunded G.B.		Total
50,000				
75,000				
90,000				

PC5 ASSET ALLOCATION

If assets cover part of PC5, allocation rule is not simple pro-rata

1. **Determine PC5 liability based on each level of benefits in the 5 years prior to plan termination**

2. **Allocate assets to cover benefits under 5 year old plan first**

3. **Then allocate assets to cover new layer of benefits in each successive plan**

PC5 ASSET ALLOCATION EXAMPLE

PBGC termination liability:

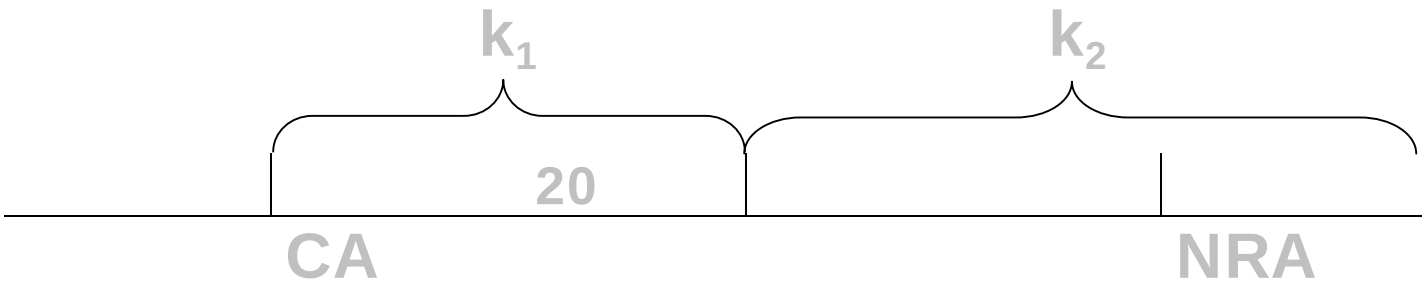
PC1-PC3	zero	
PC4	30,000	
PC5-5	5,000	5 year old plan
PC5-3	20,000	3 year old plan
PC6	25,000	
Total	80,000	

PV of vested accrued benefits under 5 year old plan is 35,000. PV of vested accrued benefits under 3 year old plan is 55,000. To allocate assets on PBGC (or §4044) basis, must define allocation rule:

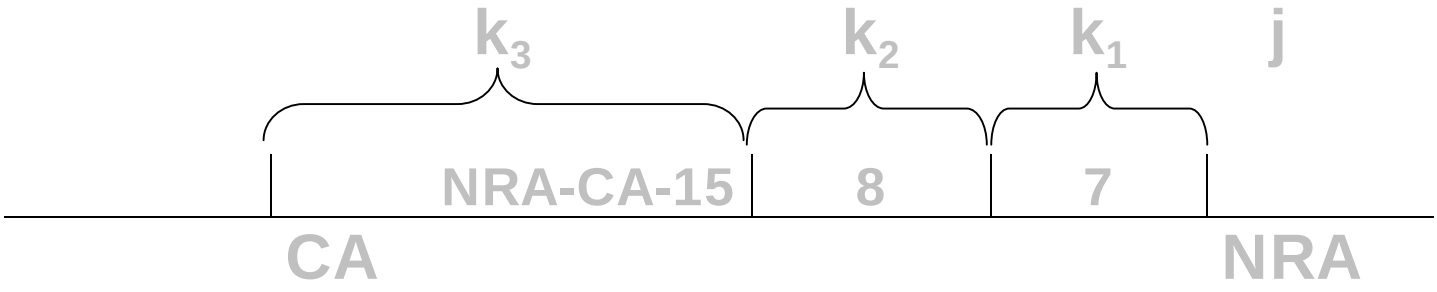
MVA	Allocation rule
45,000	MVA = 100%(PC4) + 100%(PC5-5) + 50%(PC5-3)
50,000	MVA = 100%(PC4) + 100%(PC5-5) + 75%(PC5-3)

PLAN TERMINATION LIABILITY

Calculation based on two select rates. Annuity calculation at NRA may use both rates:



HISTORY
Prior to 09/93 regulation:



k_1, k_2, k_3 are 1st, 2nd, 3rd select rates
j is PBGC immediate rate for annuity at NRA

EXCISE TAXES
§4980 Asset Reversion to Employer

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1. 50% tax in general

2. 20% tax if either

   a) Qualified replacement plan
   b) Benefit improvements

EXCISE TAXES
§4980 Asset Reversion to Employer

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1) 50% tax in general

2) 20% tax if

   a) Qualified replacement plan

      i) Need 95% participation

      ii) Asset transfer ñ 25% of reversion

      iii) Reduce 25% by value of benefit improvements within 60 days

      iv) Allocate transferred amount to employees over 7 years or less

EXCISE TAXES
§4980 Asset Reversion to Employer

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1) 50% tax in general

2) 20% tax if

   a) Benefit improvements

      i) Value ñ 20% of (reversion before benefit changes)

      ii) Uniform for all participants

      iii) Increases to non-active participants can not exceed 40% of 20% of (reversion before benefit changes)

§4050 MISSING PARTICIPANTS

Designated benefit interest rate: applicable federal mid term rate – monthly

<u>Missing Participant annuity assumptions</u>

- **Use assumptions / methods under 4044.52, excluding expense adjustment**
- **Sex distinct mortality per RR 95-28**
- **Expense load of 300 if liability > 5,000**

<u>NOTE</u>

Don't use XRA assumptions

Missing Participant lump sum assumptions

- Use assumptions / methods under 4022.7, excluding expense adjustment
- Mortality per 4022 Appendix A
- Interest per 4022 Appendix B

NOTE

Don’t use XRA assumptions

§4050 MISSING PARTICIPANTS

Designated Benefit Amount

1. **Lump sum amount under plan assumptions, and amount < mandatory threshold**

2. **If not 1, and lump sum under missing participant lump sum assumptions < 5,000, equals that lump sum**

3. **If not 1 or 2, and can't elect lump sum, use PV of benefit under missing participant annuity assumptions**

4. **If not in case 1, 2 or 3 ➔ greater of 1 or 3**

§4050 MISSING PARTICIPANTS

Missing participant annuity assumptions

1) Must determine the most valuable benefit
   a) If in pay status, that equals most valuable
   b) If not, use commencement age that gives highest present value

2) Participant not in pay status – assumed married to spouse same age, value QJ&S

3) Beneficiary not in pay status – assumed NOT married, value plan's survivor benefit

4) If 2 or 3 in pay status, use form of benefit and beneficiary of the pay status benefit

5) Don't forget expense load if > $5,000

REPORTABLE EVENTS - 4043 REGULATION PBGC FORM 10

Reporting required 30 days after event:

- **Active participant reduction**
  - **Less than 80% of actives at BOY**
  - **Less than 75% of actives at prior BOY**
- **Failure to make reqd minimum contributions**
- **Inability to pay benefits when due**
- **Distribution to a substantial owner**
- **Transfer of benefit liabilities**
- **Change contributing sponsor / controlled group**
- **Liquidation / bankruptcy**
- **Extraordinary dividend or stock redemption**
- **Application for minimum funding waiver**
- **Loan default**
- **Insolvency or similar settlement**

Numerous waivers (no Form 10 filing) for many of these reportable events

REPORTABLE EVENTS - 4043 REGULATION PBGC FORM 10

Failure to make req'd minimum contributions: Quarterly installments, and remainder of minimum

FORM 10 grants waiver if installment paid within 30 days of due date

REPORTABLE EVENTS - 4043 REGULATION

CHANGES EFFECTIVE 01/01/2016

- **Active participant reduction**
  - **No longer track participant count for every day of plan year**
  - **For single-cause event such as plant closing, mass layoff, reorganization, etc. use count as of event date**
  - **Otherwise, only look at count on last day of plan year**
- **Liquidation / bankruptcy - No longer included under insolvency / settlement**

REPORTABLE EVENTS - 4043 REGULATION

CHANGES EFFECTIVE 01/01/2016

- **New waivers for five events:**
  - **Extraordinary dividend**
  - **Change in controlled group**
  - **Active participant reduction**
  - **Transfer of benefit liabilities**
  - **Distribution to substantial owner**
    - **Low-default-risk waiver**
      Based on financial reporting information
    - **Well-funded plan waiver**
      No VRP required for prior plan year
    - **Public company waiver**
      Event previously reported on SEC Form 8-K

REPORTABLE EVENTS - 4043 REGULATION

CHANGES EFFECTIVE 01/01/2016

- **Small plan waivers - 100 or less participants**
  - **Extraordinary dividend**
  - **Change in controlled group**
  - **Active participant reduction**
  - **Transfer of benefit liabilities**
  - **Missed quarterly installments**

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REPORTABLE EVENTS - 4043 REGULATION
PBGC FORM 10-Advance

Special 30 day advance reporting required if:

1. Neither contributing sponsor nor controlled group member that the event is related to are a public company, and
2. Contributing sponsor is member of controlled group with aggregate values
   a. UVB > $50 million (ignoring plans with no UVB), and
   b. Funded vested benefit percentage<90%

EVENTS:

- Change contributing sponsor / controlled group
- Liquidation / bankruptcy
- Extraordinary dividend or stock redemption
- Transfer of benefit liabilities
- Application for minimum funding waiver
- Loan default
- Insolvency or similar settlement

REPORTABLE EVENTS - 4043 REGULATION
PBGC FORM 200

NOTICE REQUIREMENT – Lien under §430(k)

Failure to make req'd minimum contributions: Quarterly installments, and remainder of minimum

Form 200 only filed for plans with both:

1. **Unpaid balance of installments under §412 exceeds 1,000,000, and**
2. **Funding target attainment percent < 100%**

NOTES:

- **No small plan exemption**
- **Must file form within 10 days**

ERISA 4021(b)
PLANS NOT COVERED BY THE PBGC

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(1) Individual account plan
(2) Governmental / state plans
(3) Church plan - no 410(d) election
(4) 501(c)(8) or (9) plan with no employer contributions
(5) Plan with no employer contributions
(6) Unfunded plan for highly compensated
(7) Plan outside USA for nonresident aliens
(8) Plan providing benefits > 415 limits
(9) Plan maintained exclusively for substantial owners
(10) Plan of international organization exempt from taxation
(11) Plan solely to comply with workmen's compensation / unemployment compensation / disability insurance
(12) DB plan providing benefits partly based on employee's separate account
(13) Professional service employer plan – see next page

ERISA 4021(b)(13)
PROFESSIONAL SERVICE EMPLOYER PLAN

"established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan"

ERISA 4021(c)(2)
PROFESSIONAL SERVICE EMPLOYER

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization

(i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

ERISA 4021(c)(2)
PROFESSIONAL SERVICE EMPLOYER

(B) the term "professional individuals" includes but is not limited to

physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists

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Standard versus Distress termination

Variable rate premium calculations

Employer liability

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PC4 versus guaranteed benefits for M. O.

Asset reversion, excise taxes

Benefits for missing participants

Reportable Events