

each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

§ 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the annual update to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

[61 FR 34118, July 1, 1996, as amended at 68 FR 61458, Oct. 28, 2003]

§ 4281.44 Contents of notices of insolvency and annual updates.

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under

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§ 4281.43(a) to be filed with the PBGC shall contain the following information:

- (1) The name of the plan.
- (2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.
- (3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.
- (4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.
- (5) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.
- (6) The plan year for which the plan sponsor has determined that the plan is or may be insolvent.
- (7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan document was submitted to the PBGC with a previous filing, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.
- (8) A copy of the most recent actuarial valuation for the plan (*i.e.*, the most recent report submitted to the plan in connection with a valuation of plan assets and liabilities, which shall be performed in accordance with subpart B of this part). If the actuarial valuation was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.
- (9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.
- (10) The estimated amount of the plan's available resources for the insolvency year.
- (11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) A statement indicating whether the notice of insolvency is the result of an insolvency determination under § 4041A.25 (a) or (b).

(13) A certification, signed by the plan sponsor or its duly authorized representative, that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries shall contain the following information:

- (1) The name of the plan.
- (2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.
- (3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.
- (4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual update to the PBGC.* Each annual update required by § 4281.43(b) to be filed with the PBGC shall contain the following information:

- (1) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.
 - (2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.
 - (3) A statement indicating whether the annual update is the result of an insolvency determination under § 4041A.25(a) or (b).
 - (4) A certification, signed by the plan sponsor or a duly authorized representative, that the annual update has been given to all plan participants and beneficiaries in accordance with this part.
- (d) *Annual updates to participants and beneficiaries.* Each annual update required by § 4281.43(b) to be issued to plan participants and beneficiaries

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shall contain the following information:

- (1) The name of the plan.
- (2) The date the notice of insolvency was issued and the insolvency year identified in the notice.
- (3) The plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.
- (4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.
- (5) If the plan will not be insolvent for the plan year, a statement that full nonforfeitable benefits under the plan will be paid.
- (6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

§ 4281.45 Notices of insolvency benefit level.

(a) *Requirement of notices.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.46.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 4041A.25(b).

(c) *Method of issuance.* The notices of insolvency benefit level shall be delivered to the PBGC and to plan participants and beneficiaries in pay status or

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reasonably expected to enter pay status during the insolvency year. The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency benefit levels to interested parties.

[61 FR 34118, July 1, 1996, as amended at 68 FR 61458, Oct. 28, 2003]

§ 4281.46 Contents of notices of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with the PBGC shall contain the information specified in § 4281.44(a)(1) through (a)(5) and (a)(7) through (a)(11) and:

- (1) The insolvency year for which the notice is being filed.
- (2) The amount of financial assistance, if any, requested from the PBGC. (When financial assistance is requested, the plan sponsor shall submit an application in accordance with § 4281.47.)

(3) A statement indicating whether the notice of insolvency benefit level is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or its duly authorized representative, that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 4281.45(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

- (1) The name of the plan.
- (2) The insolvency year for which the notice is being sent.
- (3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by the