(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §2706.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §2706.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of §2706.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 2706.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 2706.152–2706.159 [Reserved]

§ 2706.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 2706.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 2706.161–2706.169 [Reserved]

§ 2706.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section

504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The General Counsel shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW., Suite 520N, Washington, DC 20004–1710

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §2706.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22893, 22896, June 23, 1986, as amended at 51 FR 22893, June 23, 1986; 67 FR 60863, Sept. 27, 2002; 77 FR 48431, Aug. 14, 2012]

§§ 2706.171–2706.999 [Reserved]

PARTS 2707–2799 [RESERVED]

CHAPTER XL—PENSION BENEFIT GUARANTY CORPORATION

NOTE: PBGC's regulations were substantially reorganized and renumbered effective June 29, 1981 (at 46 FR 32574) and July 1, 1996 (at 61 FR 34002). Distribution and derivation tables showing the changes that occurred as a result of these amendments are available on the PBGC's Web site at *http://www.pbgc.gov*.

SUBCHAPTER A—GENERAL

SUBCHAPTER B—PREMIUMS

SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

SUBCHAPTER D—COVERAGE AND BENEFITS

SUBCHAPTER E—PLAN TERMINATIONS

SUBCHAPTER A—GENERAL

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

Subpart A—Filing Rules

Subpart B—Issuance Rules

Subpart C—Determining Filing and Issuance Dates

Subpart D—Computation of Time

Subpart E—Electronic Means of Record Retention

AUTHORITY: 29 U.S.C. 1083(k), 1302(b)(3).

SOURCE: 68 FR 61347, Oct. 28, 2003, unless otherwise noted.

Subpart A—Filing Rules

§ 4000.1 What are these filing rules about?

Where a particular regulation calls for their application, the rules in this subpart A of part 4000 tell you what filing methods you may use for any submission (including a payment) to us. They do not cover an issuance from you to anyone other than the PBGC, such as a notice to participants. Also, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. (Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.2 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person filing with us.

§ 4000.3 What methods of filing may I use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* (1) You must file premium declarations under part 4007 of this chapter electronically in accordance with the instructions on the PBGC's Web site subject to the following provisions:

(i) This electronic filing requirement does not apply to premium information to the extent that the PBGC grants an exemption for good cause in appropriate circumstances.

(ii) This electronic filing requirement does not apply to premium payments except to the extent that the PBGC so provides in the instructions on the PBGC's Web site.

(iii) This electronic filing requirement does not apply to information you file to comply with a request we make under §4007.10(c) of this chapter (dealing with providing record information in connection with a premium compliance review).

(2) You must submit the information required under part 4010 of this chapter electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(3) You must file notices under part 4043 of this chapter electronically in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*, except as otherwise provided by PBGC.

(4) When making filings to PBGC under parts 4041A, 4245, 4262, and 4281 of this chapter (except for notices of benefit reductions and notices of restoration of benefits under part 4281), you must submit the information required under these parts electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on how to file.* Current information on how to file, including permitted filing methods, fax numbers, and mail and e-mail addresses, is—

(1) On our Web site, *http://www.pbgc.gov;*

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 445 12th Street SW, Washington, DC 20024–2101; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.)

[70 FR 11543, Mar. 9, 2005, as amended at 71 FR 31080, June 1, 2006; 79 FR 13559, Mar. 11, 2014; 80 FR 55002, Sept. 11, 2015; 80 FR 55745, Sept. 17, 2015; 80 FR 57717, Sept. 25, 2015; 86 FR 36620, July 12, 2021; 87 FR 57825, Sept. 22, 2022]

§ 4000.4 Where do I file my submission?

To find out where to send your submission, visit our Web site at *http://www.pbgc.gov*, see the instructions to our forms, or call our Customer Service Center (1–800–400–7242 for participants, or 1–800–736–2444 for practitioners; TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.) Because we have different addresses for different types of filings, you should make sure to use the appropriate address for your type of filing. For example, some filings (such as premium payments) must be sent to a specified bank, while other filings (such as the Standard Termination Notice (Form 500)) must be sent to the appropriate department at our offices in Washington, DC. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11543, Mar. 9, 2005]

§ 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart B—Issuance Rules

§ 4000.11 What are these issuance rules about?

Where a particular regulation calls for their application, the rules in this

subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (e.g., a participant or beneficiary). They do *not* cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.12 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person providing the issuance to a third party.

§ 4000.13 What methods of issuance may I use?

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.* Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

§ 4000.14 What is the safe-harbor method for providing an issuance by electronic media?

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (e.g., ''The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation.''); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart C—Determining Filing and Issuance Dates

§ 4000.21 What are these rules for determining the filing or issuance date about?

Where the particular regulation calls for their application, the rules in this subpart C of part 4000 tell you how we will determine the date you send us a filing and the date you provide an issuance to someone other than us (such as a participant). These rules do *not* cover payments to third parties. In addition, they do not cover filings with us that are not made under our regulations, such as procurement filings, litigation filings, and applications for employment with us. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable rules under those requirements for determining the filing and issuance date. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.22 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and

person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday. *We* means the PBGC.

You means the person filing with us or the person providing the issuance to a third party.

§ 4000.23 When is my submission or issuance treated as filed or issued?

(a) *Filed or issued when sent.* Generally, we treat your submission as filed, or your issuance as provided, on the date you send it, if you meet certain requirements. The requirements depend upon the method you use to send your submission or issuance (see §§ 4000.24 through 4000.29). (Certain filings are always treated as filed when received, as explained in paragraph (b)(2) of this section.) A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) *Filed or issued when received*—(1) *In general.* If you do not meet the requirements for your submission or issuance to be treated as filed or issued when sent (see §§ 4000.24 through 4000.32), we treat it as filed or issued on the date received in a permitted format at the proper address.

(2) *Certain filings always treated as filed when received.* We treat the following submissions as filed on the date we receive your submission, no matter what method you use:

(i) *Applications for benefits.* An application for benefits or related submission (unless the instructions for the applicable forms provide for an earlier date);

(ii) *Advance notice of reportable events.* Information required under subpart C of part 4043 of this chapter, dealing with advance notice of reportable events;

(iii) *Form 200 filings.* Information required under subpart D of part 4043 of this chapter, dealing with notice of certain missed minimum funding contributions; and

(iv) *Requests for approval of multiemployer plan amendments.* A request for approval of an amendment filed with the PBGC pursuant to part 4220 of this chapter.

(3) *Determining our receipt date for your filing.* If we receive your submission at the correct address by 5 p.m. (our time) on a business day, we treat it as received on that date. If we receive your submission at the correct address after 5 p.m. on a business day, or anytime on a weekend or Federal holiday, we treat it as received on the next business day. For example, if you send your fax or e-mail of a Form 200 filing to us in Washington, DC, on Friday, March 15, from California at 3 p.m. (Pacific standard time), and we receive it immediately at 6 p.m. (our time), we treat it as received on Monday, March 18. A submission made through our Web site is considered to have been received when we receive an electronic signal that you have performed the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11543, Mar. 9, 2005]

§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?

(a) *In general.* Your filing or issuance date is the date you mail your submission or issuance using the U.S. Postal Service if you meet the requirements of paragraph (b) of this section, and you mail it by the last scheduled collection of the day. If you mail it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address.

(b) *Requirements for ''send date.''* Your submission or issuance must meet the applicable postal requirements, be properly addressed, and you must use First-Class Mail (or a U.S. Postal Service mail class that is at least the equivalent of First-Class Mail, such as Priority Mail or Express Mail). However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(c) *Presumptions.* We make the following presumptions—

(1) *U.S. Postal Service postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible U.S. Postal Service postmark, we presume that the postmark date is the filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(2) *Private meter postmark.* If you meet the requirements of paragraph (b) of this section and your submission or issuance has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, we presume that the metered postmark date is your filing or issuance date. However, you may prove an earlier date under paragraph (a) of this section.

(d) *Examples.* (1) You mail your issuance using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your issuance in a mailbox at 4 p.m. on Friday, March 15 and the next scheduled collection at that mailbox is 5 p.m. that day. Your issuance date is March 15. If on the other hand you deposit it at 6 p.m. and the next collection at that mailbox is not until Monday, March 18, your issuance date is March 18.

(2) You mail your submission using the U.S. Postal Service and meet the requirements of paragraph (b) of this section. You deposit your submission in the mailbox at 4 p.m. on Friday, March 15, and the next scheduled collection at that mailbox is 5 p.m. that day. If your submission does not show a March 15 postmark, then you may prove to us that you mailed your submission by the last scheduled collection on March 15.

§ 4000.25 What if I use the postal service of a foreign country?

If you send your submission or issuance using the postal service of a foreign country, your filing or issuance date is the date of receipt at the proper address.

§ 4000.26 What if I use a commercial delivery service?

(a) *In general.* Your filing or issuance date is the date you deposit your submission or issuance with the commercial delivery service if you meet the requirements of paragraph (b) of this section, and you deposit it by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery). If you deposit it later than that, or if there is no scheduled collection that day, your filing or issuance date is the date of the next scheduled collection. If you do not meet the requirements of paragraph (b), your filing or issuance date is the date of receipt at the proper address. However, if you are filing an advance notice of reportable event or a Form 200 (notice of certain missed contributions), see § 4000.23(b); these filings are always treated as filed when received.

(b) *Requirements for ''send date.''* Your submission or issuance must meet the applicable requirements of the commercial delivery service, be properly addressed, and—

(1) *Delivery within two days.* It must be reasonable to expect your submission or issuance will arrive at the proper address by 5 p.m. on the second business day after the next scheduled collection; or

(2) *Designated delivery service.* You must use a ''designated delivery service'' under section 7502(f) of the Internal Revenue Code (Title 26, USC). Our Web site, *http://www.pbgc.gov,* lists those designated delivery services. You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

(c) *Example.* You send your submission by commercial delivery service using two-day delivery. In addition, you meet the requirements of paragraph (b) of this section. Suppose that the deadline for two-day delivery at the place you make your deposit is 8 p.m. on Friday, March 15. If you deposit your submission by that the deadline, your filing date is March 15. If, instead, you deposit it after the 8 p.m. deadline and the next collection at that site for two-day delivery is on

Monday, March 18, your filing date is March 18.

§ 4000.27 What if I hand deliver my submission or issuance?

Your filing or issuance date is the date of receipt of your hand-delivered submission or issuance at the proper address. A hand-delivered issuance need not be delivered while the intended recipient is physically present. For example, unless you have reason to believe that the intended recipient will not receive the notice within a reasonable amount of time, a notice is deemed to be received when you place it in the intended recipient's office mailbox. Our Web site, *http://www.pbgc.gov,* and the instructions to our forms, identify the proper addresses for filings with us.

§ 4000.28 What if I send a computer disk?

(a) *In general.* We determine your filing or issuance date for a computer disk as if you had sent a paper version of your submission or issuances if you meet the requirements of paragraph (b) of this section.

(1) *Filings.* For computer-disk filings, we may treat your submission as invalid if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section.

(2) *Issuances.* For computer-disk issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (''using measures reasonably calculated to ensure actual receipt'') of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirements of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic disk must comply with any technical requirements for that type of submission (our Web site, *http://www.pbgc.gov*, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For filings and issuances, you must include, in a paper cover letter or on the disk's label, the name and telephone number of the person to contact if we or the intended recipient is unable to read the disk.

§ 4000.29 What if I use electronic delivery?

(a) *In general.* Your filing or issuance date is the date you electronically transmit your submission or issuance to the proper address if you meet the requirements of paragraph (b) of this section. Note that we always treat an advance notice of reportable event and a Form 200 (notice of certain missed contributions) as filed when received. A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

(1) *Filings.* For electronic filings, if you fail to meet the requirements of paragraph (b)(1) or (b)(3) of this section, we may treat your submission as invalid.

(2) *Issuances.* For electronic issuances, we may treat your issuance as invalid if—

(i) You fail to meet the requirements (''using measures reasonably calculated to ensure actual receipt'') of § 4000.13(a), or

(ii) You fail to meet the contact information requirements of paragraph (b)(3) of this section.

(b) *Requirements.* To get the filing date under paragraph (a) of this section, you must meet the requirements of paragraphs (b)(1) and (b)(3). To get the issuance date under paragraph (a), you must meet the requirement of paragraphs (b)(2) and (b)(3).

(1) *Technical requirements for filings.* For filings, your electronic submission must comply with any technical requirements for that type of submission

(our Web site, *http://www.pbgc.gov*, identifies the technical requirements for each type of filing).

(2) *Technical requirements for issuances.* For issuances, you must comply with the safe-harbor method under § 4000.14.

(3) *Identify contact person.* For an e-mail submission or issuance with an attachment, you must include, in the body of your e-mail, the name and telephone number of the person to contact if we or the intended recipient needs you to resubmit your filing or issuance.

(c) *Failure to meet address requirement.* If you send your electronic submission or issuance to the wrong address (but you meet the requirements of paragraph (b) of this section), your filing or issuance date is the date of receipt at the proper address.

[68 FR 61347, Oct. 28, 2003, as amended at 70 FR 11544, Mar. 9, 2005]

§ 4000.30 What if I need to resend my filing or issuance for technical reasons?

(a) *Request to resubmit*—(1) *Filing.* We may ask you to resubmit all or a portion of your filing for technical reasons (for example, because we are unable to open an attachment to your e-mail). In that case, your submission (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that allows us to open the attachment to your e-mail) by the date we specify, your filing date for the submission (or portion) that we asked you to resubmit is the date you filed your original submission. If you comply with our request late, your submission (or portion) will be treated as filed on the date of your resubmission.

(2) *Issuance.* The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). In that case, your issuance (or portion) is invalid. However, if you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance. If you comply with the request late, your issuance (or portion) will be treated as provided on the date of your reissuance.

(b) *Reason to believe submission or issuance not received or defective.* If you have reason to believe that we have not received your submission (or have received it in a form that is not useable), or that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend your submission or issuance to get your original filing or issuance date. However, we may require evidence to support your original filing or issuance date. If you are not prompt, or you do not provide us with any evidence we may require to support your original filing or issuance date, your filing or issuance date is the filing or issuance date of your resubmission or reissuance.

§ 4000.31 Is my issuance untimely if I miss a few participants or beneficiaries?

The PBGC will not treat your issuance as untimely based on your failure to provide the issuance to a participant or beneficiary in a timely manner if—

(a) The failure resulted from administrative error;

(b) The failure involved only a *de minimis* percentage of intended recipients; and

(c) You resend the issuance to the intended recipient promptly after discovering the error.

§ 4000.32 Does the PBGC have discretion to waive any requirements under this part?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart D—Computation of Time

§ 4000.41 What are these computation-of-time rules about?

The rules in this subpart D of part 4000 tell you how to compute time periods under our regulations (e.g., for filings with us and issuances to third parties) where the particular regulation calls for their application. (There are specific exceptions or modifications to these rules in § 4007.6 of this chapter (premium payments), and § 4062.10 of this chapter (employer liability payments). In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (e.g., requirements under the Internal Revenue Code (Title 26, USC)). In meeting those requirements, you should follow any applicable computation-of-time rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart E tells you how to maintain required records in electronic form.)

[68 FR 61347, Oct. 28, 2003, as amended at 82 FR 60817, Dec. 22, 2017]

§ 4000.42 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Business day means a day other than a Saturday, Sunday, or Federal holiday.

We means the PBGC.

You means the person responsible, under our regulations, for the filing or issuance to which these rules apply.

§ 4000.43 How do I compute a time period?

(a) *In general.* If you are computing a time period to which this part applies, whether you are counting forwards or backwards, the day after (or before) the act, event, or default that begins the period is day one, the next day is day two, and so on. Count all days, including weekends and Federal holidays. However, if the last day you count is a weekend or Federal holiday, extend or shorten the period (whichever benefits you in complying with the time requirement) to the next regular business day. The examples in paragraph (d) of this section illustrate these rules.

(b) *When date is designated.* In some cases, our regulations designate a specific day as the end of a time period, such as ''the last day'' of a plan year or ''the fifteenth day'' of a calendar month. In these cases, you simply use the designated day, together with the weekend and holiday rule of paragraph (a) of this section.

(c) *When counting months.* If a time period is measured in months, first identify the date (day, month, and year) of the act, event, or default that begins the period. The corresponding day of the following (or preceding) month is one month later (or earlier), and so on. For example, two months after July 15 is September 15. If the period ends on a weekend or Federal holiday, follow the weekend and holiday rule of paragraph (a) of this section. There are two special rules for determining what the corresponding day is when you start counting on a day that is at or near the end of a calendar month:

(1) *Special ''last-day'' rule.* If you start counting on the last day of a calendar month, the corresponding day of any calendar month is the last day of that calendar month. For example, a three-month period measured from November 30 ends (if counting forward) on the last day of February (the 28th or 29th) or (if counting backward) on the last day of August (the 31st).

(2) *Special February rule.* If you start counting on the 29th or 30th of a calendar month, the corresponding day of February is the last day of February. For example, a one-month period measured from January 29 ends on the last day of February (the 28th or 29th).

(d) *Examples*—(1) *Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1,

December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.

(2) *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.

(3) *Counting months.* Suppose you are required to issue a Participant Notice two months after December 31. The deadline for the Participant Notice is the last day of February (the 28th or 29th). If the last day of February is a weekend or Federal holiday, your deadline is extended until the next day that is not a weekend or Federal holiday.

Subpart E—Electronic Means of Record Retention

§ 4000.51 What are these record retention rules about?

The rules in this subpart E of part 4000 tell you what methods you may use to meet any record retention requirement under our regulations if you choose to use electronic means. The rules for who must retain the records, how long the records must be maintained, and how records must be made available to us are contained in the specific part where the record retention requirement is found. (Subpart A tells you what filing methods you may use for filings with us and how we determine your filing date. Subpart B tells you what methods you may use to issue a notice or otherwise provide information to any person other than us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time.)

§ 4000.52 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

We means the PBGC.

You means the person subject to the record retention requirement.

§ 4000.53 May I use electronic media to satisfy PBGC's record retention requirements?

General requirements. You may use electronic media to satisfy the record maintenance and retention requirements of this chapter if:

(a) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(b) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 101(f), section 303(k)(4), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 101(f), section 303(k)(4), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the

electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term ''legibility'' means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term ''readability'' means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

[68 FR 61347, Oct. 28, 2003, as amended at 80 FR 55002, Sept. 11, 2015]

§ 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

(Approved by the Office of Management and Budget under control number 1212–0059)

PART 4001—TERMINOLOGY

Sec.

AUTHORITY: 29 U.S.C. 1301, 1302(b)(3).

SOURCE: 61 FR 34010, July 1, 1996, unless otherwise noted.

§ 4001.1 Purpose and scope.

(a) *In general.* This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

(b) *Title IV coverage.* Coverage by section 4050 of ERISA is not and does not result in or confer coverage by title IV of ERISA.

[61 FR 34010, July 1, 1996, as amended at 82 FR 60817, Dec. 22, 2017]

§ 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

Affected party means, with respect to a plan—

(1) Each participant in the plan;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;

(4) Each employee organization that currently represents any group of participants;

(5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate; and

(6) The PBGC.

If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

Annuity means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

Bankruptcy filing date means, with respect to a plan, the date on which a petition commencing a case under the United States Bankruptcy Code is filed, or the date on which any similar filing is made commencing a case under any similar Federal law or law of a State or political subdivision, with respect to the contributing sponsor of the plan, if such case has not been dismissed as of the termination date of the plan. If a bankruptcy petition is filed under one chapter of the United States Bankruptcy Code, or under one chapter or provision of any such similar law, and the case is converted to a

case under a different chapter or provision of such Code or similar law (for example, a Chapter 11 reorganization case is converted to a Chapter 7 liquidation case), the date of the original petition is the bankruptcy filing date. If such a plan has more than one contributing sponsor:

(1) If all contributing sponsors entered bankruptcy on the same date, that date is the bankruptcy filing date;

(2) If all contributing sponsors did not enter bankruptcy on the same date (or if not all contributing sponsors are in bankruptcy), PBGC will determine the date that will be treated as the bankruptcy filing date based on the facts and circumstances, which may include such things as the relative sizes of the contributing sponsors, the relative amounts of their minimum required contributions to the plan, the timing of the different bankruptcies, and the expectations of participants.

Basic-type benefit means a benefit that is guaranteed under part 4022 of this chapter or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 of this chapter did not apply. In a PPA 2006 bankruptcy termination, it also includes a benefit accrued by a participant, or to which a participant otherwise became entitled, on or before the plan's termination date but that is not guaranteed solely because of the provisions of §§ 4022.3(b) or 4022.4(c).

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Contributing sponsor means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(b)(2) of the Code or section 302(b)(2) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code. Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

Corporation means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

Defined benefit plan means a plan described in section 3(35) of ERISA.

Disclosure Officer means the official designated as Disclosure Officer in the Office of the General Counsel, PBGC.

Distress termination means the voluntary termination of a single-employer plan in accordance with section 4041(c) of ERISA and part 4041, subpart C, of this chapter.

Distribution date means:

(1) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(2) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or

Earliest retirement age at valuation date means the later of: a participant's age on his or her birthday nearest to the valuation date, or the participant's attained age as of his or her Earliest PBGC Retirement Date (as determined under § 4022.10 of this chapter).

EIN means the nine-digit employer identification number assigned by the Internal Revenue Service to a person.

Employer means all trades or businesses (whether or not incorporated) that are under common control, within the meaning of § 4001.3 of this chapter.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Expected retirement age (XRA) means the age, determined in accordance with

§§ 4044.55 through 4044.57 of this chapter, at which a participant is expected to begin receiving benefits when the participant has not elected, before the allocation date, an annuity starting date. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

Fair market value means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Funding standard account means an account established and maintained under section 304(b) of ERISA or section 431(b) of the Code.

Guaranteed benefit means a benefit under a single-employer plan that is guaranteed by the PBGC under section 4022(a) of ERISA and part 4022 of this chapter, or a benefit under a multiemployer plan that is guaranteed by the PBGC under section 4022A of ERISA.

Insurer means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

IRS means the Internal Revenue Service.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly (taking into account the constructive ownership rules of section 414(b) and (c) of the Code)—

(1) The entire interest in an unincorporated trade or business;

(2) 50 percent or more of the capital interest or the profits interest in a partnership; or

(3) 50 percent or more of either the voting stock of a corporation or the value of all of the stock of a corporation.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Mass withdrawal means:

(1) The withdrawal of every employer from the plan,

(2) The cessation of the obligation of all employers to contribute under the plan, or

(3) The withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw.

Multiemployer Act means the Multiemployer Pension Plan Amendments Act of 1980.

Multiemployer plan means a plan that is described in section 4001(a)(3) of ERISA and that is covered by title IV of ERISA. Multiemployer plan also means a plan that elects to be a multiemployer plan under ERISA section 3(37)(G) and Code section 414(f)(6), pursuant to procedures prescribed by PBGC.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Non-PPA 2006 bankruptcy termination means a plan termination that is not a PPA 2006 bankruptcy termination.

Nonbasic-type benefit means any benefit provided by a plan other than a basic-type benefit.

Nonforfeitable benefit means a benefit described in section 4001(a)(8) of ERISA. Benefits that become nonforfeitable solely as a result of the termination of a plan are considered forfeitable.

Normal retirement age means the age specified in the plan as the normal retirement age. This age shall not exceed the later of age 65 or the age attained after 5 years of participation in the plan. If no normal retirement age is specified in the plan, it is age 65.

Notice of intent to terminate means the notice of a proposed termination of a

single-employer plan, as required by section 4041(a)(2) of ERISA and § 4041.21 (in a standard termination) or § 4041.41 (in a distress termination) of this chapter.

PBGC means the Pension Benefit Guaranty Corporation.

Person means a person defined in section 3(9) of ERISA.

Plan means a defined benefit plan within the meaning of section 3(35) of ERISA that is covered by title IV of ERISA.

Plan administrator means an administrator, as defined in section 3(16)(A) of ERISA.

Plan sponsor means, with respect to a multiemployer plan, the person described in section 4001(a)(10) of ERISA.

Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

PN means the three-digit plan number assigned to a plan.

PPA 2006 bankruptcy termination means a plan termination to which section 404 of the Pension Protection Act of 2006 applies. Section 404 of the Pension Protection Act of 2006 applies to any plan termination in which the termination date occurs while bankruptcy proceedings are pending with respect to the contributing sponsor of the plan, if the bankruptcy proceedings were initiated on or after September 16, 2006. Bankruptcy proceedings are pending, for this purpose, if a contributing sponsor has filed or has had filed against it a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan.

Proposed termination date means the date specified as such by the plan administrator of a single-employer plan in a notice of intent to terminate or, if later, in the standard or distress termination notice, in accordance with section 4041 of ERISA and part 4041 of this chapter.

Rollover amounts means the dollar amount of all or any part of a distribution that is rolled over from a defined contribution plan into a defined benefit plan in accordance with section 401(a)(31) or 402(c) or similar provisions under the Internal Revenue Code. Rollover amounts include salary deferral contributions made by the participant, any additional employer contributions provided for under the defined contribution plan, and earnings on both.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA) and that is covered by title IV of ERISA.

Standard termination means the voluntary termination, in accordance with section 4041(b) of ERISA and part 4041, subpart B, of this chapter, of a single-employer plan that is able to provide for all of its benefit liabilities when plan assets are distributed.

Sufficient for benefit liabilities means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA.

Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of ERISA. In a PPA 2006 bankruptcy termination, the determination whether a plan is sufficient for guaranteed benefits is made taking into account the limitations in sections 4022(g) and 4044(e) of ERISA (and corresponding provisions of these regulations). The determinations of which benefits are guaranteed and which benefits are in priority category 3 under section 4044(a)(3) of ERISA are made by reference to the bankruptcy filing date, but the present values of those benefits are determined as of the proposed termination date and the date of distribution.

Termination date means the date established pursuant to section 4048(a) of ERISA.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and part 4044 of this chapter.

Unreduced retirement age (URA) means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

U.S. entity means an entity subject to the personal jurisdiction of the U.S. district courts.

Ultimate parent means the parent at the highest level in the chain of corporations and/or other organizations constituting a parent-subsidiary controlled group.

Voluntary employee contributions means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

[61 FR 34010, July 1, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4001.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 4001.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of ERISA:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are ''two or more trades or businesses under common control'', as defined in regulations prescribed under section 414(c) of the Code.

(2) The PBGC will determine that all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with such person.

(2) Persons are under common control if they are members of a ''controlled group of corporations'', as defined in regulations prescribed under section 414(b) of the Code, or if they are ''two or more trades or businesses under common control'', as defined in regulations prescribed under section 414(c) of the Code.

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1302(f).

SOURCE: 82 FR 42733, Sept. 12, 2017, unless otherwise noted.

§ 4002.1 Board of Directors, Chair, and Representatives of Board Members.

(a) *Composition and responsibilities of the Board of Directors*—(1) *Board.* Section 4002(d)(1) of ERISA establishes the Board membership as the Secretaries of Labor (Chair), the Treasury, and Commerce. A person who, at the time of a meeting of the Board of Directors, is serving in an acting capacity as, or performing the duties of, a Member of the Board of Directors will serve as a Member of the Board of Directors with the same authority and effect as the designated Secretary.

(2) *Chair of the Board.* As Chair of the Board, the Secretary of Labor will preside over all Board meetings. As a direct report to the Board under section 4002(d)(4) of ERISA, the Inspector General of the Corporation reports to the Board through the Chair. The Participant and Plan Sponsor Advocate also reports to the Board through the Chair.

(3) *Board responsibilities.* Except as provided in paragraph (b) of this section, the Board may not delegate any of the following responsibilities—

(i) Voting on an amendment to these bylaws.

(ii) Approval of the Annual Report, which includes the Annual Management Report (AMR) (and its components the financial statements, management's discussion and analysis, annual performance report and independent auditor's report), the Chair's message, and other documentation in

conformance with guidance issued by the Office of Management and Budget (OMB).

(iii) Approval of the Corporation's Investment Policy Statement.

(iv) Approval of all reports or recommendations to the Congress required by Title IV of ERISA.

(v) Approval of any policy matter (other than administrative policies) that would have a significant impact on the pension insurance program.

(vi) Review of reports from the Corporation's Inspector General that the Inspector General deems appropriate to deliver to the Board.

(4) *Investment Policy Statement review.* The Board must review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years.

(b) *Designation of and responsibilities of Board Representatives and Alternate Representatives*—(1) *Board Representatives.* A Board Representative, as designated under section 4002(d)(3) of ERISA, may act for all purposes under these bylaws, except that an action of a Board Representative on a Board Member's behalf with respect to the powers described in paragraphs (a)(3)(i) through (iii) of this section, will be valid only upon ratification in writing by the Board Member. Any Board Representative may refer for Board action any matter under consideration by the Board Representatives.

(2) *Alternate Representatives.* A Board Member may designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Alternate Representative at a meeting. An Alternate Representative may act for all purposes at that meeting, except that the Alternate Representative's actions will be valid only upon ratification in writing by either the Board Member or the Board Representative. Any action of the Alternate Representative involving the powers described in paragraphs (a)(3)(i) through (iii) of this section or any matter that has been referred to the Board under paragraph (b)(1) of this section must be ratified in writing by the Board Member.

(3) *Ratification.* For purposes of this section, ratification of a Board Representative or Alternative Representative action includes approval of the minutes of the meeting of the Board of Directors by voice vote or otherwise.

(c) *Review and approval of regulations.* Regulations may be issued by the Director of the Corporation, subject to the following conditions—

(1) Regulations must first be reviewed for comment by each Board Representative except for routine updates of PBGC valuation factors and actuarial assumptions.

(2) A Board Representative may, within 21 days of receiving a regulation for review, request that it be referred to the Board Representatives for approval.

(3) Nonsignificant regulations and significant proposed regulations within the meaning of Executive Order 12866 and subject to review under paragraph (c)(1) of this section may be issued by the Director upon either the expiration of the time specified in paragraph (c)(2) of this section, or, if the approval option is exercised, upon Board Representative approval.

(4) Significant final regulations must be approved by the Board Representatives or the Board.

(5) The Director may submit regulations subject to approval by the Board Representatives or the Board to OMB for concurrent review after they have been pending without comment before the Board Representatives or the Board for more than 60 days.

§ 4002.2 Quorum.

Section 4002(d)(2) of ERISA establishes that a majority of the Board Members will constitute a quorum for the transaction of business. Any act of a majority of the Members present at any meeting at which there is a quorum will be the act of the Board.

§ 4002.3 Meetings.

(a) *General.* Meetings of the Board of Directors are called by the Chair in accordance with section 4002(e)(1) of ERISA and on the request of any Board Member. The Chair must provide reasonable notice of any meetings to each Board Member.

(b) *Minutes.* The General Counsel of the Corporation serves as Secretary to

the Board of Directors pursuant to section 4002(d)(5) of ERISA. The General Counsel must keep Board minutes. As soon as practicable after each meeting, the General Counsel must distribute a draft of the minutes of such meeting to each Member of the Board for approval. The Board of Directors may approve minutes by resolution or by voice vote at a subsequent meeting. Subject to appropriate redactions authorized by section 4002(e)(2)(C) of ERISA, approved minutes will be posted on PBGC's Web site.

§ 4002.4 Place of meetings; use of conference call communications equipment.

(a) *Place of meetings.* Meetings of the Board of Directors will be held at the principal office of the Corporation or the Department of Labor unless otherwise determined by the Board of Directors or the Chair.

(b) *Teleconference.* Any Member may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can speak to and hear each other. Any Board Member so participating in a meeting will be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through the use of such equipment, including the votes of each Member, must be recorded in the minutes of the meetings of the Board of Directors.

§ 4002.5 Voting without a meeting.

A resolution of the Board of Directors signed by all of the Board Members or all of the Board Representatives will have the same effect as if agreed to at a meeting and must be kept in the Corporate Minutes Book. A resolution for an action taken on any matter for which a Board Member has been disqualified under § 4002.6 may be signed by the Board Representative of the disqualified Board Member to the extent the matter is delegable under these bylaws.

§ 4002.6 Conflict of interest.

(a) *Board Members and Director.* The Board Members and the Director must work with their respective ethics office to identify actual or potential conflicts of interest under 18 U.S.C. 208 or section 4002(j) of ERISA or the appearance of the loss of impartiality under 5 CFR 2635.502.

(b) *Disqualification.* A Board Member and the Director must notify the Board Members of disqualification in any decision or activity based on a conflict of interest under paragraph (a) of this section. To the extent a matter is delegable under these bylaws, the disqualified Board Member's Board Representative, acting independently of that Member, may vote on the matter in the Member's place. The disqualified Board Member may not ratify any action taken on the matter giving rise to his or her disqualification.

§ 4002.7 Director of the Corporation and senior officers.

(a) *Director of the Corporation.* Section 4002(a) and (c) of ERISA establish that the Corporation is administered by a Director. Subject to policies established by the Board, the Director is responsible for the Corporation's management, including its personnel, organization and budget practices, and for carrying out the Corporation's functions under Title IV of ERISA. The Director will timely provide the Board any information necessary to assist the Board in exercising its statutory responsibilities. The Director must submit the Corporation's budget to the Chair of the Board for review and approval before formally submitting the budget to OMB.

(b) *Senior officers.* The senior officers of the Corporation report directly to the Director. The Director must consult with the Board before eliminating or creating a senior officer position or making an appointment to a senior officer position.

§ 4002.8 Emergency procedures.

(a) An emergency exists if a quorum of the Corporation's Board cannot readily be assembled or act through written contact because of the declaration of a government-wide emergency. These emergency procedures must remain in effect during the emergency and upon the termination of the emergency will cease to be operative unless

and until another emergency occurs. The emergency procedures operate in conjunction with the PBGC Continuity of Operations Plan (''COOP Plan'') of the current year, and any government-wide COOP protocols in effect.

(b) During an emergency, the business of the PBGC must continue to be managed in accordance with its COOP Plan. The functions of the Board of Directors must be carried out by those Members of the Board of Directors in office at the time the emergency arises, or by persons designated by the agencies' COOP plans to act in place of the Board Members, who are available to act during the emergency. If no such persons are available, then the authority of the Board must be transferred to the Board Representatives who are available. If no Board Representatives are available, then the Director of the Corporation must perform essential Board functions.

(c) During an emergency, meetings of the Board may be called by any available Member of the Board. The notice thereof must specify the time and place of the meeting. To the extent possible, notice must be given in accordance with these bylaws. Notice must be given to those Board Members whom it is feasible to reach at the time of the emergency, and notice may be given at a time less than 24 hours before the meeting if deemed necessary by the person giving notice.

§ 4002.9 Seal.

The seal of the Corporation must be in such form as may be approved from time to time by the Board.

§ 4002.10 Authority and amendments.

(a) Section 4002 of ERISA and the bylaws establish the authority and responsibilities of the Board, the Board Representatives, and the Director.

(b) These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Subpart A—General Provisions

Sec.

Subpart B—Initial Determinations

Subpart C—Reconsideration of Initial Determinations

Subpart D—Administrative Appeals

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34012, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4003.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by PBGC on cases

pending before it involving the matters set forth in paragraphs (d) and (e) of this section and the procedures for requesting and obtaining administrative review by PBGC of those determinations. Subpart A contains general provisions. Subpart B sets forth rules governing the issuance of all initial determinations of PBGC on matters covered by this part. Subpart C establishes procedures governing the reconsideration by PBGC of initial determinations relating to the matters set forth in paragraph (d). Subpart D establishes procedures governing administrative appeals from initial determinations relating to the matters set forth in paragraph (e).

(b) *Scope.* This part applies to the initial determinations made by PBGC that are listed in paragraphs (d) and (e) of this section.

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, PBGC determines that it would be appropriate to do so, or

(2) The procedure that PBGC may utilize in reviewing any determination to which this part does not apply.

(d) *Determinations subject to reconsideration.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (d) may request reconsideration, subject to the terms of this part.

(1) Determinations with respect to premiums, interest and late payment penalties pursuant to section 4007 of ERISA;

(2) Determinations with respect to voluntary terminations under section 4041 of ERISA, including any of the following:

(i) A determination that a notice requirement or a certification requirement under section 4041 of ERISA has not been met;

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met;

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits; and

(iv) A determination with respect to a plan terminating under section 4041(b) of ERISA or with respect to the distribution of residual assets under section 4044(d) of ERISA; and

(3) Determinations with respect to penalties under section 4071 of ERISA.

(e) *Determinations subject to appeal.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (e) may file an appeal, subject to the terms of this part.

(1) Determinations that a plan is or is not covered under section 4021 of ERISA;

(2) Determinations of a participant's or beneficiary's benefit entitlement and the amount of benefit payable under a covered plan under sections 4022, 4022B, and 4044 of ERISA (other than a determination described in paragraph (d)(2)(iv) of this section);

(3) Determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(4) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(5) Determinations of the amount of liability under sections 4062(b)(1), 4063, or 4064 of ERISA; and

(6) Determinations with respect to benefits payable by PBGC under section 4050 of ERISA and part 4050 of this chapter.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 77 FR 22489, Apr. 16, 2012; 82 FR 60818, Dec. 22, 2017; 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, multiemployer plan, PBGC, person, plan administrator, and single-employer plan.

In addition, for purposes of this part:

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-employer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of PBGC with respect to a pension plan in which

such person has an interest. The term ''beneficiary'' includes an alternate payee (within the meaning of section 206(d)(3)(K) of ERISA) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of ERISA).

Appeals Board means a board consisting of three PBGC officials. The Director will appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson will designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

Appellant means any person filing an appeal under subpart D of this part.

Director means the Director of any department of PBGC and includes the Director of PBGC, Deputy Directors, and the General Counsel.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.3 PBGC assistance in obtaining information.

(a) *General.* A person may request PBGC's assistance in obtaining information if the person lacks information necessary—

(1) To file a request for review pursuant to subpart C or D of this part, or to decide whether to seek review; or

(2) To participate in an appeal pursuant to § 4003.57, or to decide whether to participate in an appeal.

(b) *Information not in PBGC's possession.* A person may request PBGC's assistance in obtaining information in the possession of a party other than PBGC. The request must—

(1) Be in writing;

(2) State or describe the missing information, the reason why the person needs the information, and the reason why the person needs the assistance of PBGC in obtaining the information; and

(3) Be submitted to the Appeals Board or the department that is responsible for reviewing the initial determination under this part. If the determination is subject to reconsideration, see § 4003.33 for information on where to submit the request for assistance. If the determination is subject to review by appeal, see § 4003.53 for information on where to submit the request.

(c) *Information in the possession of PBGC.* A person may request information in the possession of PBGC pursuant to the Freedom of Information Act and part 4901 of this chapter or the Privacy Act and part 4902 of this chapter, as applicable. See parts 4901 and 4902 of this chapter for additional information. Nothing in this paragraph (c) limits or amends the requirements under part 4901 or 4902 of this chapter.

[85 FR 10283, Feb. 24, 2020]

§ 4003.4 Extension of time.

When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only when the request for an extension is made before the expiration of the time prescribed. The request for an extension must be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension will stop the running of the prescribed period of time. Requests for extension of the time to submit an appeal should be sent to the Appeals Board; requests for extension of the time to submit a request for reconsideration should be sent to the department that issued the initial determination. When a request for an extension is granted, PBGC will notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, PBGC will notify the person requesting the extension in writing, and the prescribed period of time will resume running from the date of denial.

[85 FR 10283, Feb. 24, 2020]

§ 4003.5 Non-timely request for review.

PBGC will process a request for review of an initial determination that was not filed within the prescribed period of time for requesting review (see §§ 4003.32 and 4003.52) if—

(a) The person requesting review demonstrates in his or her request that he or she did not file a timely request for review because he or she neither knew nor, with due diligence, could have known of the initial determination; and

(b) The request for review is filed within 30 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the requested review is reconsideration, or within 45 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the request for review is an appeal.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.6 Representation.

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney, signed by the person making the designation, which authorizes the representation and specifies the scope of representation must be filed with PBGC in accordance with § 4003.9(b) of this part.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.7 Exhaustion of administrative remedies.

Except as provided in § 4003.22(b), a person aggrieved by an initial determination of PBGC covered by this part, other than an initial determination subject to reconsideration that is issued by a Department Director, has not exhausted his or her administrative remedies until he or she has filed a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, and a decision granting or denying the relief requested has been issued.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.8 Request for confidential treatment.

If any person filing a document with PBGC believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, he or she must specify the information with respect to which confidentiality is claimed and the grounds therefor.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.9 Method and date of filing.

(a) *Method of filing.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part.

(b) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

[68 FR 61352, Oct. 28, 2003, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.10 Computation of time.

PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[68 FR 61352, Oct. 28, 2003, as amended at 85 FR 10284, Feb. 24, 2020]

Subpart B—Initial Determinations

§ 4003.21 Form and contents of initial determinations.

All initial determinations to which this subpart applies will be in writing, will state the reason for the determination, and, except when effective on the date of issuance as provided in § 4003.22(b), will contain notice of the right to request review of the initial determination pursuant to subpart C or D of this part, as applicable, and a brief description of the procedures for requesting review.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.22 Effective date of determinations.

(a) *General rule.* Except as provided in paragraph (b) of this section, an initial

determination covered by this subpart will not become effective until the prescribed period of time for filing a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, has elapsed. The filing of a request for review under subpart C or D of this part will automatically stay the effectiveness of an initial determination until a decision on the request for review has been issued by PBGC.

(b) *Exception.* Except for initial determinations listed in § 4003.1(e)(2), (3), and (6), PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When PBGC makes such an order, the initial determination will state that it constitutes the final agency action effective on the date of issuance, there is no right to request review under subparts C and D of this part, and any person aggrieved by the initial determination has exhausted all administrative remedies.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

Subpart C—Reconsideration of Initial Determinations

§ 4003.31 Who may request reconsideration.

Any person aggrieved by an initial determination of PBGC to which this subpart applies may request reconsideration of the initial determination.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.32 When to request reconsideration.

Except as provided in §§ 4003.4 and 4003.5, a request for reconsideration must be filed within 30 days after the date of the initial determination of which reconsideration is sought or, when administrative review includes a procedure in part 4903 of this chapter, by the date that is specified in PBGC's notice of the right to request review.

[61 FR 34012, July 1, 1996, as amended at 75 FR 68205, Nov. 5, 2010; 85 FR 10284, Feb. 24, 2020]

§ 4003.33 Where to submit request for reconsideration.

A request for reconsideration must be submitted to the Director of the department within PBGC that issued the initial determination, except that a request for reconsideration of an initial determination described in § 4003.1(d)(2)(ii) must be submitted to the Director. See § 4000.4 of this chapter for information on where to file.

[61 FR 34012, July 1, 1996, as amended at 68 FR 61352, Oct. 28, 2003; 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.34 Contents of request for reconsideration.

A request for reconsideration must—

(a) Be in writing;

(b) Be clearly designated as a request for reconsideration;

(c) Specifically explain why PBGC's determination is wrong and the result the requestor is seeking;

(d) Describe the relevant information the requestor believes is known by PBGC and summarize any other information that is relevant to the request for reconsideration; and

(e) Include copies of any documentation that supports the requestor's claim or assertions.

[85 FR 10284, Feb. 24, 2020]

§ 4003.35 Decision on request for reconsideration.

(a) Except as provided in paragraphs (a)(1) or (a)(2), final decisions on requests for reconsideration will be issued by the same department of PBGC that issued the initial determination, by an official whose level of authority in that department is higher than that of the person who issued the initial determination.

(1) When an initial determination is issued by a Director of a department, the Director of a department (or an official designated by the Director of a department) will issue the decision on request for reconsideration of an initial determination other than one described in § 4003.1(d)(2)(ii).

(2) The Director (or an official designated by the Director) will issue the decision on a request for reconsideration of an initial determination described in § 4003.1(d)(2)(ii).

(b) The decision on a request for reconsideration shall be in writing, specify the relief granted, if any, state the reason(s) for the decision, and state that the person has exhausted his or her administrative remedies.

(c) The decision on a request for reconsideration constitutes the final agency action by PBGC with respect to the initial determination that was the subject of the request for reconsideration and is binding on all persons who participated in the request for reconsideration.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

Subpart D—Administrative Appeals

§ 4003.51 Who may appeal or participate in appeals.

Any person aggrieved by an initial determination to which this subpart applies may file an appeal. Any person who may be aggrieved by a decision under this subpart granting the relief requested in whole or in part may participate in the appeal in the manner provided in § 4003.57.

§ 4003.52 When to file.

Except as provided in §§ 4003.4 and 4003.5, an appeal under this subpart must be filed within 45 days after the date of the initial determination being appealed or, when administrative review includes a procedure in part 4903 of this chapter, by the date that is specified in PBGC's notice of the right to request review.

[61 FR 34012, July 1, 1996, as amended at 75 FR 68205, Nov. 5, 2010; 85 FR 10284, Feb. 24, 2020]

§ 4003.53 Where to file.

An appeal or a request for an extension of time to appeal must be submitted to the Appeals Board. See § 4000.4 of this chapter for additional information on where to file.

[61 FR 34012, July 1, 1996, as amended at 68 FR 61352, Oct. 28, 2003; 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.54 Contents of appeal.

(a) An appeal must—

(1) Be in writing;

(2) Be clearly designated as an appeal;

(3) Specifically explain why PBGC's determination is wrong and the result the appellant is seeking;

(4) Describe the relevant information the appellant believes is known by PBGC, and summarize any other information the appellant believes is relevant. It is important to include copies of any documentation that support the appellant's claim or the appellant's assertions about this information;

(5) State whether the appellant desires to appear in person or through a representative before the Appeals Board; and

(6) State whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process.

(b) In any case where the appellant believes that another person may be aggrieved if PBGC grants the relief sought, the appeal must also include the name(s) and address(es) (if known) of such other person(s).

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.55 Opportunity to appear and to present witnesses.

(a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

(b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses will contribute to the resolution of a factual dispute.

(c) Appearances permitted under this section will take place at the main offices of PBGC, as listed on PBGC's website, *www.pbgc.gov*, unless the Appeals Board, in its discretion, designates a different location, either on

its own initiative or at the request of the appellant or a third party participating in the appeal.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.56 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.

(c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal will be binding on all appellants whose appeals were subject to the consolidation.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.57 Appeals affecting third parties.

(a) Before the Appeals Board issues a decision granting, in whole or in part, the relief requested in an appeal, it will make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:

(1) The pendency of the appeal;

(2) The grounds upon which the appeal is based;

(3) The grounds upon which the Appeals Board is considering reversing the initial determination;

(4) The right to submit written comments on the appeal;

(5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and

(6) That no further opportunity to present information to PBGC with respect to the initial determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.58 Powers of the Appeals Board.

(a) In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

(b) The Appeals Board may refer certain appeals to another PBGC department or to Appeals Board staff to provide a response to the appellant. The response from another PBGC department or Board staff will be in writing and address the matters raised in the appeal. The response may be in the form of an explanation or corrected benefit determination. In either case, the appellant will have 45 calendar-days from the date of the response to file a written request for review by the Appeals Board. If a written request for review is not filed with the Appeals Board within the 45-calendar-day period the initial determination will become effective pursuant to § 4003.22(a).

(1) Appeals that may be referred to another PBGC department or to the Board staff include those that—

(i) Request an explanation of the initial determination being appealed;

(ii) Dispute specific data used in the initial determination, such as date of hire, date of retirement, date of termination of employment, length of service, compensation, marital status and form of benefit elected; or

(iii) Request an explanation of the limits on benefits payable by PBGC under part 4022, subpart B, such as the maximum guaranteeable benefit and phase-in of the PBGC guarantee.

(2) An explanation or corrected benefit determination issued under this subsection is not considered a decision of the Appeals Board. If an appellant aggrieved by PBGC's initial determination is issued an explanation or corrected benefit determination under this section, the appellant has not exhausted his or her administrative remedies until the appellant has filed a

timely request with the Appeals Board for review and the Appeals Board has issued a decision granting or denying the relief requested. See § 4003.7 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board will consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by PBGC with respect to the initial determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board will be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the appellant has exhausted his or her administrative remedies.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.60 Referral of appeal to the Director.

The Appeals Board may, in its discretion, refer any appeal to the Director of PBGC for decision. In such a case, the Director will have all the powers vested in the Appeals Board by this subpart and the decision of the Director will meet the requirements of and have the effect of a decision issued under § 4003.59 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

[67 FR 47695, July 22, 2002]

SUBCHAPTER B—PREMIUMS

PART 4006—PREMIUM RATES

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1306, 1307.

SOURCE: 61 FR 34016, July 1, 1996, unless otherwise noted.

§ 4006.1 Purpose and scope.

This part, which applies to all plans covered by title IV of ERISA, provides rules for computing the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4007 of this chapter for rules for the payment of premiums, including due dates and late payment charges.)

§ 4006.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, ERISA, fair market value, insurer, irrevocable commitment, mandatory employee contributions, multiemployer plan, notice of intent to terminate, PBGC, plan administrator, plan, plan year, single-employer plan, and termination date.

In addition, for purposes of this part:

Continuation plan means a new plan resulting from a consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(*l*) of the Code.

New plan means a plan that did not exist before. the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan even if the plan constitutes a successor plan within the meaning of section 4021(a) of ERISA.

Newly covered plan means a plan that becomes covered by title IV of ERISA during the premium payment year and that existed as an uncovered plan immediately before the first date in the premium payment year on which it was a covered plan.

Participant has the meaning described in § 4006.6.

Participant count of a plan means the number of participants in the plan on the participant count date of the plan.

Participant count date of a plan means the date provided for in § 4006.5(c), (d), or (e) as applicable.

Premium funding target has the meaning described in § 4006.4(b)(1).

Premium payment year means the plan year for which the premium is being paid.

Short plan year means a plan year of coverage that is shorter than a normal plan year.

Small plan means a plan—

(1) Whose participant count is not more than 100, or

(2) Whose funding valuation date for the premium payment year, determined in accordance with ERISA section 303(g)(2), is not the first day of the premium payment year.

UVB valuation date of a plan means the plan's funding valuation date for the UVB valuation year, determined in accordance with ERISA section 303(g)(2).

UVB valuation year of a plan means—

(1) In general,—

(i) The plan year preceding the premium payment year, if the plan is a small plan other than a continuation plan, or

(ii) The premium payment year, in any other case; or

(2) For a small plan that so opts subject to PBGC premium instructions, the premium payment year.

[61 FR 34016, July 1, 1996, as amended at 65 FR 75163, Dec. 1, 2000; 73 FR 15074, Mar. 21, 2008; 79 FR 13559, Mar. 11, 2014]

§ 4006.3 Premium rate.

Subject to the provisions of § 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans), the premium paid for basic benefits guaranteed under section 4022(a) or section 4022A(a) of ERISA shall equal the flat-rate premium under paragraph (a) of this section

plus, in the case of a single-employer plan, the variable-rate premium under paragraph (b) of this section. Premium rates (and the MAP–21 cap rate referred to in paragraph (b)(2) of this section) are subject to change each year under inflation indexing provisions in section 4006 of ERISA.

(a) *Flat-rate premium.* The flat-rate premium for a plan is equal to the applicable flat premium rate multiplied by the plan's participant count. The applicable flat premium rate is the amount prescribed for the calendar year in which the premium payment year begins by the applicable provisions of—

(1) ERISA section 4006(a)(3)(A), (F), and (G) for a single-employer plan, or

(2) ERISA section 4006(a)(3)(A), (H), and (J) for a multiemployer plan.

(b) *Variable-rate premium*—(1) *In general.* Subject to the cap provisions in paragraphs (b)(2) and (b)(3) of this section, the variable-rate premium for a single-employer plan is equal to a specified dollar amount for each $1,000 (or fraction thereof) of the plan's unfunded vested benefits as determined under § 4006.4 for the UVB valuation year. The specified dollar amount is the applicable variable premium rate prescribed by the applicable provisions of ERISA section 4006(a)(8) for the calendar year in which the premium payment year begins.

(2) *MAP–21 cap.* The variable-rate premium for a plan is not more than the applicable MAP–21 cap rate multiplied by the plan's participant count. The applicable MAP–21 cap rate is the amount prescribed by the applicable provisions of ERISA section 4006(a)(3)(E)(i)(II), (E)(i)(III), (K), and (L) for the calendar year in which the premium payment year begins.

(3) *Small-employer cap.* (i) *In general.* If a plan is described in paragraph (b)(3)(ii) of this section for the premium payment year, the variable-rate premium is not more than $5 multiplied by the square of the participant count. For example, if the participant count is 20, the variable-rate premium is not more than $2,000 ($5 × 20^2 = $5 × 400 = $2,000).

(ii) *Plans eligible for cap.* A plan is described in paragraph (b)(3)(ii) of this section for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(iii) *Meaning of ''employee.''* For purposes of paragraph (b)(3)(ii) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

[61 FR 34016, July 1, 1996, as amended at 72 FR 71228, Dec. 17, 2007; 73 FR 15074, Mar. 21, 2008; 79 FR 13559, Mar. 11, 2014]

§ 4006.4 Determination of unfunded vested benefits.

(a) *In general.* Except as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits for the UVB valuation year is the excess (if any) of the plan's premium funding target for the UVB valuation year (determined under paragraph (b) of this section) over the fair market value of the plan's assets for the UVB valuation year (determined under paragraph (c) of this section). Unfunded vested benefits for the UVB valuation year must be determined as of the plan's UVB valuation date , based on the plan provisions and the plan's population as of that date. The determination must be made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Premium funding target*—(1) *In general.* A plan's premium funding target is its standard premium funding target under paragraph (b)(2) of this section or, if an election to use the alternative premium funding target under § 4006.5(g) is in effect, its alternative premium funding target under § 4006.5(g).

(2) *Standard premium funding target.* A plan's standard premium funding target under this section is the plan's funding target as determined under ERISA section 303(d) (or 303(i), if applicable) for the UVB valuation year using the same assumptions that are used for funding purposes, except that—

(i) Only vested benefits are taken into account, and

(ii) The interest rates to be used are the segment rates for the month preceding the month in which the UVB valuation year begins that are determined in accordance with ERISA section 4006(a)(3)(E)(iv). These are the rates that would be determined under ERISA section 303(h)(2)(C) if ERISA section 303(h)(2)(D) were applied by using the monthly yields for the month preceding the month in which the UVB valuation year begins on investment grade corporate bonds with varying maturities and in the top 3 quality levels rather than the average of such yields for a 24-month period. For this purpose, the transition rule in ERISA section 303(h)(2)(G) is inapplicable.

(3) *''At-risk'' plans; transition rules; loading factor.* The transition rules in ERISA section 303(i)(5) apply to the determination of the premium funding target of a plan in at-risk status for funding purposes. If a plan in at-risk status is also described in ERISA section 303(i)(1)(A)(ii) for the UVB valuation year, its premium funding target reflects a loading factor pursuant to ERISA section 303(i)(1)(C) equal to the sum of—

(i) *Per-participant portion of loading factor.* The amount determined for funding purposes under ERISA section 303(i)(1)(C)(i) for the UVB valuation year, and

(ii) *Four percent portion of loading factor.* Four percent of the premium funding target determined as if the plan were not in at-risk status.

(c) *Value of assets.* The fair market value of a plan's assets under this section is determined in the same manner as for funding purposes under ERISA section 303(g)(3) and (4), except that averaging as described in ERISA section 303(g)(3)(B) must not be used and prior year contributions are included only to the extent received by the plan by the date the premium is filed. Contribution receipts must be accounted for as described in ERISA section 303(g)(4), using effective interest rates determined under ERISA section 303(h)(2)(A) (not rates that could be determined based on the segment rates described in paragraph (b)(2) of this section).

(d) *''Vested.''* For purposes of ERISA section 4006(a)(3)(E), this part, and part 4007 of this chapter:

(1) A participant's benefit that is otherwise vested does not fail to be vested merely because of the circumstance that the participant is living, in the case of the following death benefits:

(i) A qualified pre-retirement survivor annuity (as described in ERISA section 205(e)), (ii) A post-retirement survivor annuity that pays some or all of the participant's benefit amount for a fixed or contingent period (such as a joint and survivor annuity or a certain and continuous annuity), and

(iii) A benefit that returns the participant's accumulated mandatory employee contributions (as described in ERISA section 204(c)(2)(C)).

(2) A benefit otherwise vested does not fail to be vested merely because of the circumstance that the benefit may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status).

(3) A participant's pre-retirement lump-sum death benefit (other than a benefit described in paragraph (d)(1)(iii) of this section) is not vested if the participant is living.

(4) A participant's disability benefit is not vested if the participant is not disabled.

(e) Illustration of vesting principles. The vesting principles set forth in paragraph (d) of this section are illustrated by the following examples:

(1) *Example 1.* Under Plan A, if a participant retires at or after age 55 but before age 62, the participant receives a temporary supplement from retirement until age 62. The supplement is not a QSUPP (qualified social security supplement), as defined in Treasury Reg. §1.401(a)(4)–12, and is not protected under Code section 411(d)(6). The temporary supplement is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, is at least 55 but less than 62, and thus eligible for the supplement. The calculation is unaffected by the fact that the plan could be amended to remove the supplement after the UVB valuation date.

(2) *Example 2.* Plan B provides a qualified pre-retirement survivor annuity (QPSA) upon the death of a participant who has five years of service, at no charge to the participant. The QPSA is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, has five years of service and is thus eligible for the QPSA. The calculation is unaffected by the fact that the participant is alive on that date.

(f) *Plans to which special funding rules apply.* The following statutory provisions are disregarded for purposes of determining unfunded vested benefits (whether the standard premium funding target or the alternative premium funding target is used):

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

[73 FR 15074, Mar. 21, 2008, as amended at 79 FR 13560, Mar. 11, 2014; 85 FR 6058, Feb. 4, 2020]

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1) through (5) of this section is not required to determine or report its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

(1) *Plans without vested participants.* A plan is described in this paragraph if it does not have any participants with vested benefits as of the UVB valuation date.

(2) *Section 412(e)(3) plans.* A plan is described in this paragraph if the plan is a plan described in section 412(e)(3) of the Code and the regulations thereunder on the UVB valuation date.

(3) *Certain plans completing a standard termination.* A plan is described in this paragraph if it—

(i) Makes a final distribution of assets in a standard termination during the premium payment year, and

(ii) Did not engage in a spinoff during the premium payment year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Certain plans in the process of completing a standard termination initiated in a prior year.* A plan is described in this paragraph if —

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA;

(ii) The proposed termination date set forth in the notice of intent to terminate is before the beginning of the premium payment year; and

(iii) The plan ultimately makes a final distribution of plan assets in conjunction with the plan termination.

(5) *Certain small new and newly covered plans.* A plan is described in this paragraph if—

(i) It is a small plan other than a continuation plan, and

(ii) It is a new plan or a newly covered plan.

(b) *Reporting exemption for plans paying capped variable-rate premium.* A plan that qualifies for the variable-rate premium cap described in ERISA section 4006(a)(3)(H) is not required to determine or report its unfunded vested benefits under § 4006.4 if it reports that it qualifies for the cap and pays a variable-rate premium equal to the amount of the cap.

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant count date of a plan is the last day of the plan year preceding the premium payment year.

(d) *Participant count date; new and newly covered plans.* The participant count date of a new plan or a newly covered plan is the first day of the premium payment year. For this purpose, a new plan's premium payment year begins on the plan's effective date.

(e) *Participant count date; certain transactions.* (1) The participant count date of a plan described in paragraph (e)(2) or (3) of this section is the first day of the premium payment year.

(2) With respect to a transaction where some, but not all, of the assets

and liabilities of one plan (the ''transferor plan'') are transferred into another plan (the ''transferee plan'')—

(i) The transferor plan if the spinoff is not de minimis and is effective at the beginning of the transferor plan's premium payment year; and

(ii) The transferee plan if the transferor plan meets the criteria in paragraph (e)(2)(i) of this section and the transfer occurs at the beginning of the transferee plan's premium payment year.

(3) With respect to a merger effective at the beginning of the premium payment year, the transferee plan if—

(i) The merger is not de minimis; or

(ii) The assets of the transferee plan immediately before the merger are less than the total assets transferred to the transferee plan in the merger.

(4) For purposes of this paragraph (e), ''de minimis'' has the meaning described in regulations under section 414(l) of the Code (for single-employer plans) or in part 4231 of this chapter (for multiemployer plans).

(f) *Proration for certain short plan years.* The premium for a plan that has a short plan year described in this paragraph (f) is prorated by the number of months in the short plan year (treating a part of a month as a month). The proration applies whether or not the short plan year ends by the premium due date for the short plan year. For purposes of this paragraph (f), there is a short plan year in the following circumstances:

(1) *New or newly covered plan.* A new plan becomes effective less than one full year before the beginning of its second plan year, or a newly covered plan becomes covered on a date other than the first day of its plan year. (Cessation of coverage before the end of a plan year does not give rise to proration under this section.)

(2) *Change in plan year.* A plan amendment changes the plan year, but only if the plan does not merge into or consolidate with another plan or otherwise cease its independent existence either during the short plan year or at the beginning of the full plan year following the short plan year.

(3) *Distribution of assets.* The plan's assets (other than any residual assets under section 4044(d) of ERISA) are distributed pursuant to the plan's termination, but only if the plan did not engage in a spinoff during the plan year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Appointment of trustee.* The plan is a single-employer plan, and a plan trustee is appointed pursuant to section 4042 of ERISA.

(g) *Alternative premium funding target.* A plan's alternative premium funding target is determined in the same way as its standard premium funding target except that the discount rates described in ERISA section 4006(a)(3)(E)(iv) are not used. Instead, the alternative premium funding target is determined using the discount rates that would have been used to determine the funding target for the plan under ERISA section 303 for the purpose of determining the plan's minimum contribution under ERISA section 303 for the UVB valuation year if the segment rate stabilization provisions of ERISA section 303(h)(2)(iv) were disregarded. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the election first applies must begin at least five years after the beginning of the premium payment year to which a revocation of a prior election first applied. The election will be effective—

(i) For the premium payment year for which made and for all plan years

that begin less than five years thereafter, and

(ii) For all succeeding plan years until the premium payment year to which a revocation of the election first applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the revocation first applies must begin at least five years after the beginning of the premium payment year to which the election first applied.

[61 FR 34016, July 1, 1996, as amended at 62 FR 60428, Nov. 7, 1997; 65 FR 75163, Dec. 1, 2000; 71 FR 31081, June 1, 2005; 73 FR 15075, Mar. 21, 2008; 79 FR 13560, Mar. 11, 2014; 85 FR 6058, Feb. 4, 2020]

§ 4006.6 Definition of "participant."

(a) *General rule.* For purposes of this part and part 4007 of this chapter, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date.

(b) *Loss or distribution of benefit.* For purposes of this section, an individual is treated as no longer being a participant—

(1) In the case of an individual with no vested accrued benefit, after—

(i) The individual incurs a one-year break in service under the terms of the plan,

(ii) The individual's entire ''zero-dollar'' vested accrued benefit is deemed distributed under the terms of the plan, or

(iii) The individual dies; and

(2) In the case of a living individual whose accrued benefit is fully or partially vested, or a deceased individual whose accrued benefit was fully or partially vested at the time of death, after—

(i) An insurer makes an irrevocable commitment to pay all benefit liabilities with respect to the individual, or

(ii) All benefit liabilities with respect to the individual are otherwise distributed.

(c) *Examples.* The operation of this section is illustrated by the following examples:

Example 1. Participation under a calendar-year plan begins upon commencement of employment, and the only benefit provided by the plan is an accrued benefit (expressed as a life annuity beginning at age 65) of $30 per month times full years of service. The plan credits a ratable portion of a full year of service for service of at least 1,000 hours but less than 2,000 hours in a service computation period that begins on the date when the participant commences employment and each anniversary of that date. John and Mary both commence employment on July 1, 2008. On December 31, 2008 (the participant count date for the plan's 2009 premium), John has credit for 988 hours of service and Mary has credit for 1,006 hours of service. For purposes of this section, Mary is considered to have an accrued benefit, and John is considered not to have an accrued benefit. Thus, the plan is considered to have benefit liabilities with respect to Mary, but not John, on December 31, 2008; and Mary, but not John, must be counted as a participant for purposes of computing the plan's 2009 premium.

Example 2. The plan also provides that a participant becomes vested five years after commencing employment and defines a one-year break in service as a service computation period in which less than 500 hours of service is performed. On February 1, 2010, John has an accrued benefit of $18 per month beginning at age 65 based on credit for 1,200 hours of service in the service computation period that began July 1, 2008. However, John has credit for only 492 hours of service in the service computation period that began July 1, 2009. On February 1, 2010, John terminates his employment. On December 31, 2010 (the participant count date for the 2011 premium), John has incurred a one-year break in service, and thus is not counted as a participant for purposes of computing the plan's 2011 premium.

Example 3. On January 1, 2012, the plan is amended to provide that if a vested participant whose accrued benefit has a present value of $5,000 or less leaves employment, the benefit will be immediately cashed out. On December 30, 2013, Jane, who has a vested benefit with a present value of less than $5,000, leaves employment. Because of reasonable administrative delay in determining the amount of the benefit to be paid, the plan does not pay Jane the value of her benefit until January 9, 2014. Under the provisions of this section, Jane is treated as not having an accrued benefit on December 31, 2013 (the participant count date for the 2014 premium), because Jane's benefit is treated as having been paid on December 30, 2013. Thus, Jane is not counted as a participant

for purposes of computing the plan's 2014 premium.

Example 4. If the plan amendment had instead provided for cashouts as of the first of the month following termination of employment, and the plan paid Jane the value of her benefit on January 1, 2014, Jane would be treated under the provisions of this section as having an accrued benefit on December 31, 2013, and would thus be counted as a participant for purposes of computing the plan's 2014 premium.

[65 FR 75163, Dec. 1, 2000, as amended at 73 FR 15076, Mar. 21, 2008]

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section (''termination premium'') applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date, multiplied by the termination premium rate. In general, the termination premium rate is $1,250. However, the termination premium rate is $2,500 for an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

[72 FR 71229, Dec. 17, 2007, as amended at 79 FR 13561, Mar. 11, 2014]

PART 4007—PAYMENT OF PREMIUMS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

SOURCE: 61 FR 34020, July 1, 1996, unless otherwise noted.

§ 4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

§ 4007.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, IRS, notice of intent to terminate, PBGC, plan, plan administrator, plan year, single-employer plan, and termination date.

(b) For purposes of this part, the following terms are defined in § 4006.2 of this chapter: continuation plan, new plan, newly covered plan, participant, participant count, premium funding target, premium payment year short plan year, small plan, and UVB valuation date.

[61 FR 34020, July 1, 1996, as amended at 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of

premiums must be made in accordance with the premium instructions on PBGC's Web site (*www.pbgc.gov*). Subject to the provisions of § 4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

(b) *Electronic filing.* Information must be filed electronically except to the extent that PBGC grants an exemption for good cause in appropriate circumstances. (The requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply to information filed to comply with a PBGC request under (4007.10(c) (dealing with providing record information in connection with a premium compliance review).) Unless an exemption applies, filing on paper or in any other manner other than by a prescribed electronic filing method does not satisfy the requirement to file. Failure to file electronically as required is subject to penalty under ERISA section 4071.

[71 FR 31081, June 1, 2006, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

§ 4007.4 Where to file.

See § 4000.4 of this chapter for information on where to file.

[71 FR 31081, June 1, 2006]

§ 4007.5 Date of filing.

The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

[68 FR 61352, Oct. 28, 2003]

§ 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[68 FR 61352, Oct. 28, 2003]

§ 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by this part, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) With respect to any PBGC bill for a premium underpayment and/or interest thereon, interest will accrue only until the date of the bill if the premium underpayment and interest billed are paid within 30 days after the date of the bill.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008]

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* Subject to the provisions of § 4007.13, if any premium payment due under this part is not paid by the due date under this part, PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (h) of this section. The amount determined under this paragraph (a) will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment. The penalty rate is—

(1) For any amount of unpaid premium that is paid on or before the date PBGC issues the first written notice to any person liable for the premium that there is or may be a premium delinquency (for example, a premium bill, a letter initiating a premium compliance review, a notice of filing error in premium determination, or a letter questioning a failure to make a premium filing), ½ percent per month, to a maximum penalty charge of 25 percent of the unpaid premium; or

(2) For any amount of unpaid premium that is paid after that date, 2½ percent per month, to a maximum penalty charge of 50 percent of the unpaid premium.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) Reasonable cause waivers. PBGC will waive all or part of a late payment penalty charge if PBGC determines that there is reasonable cause for the late payment. Policy guidelines for applying the ''reasonable cause'' standard are in §§ 22 through 25 of the appendix to this part.

(d) *Other waivers.* PBGC may waive all or part of a late payment penalty charge in other circumstances without regard to whether there is reasonable cause. Policy guidelines for waivers without reasonable cause are in § 21(b)(1), (b)(3), (b)(4), and (b)(5) of the appendix to this part.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Filings not more than 7 days late.* PBGC will waive premium payment penalties that arise solely because premium payments are late by not more than seven calendar days, as described in this paragraph (f). In applying this waiver, PBGC will assume that each premium payment with respect to a plan year was made seven calendar days before it was actually made. All other rules will then be applied as usual. If the result of this procedure is that no penalty would arise for that plan year, then any penalty that would apply on the basis of the actual payment date(s) will be waived.

(g) *Variable-rate premium penalty relief.* PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(1),—

(1) The plan administrator reports—

(i) The fair market value of the plan's assets for the premium payment year, and

(ii) An estimate of the plan's premium funding target for the premium payment year that is certified by an enrolled actuary to be a reasonable estimate that takes into account the most current data available to the enrolled actuary and that has been determined in accordance with generally accepted actuarial principles and practices; and

(2) The plan administrator pays at least the amount of variable-rate premium determined from the value of assets and estimated premium funding target so reported.

(h) *Demonstrated compliance.* PBGC will waive 80 percent of the premium payment penalty assessed under paragraph (a)(2) of this section if the criteria in paragraphs (h)(1) and (2) of this section are met.

(1) For each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined,—

(i) Any required premium filing for the plan has been made; and

(ii) PBGC has not required payment of a penalty for the plan under this section.

(2) For the plan year for which the penalty rate is being determined, the total amount of premium is paid no later than 30 days after PBGC issues the first written notice as described in paragraph (a)(1) of this section.

[64 FR 66385, Nov. 26, 1999, as amended at 65 FR 75164, Dec. 1, 2000; 71 FR 66869, Nov. 17, 2006; 72 FR 71229, Dec. 17, 2007; 73 FR 15076, Mar. 21, 2008; 79 FR 350, Jan. 3, 2014; 79 FR 13561, Mar. 11, 2014; 81 FR 65545, Sept. 23, 2016]

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure to pay the premiums due under this part will not result in a plan's loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of

ERISA for plans not covered under title IV of ERISA.

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007]

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* The designated recordkeeper under paragraph (a)(3) of this section must retain, for a period of six years after the premium due date, all plan records that are necessary to establish, support, and validate the amount of any premium required to be paid and any information required to be reported (''premium-related information'') under this part and part 4006 of this chapter and under PBGC's premium filing instructions. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that support and demonstrate the calculation of unfunded vested benefits.

(2) *Electronic recordkeeping.* A designated recordkeeper may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(3) *Designated recordkeepers.*

(i) With respect to the flat-rate and variable-rate premiums described in § 4006.3 of this chapter, the plan administrator is the designated recordkeeper.

(ii) With respect to the premium for certain terminated single-employer plans described in § 4006.7 of this chapter, each person who was a contributing sponsor of such a plan, or was a member of a contributing sponsor's controlled group, as of the day before the plan's termination date is a designated recordkeeper.

(4) *Records.* (i) Records that must be retained pursuant to paragraph (a)(1) of this section include, but are not limited to, records prepared by the plan administrator, a plan sponsor, an employer required to contribute to the plan with respect to its employees, an enrolled actuary performing services for the plan, or an insurance carrier issuing any contract to pay benefits under the plan.

(ii) For purposes of this section, ''records'' include, but are not limited to, plan documents; participant data records; personnel and payroll records; actuarial tables, worksheets, and reports; records of computations, projections, and estimates; benefit statements, disclosures, and applications; financial and tax records; insurance contracts; records of plan procedures and practices; and any other records, whether in written, electronic, or other format, that are relevant to the determination of the amount of any premium required to be paid or any premium-related information required to be reported.

(iii) When a record to be produced for PBGC inspection and copying exists in more than one format, it must be produced in the format specified by PBGC.

(b) *PBGC audit*—(1) *In general.* In order to determine the correctness of any premium paid or premium-related information reported or to determine the amount of any premium required to be paid or any premium-related information required to be reported, PBGC may—

(i) Audit any premium filing,

(ii) Inspect and copy any records that are relevant to the determination of the amount of any premium required to be paid and any premium-related information required to be reported, including (without limitation) the records described in paragraph (a) of this section, and

(iii) Require disclosure of any manual or automated system or process used to determine any premium paid or premium-related information reported, and demonstration of its operation in order to permit PBGC to determine the effectiveness of the system or process and the reliability of information produced by the system or process.

(2) *Deficiencies found on audit.* If, upon audit, PBGC determines that a premium due under this part was underpaid, late payment interest and penalty charges will apply as provided for in this part. If, upon audit, PBGC determines that required information was not timely and accurately reported, a penalty may be assessed under ERISA section 4071.

(3) *Insufficient records.* In determining the premium due, if, in the judgment of PBGC, a plan's records fail to establish the participant count or (for a single-

employer plan) the plan's unfunded vested benefits for any premium payment year, PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the participant count and/or unfunded vested benefits for premium computation purposes.

(c) *Providing record information*—(1) *In general.* A designated recordkeeper must make the records retained pursuant to paragraph (a) of this section available to PBGC promptly upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location). If PBGC requests in writing that records retained pursuant to paragraph (a) of this section, or information in such records, be submitted to PBGC, the designated recordkeeper must submit the requested materials to PBGC either electronically or by hand, mail, or commercial delivery service within 45 days of the date of PBGC's request therefor, or by a different time specified in the request.

(2) *Extension.* Except as provided in paragraph (c)(3) of this section, a designated recordkeeper may automatically extend the period described in paragraph (c)(1) by submitting a certification to the PBGC prior to the expiration of that time period. The certification shall—

(i) Specify a date to which the time period described in paragraph (c)(1) is extended that is no more than 90 days from the date of the PBGC's written request for information; and

(ii) Contain a statement, certified to by the designated recordkeeper under penalty of perjury (18 U.S.C. §1001), that, despite reasonable efforts, the additional time is necessary to comply with the PBGC's request.

(3) *Shortening of time period.* The PBGC may in its discretion shorten the time period described in paragraph (c)(1) or (c)(2) of this section where it determines that the interests of PBGC may be prejudiced by a delay in the receipt of the information (e.g., where collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized). If the PBGC shortens the time period described in paragraph (c)(1), no extension is available under paragraph (c)(2).

(d) *Address and timeliness.* Information required to be submitted under paragraph (c) of this section shall be submitted to the address specified in the PBGC's request. The timeliness of a submission shall be determined in accordance with §§ 4007.5 and 4007.6.

[61 FR 34020, July 1, 1996, as amended at 62 FR 36663, July 9, 1997; 68 FR 61352, Oct. 28, 2003; 72 FR 71229, Dec. 17, 2007; 73 FR 15077, Mar. 21, 2008]

§ 4007.11 Due dates.

(a) *In general.* In general:

(1) The flat-rate and variable-rate premium filing due date is the fifteenth day of the tenth calendar month that begins on or after the first day of the premium payment year.

(2) If the variable-rate premium paid by the premium filing due date is estimated as described in §4007.8(g)(1)(ii), a reconciliation filing and any required variable-rate premium payment must be made by the end of the sixth calendar month that begins on or after the premium filing due date.

(3) *Small plan transition rule.* Notwithstanding paragraph (a)(1) of this section, if a plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the last plan year that began before 2014, then the plan's due date for the first plan year beginning after 2013 is the fifteenth day of the fourteenth calendar month that begins on or after the first day of that plan year.

(b) *Plans that change plan years.* For a plan that changes its plan year, the flat-rate and variable-rate premium filing due date for the short plan year is as specified in paragraph (a) of this section. For the plan year that follows a short plan year, the due date is the later of —

(1) The due date specified in paragraph (a) of this section, or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *New and newly covered plans.* For a new plan or newly covered plan, the flat-rate and variable-rate premium filing due date for the first plan year of coverage is the latest of—

(1) The due date specified in paragraph (a) of this section, or

(2) 90 days after the date of the plan's adoption, or

(3) 90 days after the date on which the plan became covered by title IV of ERISA, or

(4) In the case of a small plan that is a continuation plan, 90 days after the plan's UVB valuation date.

(d) *Terminating plans.* For a plan that terminates in a standard termination, the flat-rate and variable-rate premium filing due date for the plan year in which all plan assets are distributed pursuant to the plan's termination is the earlier of—

(1) The due date specified in paragraph (a) of this section, or

(2) The date when the post-distribution certification under § 4041.29 of this chapter is filed.

(e) *Continuing obligation to file.* The obligation to make flat-rate and variable-rate premium filings and payments under this part continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier.

[79 FR 13561, Mar. 11, 2014]

§ 4007.12 Liability for single-employer premiums.

(a) The designation under this part of the plan administrator as the person required to make flat-rate and variable-rate premium filings and payments under this part for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for flat-rate and variable-rate premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) After a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) the first notice of intent to terminate in a distress termination under section 4041(c) of ERISA or PBGC issues a notice of determination under section 4042(a) of ERISA, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

(Approved by the Office of Management and Budget under control number 1212–0009)

[61 FR 34020, July 1, 1996, as amended at 72 FR 71229, Dec. 17, 2007; 79 FR 13562, Mar. 11, 2014]

§ 4007.13 Premiums for certain terminated single-employer plans.

(a) *Applicability*—(1) *In general.* This section applies where there is a ''DRA 2005 termination'' of a plan. Subject to paragraph (a)(2) of this section, there is a DRA 2005 termination where a single-employer plan's termination date is after 2005 and either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) or (iii) of ERISA.

(2) *Plans terminated during reorganization proceedings.* Except as provided in paragraph (a)(3) of this section, a DRA 2005 termination of a plan does not occur where as of the plan's termination date—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State),

(iii) The person has not been discharged from the proceeding, and

(iv) The proceeding was filed before October 18, 2005.

(3) *Special rule for certain airline-related plans.* Paragraph (a)(2) of this section does not apply to an ''eligible plan'' under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan.

(4) *Termination premium.* A premium as described in §4006.7 of this chapter is payable to PBGC with respect to a DRA 2005 termination each year for three years after the termination (the ''termination premium'').

(b) *Filing requirements; method of filing.* Notwithstanding §4007.3, in the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member is responsible for filing prescribed termination premium information and payments. Any such person may file on behalf of all such persons.

(c) *Late payment penalty charges.* Notwithstanding §4007.8(a), if any required termination premium payment is not filed by the due date under paragraph (d) of this section, PBGC may assess a late payment penalty charge based on the facts and circumstances, subject to waiver under §4007.8(b), (c), (d), or (e). The charge will not exceed the amount of termination premium not timely filed.

(d) *Due dates.* Notwithstanding §4007.11, the due date for the termination premium is the 30th day of each of three applicable 12-month periods. The three applicable 12-month periods with respect to a DRA 2005 termination of a plan are—

(1) *First applicable 12-month period.* Except as provided in paragraph (e) or (f) of this section, the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the plan's termination date, and

(2) *Subsequent applicable 12-month periods.* Each of the first two periods of 12 calendar months that immediately follow the first applicable 12-month period.

(e) *Certain reorganization cases.* (1) This paragraph (e) applies with respect to a DRA 2005 termination of a plan if the conditions in both paragraph (e)(2) and paragraph (e)(3) of this section are satisfied.

(2) The condition of this paragraph (e)(2) is that either—

(i) The plan terminates under section 4042 of ERISA, or

(ii) The plan terminates under section 4041(c) of ERISA and at least one contributing sponsor or member of a contributing sponsor's controlled group meets the requirements of section 4041(c)(2)(B)(ii) of ERISA.

(3) The condition of this paragraph (e)(3) is that as of the plan's termination date—

(i) A bankruptcy proceeding has been filed by or against any person that was a contributing sponsor of the plan on the day before the plan's termination date or that was on that day a member of any controlled group of which any such contributing sponsor was a member,

(ii) The proceeding is pending as a reorganization proceeding under chapter 11 of title 11, United States Code (or under any similar law of a State or political subdivision of a State), and

(iii) The person has not been discharged from the proceeding.

(4) If this paragraph (e) applies with respect to a DRA 2005 termination of a plan, then except as provided in paragraph (f) of this section, the first applicable 12-month period with respect to the plan is the period of 12 calendar months beginning with the first calendar month following the calendar month in which occurs the earliest date when, for every person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, either—

(i) There is not pending any bankruptcy proceeding that was filed by or against such person and that was, as of the plan's termination date, a reorganization proceeding under chapter 11 of title 11, United States Code (or under

any similar law of a State or political subdivision of a State), or

(ii) The person has been discharged in any such proceeding, or

(iii) The person no longer exists.

(f) *Plan termination date in past when set.* If a plan's termination date is in the past when it is established by agreement or court action as described in section 4048 of ERISA, then the first applicable 12-month period for determining the due dates of the termination premium begins with the later of—

(1) The first calendar month following the calendar month in which the termination date is established by agreement or court action as described in section 4048 of ERISA, or

(2) The first calendar month specified in paragraph (d)(1) of this section or (if paragraph (e) of this section applies) paragraph (e)(4) of this section.

(g) *Liability for termination premiums.* In the case of a DRA 2005 termination of a plan, each person that was a contributing sponsor of the plan on the day before the plan's termination date, or that was on that day a member of any controlled group of which any such contributing sponsor was a member, is jointly and severally liable for termination premiums with respect to the plan.

[72 FR 71230, Dec. 17, 2007, as amended at 79 FR 13562, Mar. 11, 2014]

APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

Sec.

GENERAL PROVISIONS

1 What is the purpose of this Appendix?

This appendix sets forth principles and guidelines that we intend to follow in assessing, reviewing, and waiving premium penalties. However, this is only general policy guidance. Our action in each case is guided by the facts and circumstances of the case.

2 What defined terms are used in this Appendix?

The following terms are defined in part 4001 of this chapter: contributing sponsor, ERISA, PBGC, person, plan, and plan administrator. In addition, in this appendix:

(a) *Premium penalty* means a penalty under ERISA section 4007 and under this part for failing to pay a premium in full and on time.

(b) *Waiver* means reduction or elimination of a premium penalty that is being or has been assessed.

(c) *We* means PBGC.

(d) *You* means, according to the context,—

(1) A plan administrator, contributing sponsor, or other person, if—

(i) The person's action or inaction may be the basis for a premium penalty assessment,

(ii) The person may be required to pay the premium penalty, or

(iii) The person is requesting review of the premium penalty; or

(2) An employee or agent of, or advisor to, any of these persons.

3 What is the purpose of a premium penalty?

The basic purpose of a premium penalty is to encourage you to pay premiums in full and on time and to voluntarily self-correct any failure to do so.

4 What information is in this Appendix and how is it organized?

This Appendix has four divisions:

(a) *General provisions.* The General Provisions division (§§ 1–4) tells you the purpose and organization of the Appendix, the purpose of a premium penalty, and the definitions of terms used in the Appendix.

(b) *Premium penalty assessment.* The Premium Penalty Assessment division is reserved.

(c) *Waiver standards.* The Waiver Standards division (§§ 21–25) explains the principles that PBGC follows in waiving premium penalties.

(1) *Reasonable cause.* We waive premium penalties for reasonable cause, as explained in §§ 22–25.

(2) *Other waivers.* We also waive premium penalties in some other circumstances, such as mistake of law, as explained in §21.

(d) *Procedures.* The Procedures division is reserved.

PREMIUM PENALTY ASSESSMENT

[Reserved]

WAIVER STANDARDS

21 What are the standards for waiving a premium penalty?

(a) *Facts and circumstances.* In deciding whether to waive a premium penalty in whole or in part under paragraph (b), we consider the facts and circumstances of each case.

(b) *Waivers.*

(1) *Provisions of law.* We waive all or part of a premium penalty if a statute or regulation requires that we do so. For example, ERISA section 4007(b) and §4007.8 of this part provide for a waiver in certain circumstances involving business hardship, and §4007.8 of this part also provides , and for a waiver of a premium penalty that accrues after the date of a bill for a premium underpayment if you pay the premium owed within 30 days after the date of the bill, and for waivers in certain cases where you pay not more than a week late or where you estimate the variable-rate premium and then timely correct any underpayment.

(2) *Reasonable cause.* We waive a premium penalty if you show reasonable cause for a failure to pay a premium in full and on time. See §§22 through 25 for guidelines on ''reasonable cause'' waivers. If there is reasonable cause for only part of a failure to pay a premium, we waive the premium penalty only for that part.

(3) *Legal errors.* We may waive all or part of a premium penalty if the failure to pay a premium in full and on time that gives rise to the premium penalty results from certain kinds of legal errors.

(i) *Erroneous legal interpretation—disclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, we waive a premium penalty that arises from the failure if you promptly and adequately call our attention to the interpretation and the relevant facts, and the erroneous interpretation is not frivolous. If the interpretation affects a filing that you make with us, you should call our attention to the interpretation in writing with the filing. If you rely on the interpretation to justify not making a filing with us, you should call our attention to the interpretation in writing by the time prescribed for the filing not made.

(ii) *Erroneous legal interpretation—undisclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, and you do not promptly and adequately call our attention to the interpretation and the relevant facts, we may nevertheless waive a premium penalty if the weight of authority supporting the interpretation is substantial in relation to the weight of opposing authority and it is reasonable for you to rely on the interpretation.

(iii) *Recent change in the law.* We may waive all or part of a premium penalty if the law changes shortly before the date a premium payment is due and the premium payment that you make by the due date would have been correct under the law as in effect before the change. In determining whether and to what extent to grant a waiver in a case of this kind, we consider such factors as the length of time between the change in the law and the premium due date, the nature and timing of any publicity given to the change in the law, the complexity of the legal issues, and your general familiarity with those issues.

(4) *Pendency of PBGC procedures.* We may waive all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures. For example:

(i) If you request review of a premium penalty, and you make a non-frivolous argument in your request for review that you were not required to pay the premium or that you were, and still are, unable to obtain the information needed to determine the premium, we may waive the portion of the premium penalty that accrues during the review process. If you make such a non-frivolous argument with respect to a portion of the premium, we may apply this principle to that portion.

(ii) We may waive all or a part of a premium penalty if we believe that the pendency of PBGC procedures for identifying a premium delinquency and notifying you of the delinquency contributed to your failure to correct the delinquency more promptly.

(5) *Other circumstances.* We may waive all or part of a premium penalty in other circumstances if we determine that it is appropriate to do so.

(c) *Action or inaction of outside parties.* In some cases an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization may assist you in complying with PBGC requirements. If the outside individual's or firm's action, inaction, or advice causes or contributes to a failure to pay a premium in full and on time, we apply our waiver authority as if the outside individual or firm were part of your organization. In the case of an outside individual who is part of a firm, we generally consider both the individual and the firm to be part of your organization.

22 What is "reasonable cause"?

(a) *General rule.* In general, there is ''reasonable cause'' for a failure to pay a premium in full and on time to the extent that—

(1) The failure arises from circumstances beyond your control, and

(2) You could not avoid the failure by the exercise of ordinary business care and prudence.

(b) *Overlooking legal requirements.* Overlooking legal requirements does not constitute reasonable cause.

(c) *Action or inaction of outside parties.* If an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization assists you in complying with PBGC requirements, there is generally no reasonable cause for a failure to pay a premium in full and on time that arises from circumstances within the control of the outside individual or firm, or could be avoided by the exercise of ordinary business care and prudence by the outside individual or firm. The fact that you exercised care and prudence in selecting and monitoring the outside individual or firm is not a basis for a reasonable cause waiver.

(d) *Size of organization.* If an organization or one or more of its employees is responsible for taking action, the size of the organization may affect what ordinary business care and prudence would require. For example, ordinary business care and prudence would typically require a larger organization to establish more comprehensive backup procedures than a smaller organization for dealing with situations such as computer failure, the loss of important records, and the inability of an individual to carry out assigned responsibilities. Thus, there may be reasonable cause for a small organization's failure to pay a premium in full and on time even though, if the organization were larger, the exercise of ordinary business care and prudence would have avoided the failure.

(e) *Size of premium underpayment.* In general, the larger a premium, the more care and prudence you should use to make sure that you pay it in full and on time. Thus, there may be reasonable cause for a small underpayment even though, under the same circumstances, we would conclude that a larger underpayment could have been avoided by the exercise of ordinary business care and prudence.

(f) *Collection and enforcement.* In determining whether reasonable cause exists, we do not consider either—

(i) The likelihood or cost of collecting the premium penalty, or

(ii) The costs and risks of enforcing the premium penalty by litigation.

23 What kinds of facts does PBGC consider in determining whether there is reasonable cause for a failure to pay a premium?

In determining the extent to which a failure to pay a premium in full and on time arose from circumstances beyond your control and the extent to which you could have avoided the failure by the exercise of ordinary business care and prudence—and thus the extent to which waiver of a premium penalty for reasonable cause is appropriate—we consider facts such as the following:

(a) What event or circumstance caused the underpayment and when the event happened or the circumstance arose. The dates you give should clearly correspond with the underpayment upon which the premium penalty is based.

(b) How that event or circumstance kept you from paying the premium in full and on time. The explanation you give should relate directly to the failure to pay a premium that is the subject of the premium penalty.

(c) Whether you could have anticipated the event or circumstance.

(d) How you responded to the event or circumstance, including what steps you took, and how quickly you took them, to pay the premium and how you conducted other business affairs. Knowing how you responded to the event or circumstance may help us determine what degree of business care and prudence you were capable of exercising during that period and thus whether the failure to pay the premium could or could not have been avoided by the exercise of ordinary business care and prudence.

24 What are some situations that might justify a "reasonable cause" waiver?

The following examples illustrate some of the reasons often given for failures to pay premiums for which we may assess penalties. The situation described in each example may constitute reasonable cause, and each example lists factors we consider in determining whether to grant a premium penalty waiver for reasonable cause in a case of that kind.

(a) *An individual with responsibility for taking action was suddenly and unexpectedly absent or unable to act.* We consider such factors as the following: The nature of the event that caused the individual's absence or inability to act, for example, the resignation of the individual or the death or serious illness of the individual or a member of the individual's immediate family; the size of the organization and what kind of backup procedures it had to cope with such events; how close the event was to the deadline that was missed; how abrupt and unanticipated the event was; how the individual's absence or inability to act prevented compliance; how expensive it would have been to comply without the absent individual; whether and how other business operations and obligations were affected; how quickly and prudently a replacement for the absent individual was selected or other arrangements for compliance were made; and how quickly

a replacement for the absent individual took appropriate action.

(b) *A fire or other casualty or natural disaster destroyed relevant records or prevented compliance in some other way.* We consider such factors as the following: The nature of the event; how close the event was to the deadline that was missed; how the event caused the failure to pay the premium; whether other efforts were made to get needed information; how expensive it would have been to comply; and how you responded to the event.

(c) *You reasonably relied on erroneous oral or written advice given by a PBGC employee.* We consider such factors as the following: Whether there was a clear relationship between your situation and the advice sought; whether you provided the PBGC employee with adequate and accurate information; and whether the surrounding circumstances should have led you to question the correctness of the advice or information provided.

(d) *You were unable to obtain information, including records and calculations, needed to comply.* We consider such factors as the following: What information was needed; why the information was unavailable; when and how you discovered that the information was not available; what attempts you made to get the information or reconstruct it through other means; and how much it would have cost to comply.

25 What are some situations that might justify a partial "reasonable cause" waiver?

(a) Assume that a fire destroyed the records needed to compute a premium payment. If in the exercise of ordinary business care and prudence it should take you one month to reconstruct the records and pay the premium, but the payment was made two months late, it might be appropriate to waive that part of the premium penalty attributable to the first month the payment was late, but not the part attributable to the second month.

(b) Assume that a plan administrator underpaid the plan's flat-rate premium because of reasonable reliance on erroneous advice from a PBGC employee, and also underpaid the plan's variable-rate premium because the plan actuary used the wrong interest rate. A PBGC audit revealed both errors. PBGC billed the plan for a premium penalty of $5,000—$1,000 for underpayment of the flat-rate premium and $4,000 for underpayment of the variable-rate premium. The plan administrator requested a waiver of the premium penalty. While the erroneous PBGC advice constituted reasonable cause for underpaying the flat-rate premium, there was no showing of reasonable cause for the error in the variable-rate premium. Therefore, we would waive only the part of the premium penalty based on underpayment of the flat-rate portion of the premium ($1,000).

PROCEDURES

[Reserved]

[71 FR 66869, Nov. 17, 2006, as amended at 79 FR 13562, Mar. 11, 2014]

SUBCHAPTER C—CERTAIN REPORTING AND DISCLOSURE REQUIREMENTS

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1310.

SOURCE: 61 FR 34022, July 1, 1996, unless otherwise noted.

§ 4010.1 Purpose and scope.

This part prescribes the requirements for annual filings with PBGC under ERISA section 4010.

[61 FR 34022, July 1, 1996, as amended at 74 FR 11029, Mar. 16, 2009]

§ 4010.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value, IRS, PBGC, person, plan, plan year, unreduced retirement age (URA), ultimate parent, and U.S. entity.

In addition, for purposes of this part:

At-risk status means, with respect to a plan for a plan year, at-risk status as defined in ERISA section 303(i)(4) and Code section 430(i)(4).

Exempt entity means a person that does not have to file information and about which information does not have to be filed, as described in § 4010.4(c).

Exempt plan means a plan about which actuarial information does not have to be filed, as described in § 4010.8(c).

Fair market value of the plan's assets means the fair market value of the plan's assets at the end of the plan year ending within the filer's information year (determined without regard to any contributions receivable).

Filer means a person who is required to file reports, as described in § 4010.4.

Fiscal year means, with respect to a person, the person's annual accounting period or, if the person has not adopted a closing date, the calendar year.

Foreign entity means a member of a controlled group that —

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the information year, meets one of the following tests—

(i) Is not required to file any United States Federal income tax form;

(ii) Has no income reportable on any United States Federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States income tax returns for employee withholding.

4010 funding target attainment percentage means, with respect to a plan for a plan year, the percentage as determined under § 4010.4(b) for the plan year.

Funding target means, with respect to a plan for a plan year, the funding target as provided under ERISA section 303(d)(1) and Code section 430(d)(1) determined as of the valuation date for the plan year.

Information year means the information year determined under § 4010.5.

Valuation date means, with respect to a plan for a plan year, the valuation

date as determined under ERISA section 303(g)(2) and Code section 430(g)(2).

[61 FR 34022, July 1, 1996, as amended at 74 FR 11029, Mar. 16, 2009; 81 FR 15439, Mar. 23, 2016; 85 FR 6059, Feb. 4, 2020]

§ 4010.3 Filing requirement.

(a) *General.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where one or more waivers under § 4010.11 apply, each filer must submit to PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of the filer's controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by PBGC, the information must be submitted electronically in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*.

(b) *Single controlled group submission.* Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

[70 FR 11544, Mar. 9, 2005, as amended at 74 FR 11029, Mar. 16, 2009]

§ 4010.4 Filers.

(a) *General.* Unless a waiver in § 4010.11 of this part applies, a contributing sponsor of a plan and each member of the contributing sponsor's controlled group on the last day of the information year is a filer with respect to an information year (unless exempted under paragraph (c) of this section) if—

(1) For any plan (including an exempt plan) maintained by the members of the contributing sponsor's controlled group on the last day of the information year, the 4010 funding target attainment percentage for the plan year ending within the information year is less than 80 percent;

(2) Any member of the controlled group fails to make a required installment or other required payment to a plan and, as a result, the conditions for imposition of a lien described in ERISA section 303(k) or 306(g) and Code section 430(k) or 433(g) have been met during the information year, and the required installment or other required payment is not made within ten days after its due date; or

(3) Any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers under ERISA section 302(c) and Code section 412(c) totaling in excess of $1 million, and as of the end of the plan year ending within the information year, any portion thereof is still outstanding.

(b) 4010 *Funding target attainment percentage*—(1) *General.* The 4010 funding target attainment percentage for a plan for a plan year equals the funding target attainment percentage as provided under ERISA section 303(d)(2) and Code section 430(d)(2) determined without regard to the interest rate stabilization provisions of ERISA section 303(h)(2)(C)(iv) and Code section 430(h)(2)(C)(iv).

(2) *Assets used to determine 4010 funding target attainment percentage.* For purposes of determining the 4010 funding target attainment percentage for a plan for the plan year, the value of plan assets determined under ERISA section 303(g)(3) and Code section 430(g)(3) may (but need not) be substituted for the asset value determined without regard to the interest rate stabilization provisions of ERISA section 303(h)(2)(C)(iv) and Code section 430(h)(2)(C)(iv).

(3) *Prefunding balance and funding standard carryover balance elections.* For purposes of determining the 4010 funding target attainment percentage for a plan for the plan year, prefunding balances and funding standard carryover balances must reflect any elections (or deemed elections) under ERISA section 303(f) and Code section 430(f) that affect the value of such balances as of the beginning of the plan year, regardless of when the elections (or deemed elections) are made.

(c) *Exempt entities.* A person is an exempt entity for an information year if the conditions of paragraphs (c)(1) through (4) of this section are satisfied.

(1) The person is not a contributing sponsor of a plan (other than an exempt plan) as of the last day of the information year.

(2) The person has revenue for its fiscal year ending within the controlled group's information year that is five

percent or less of the revenue of the person's controlled group for the fiscal year(s) ending within the information year.

(3) The person has annual operating income for the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's annual operating income for the fiscal year(s) ending within the information year, or

(ii) $5 million.

(4) The person has net assets at the end of the fiscal year ending within the controlled group's information year that is no more than the greater of—

(i) Five percent of the controlled group's net assets at the end of the fiscal year(s) ending within the information year, or

(ii) $5 million.

(d) *Minimum funding waiver*—(1) *General.* For purposes of § 4010.4(a)(3), a portion of the minimum funding waiver for a plan is considered outstanding unless prior to the plan year ending within the information year the statutory amortization period has ended, or, as of the valuation date for the plan year ending within the information year, the amortization bases are deemed to be reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5).

(2) *Example.* Company A sponsors Plan X, which received a minimum funding waiver of $700,000 for the plan year ending December 31, 2004, and another waiver of $500,000 for the plan year ending December 31, 2008. Assume that the amortization bases of the waivers are not reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5), and the waivers are therefore outstanding for the full five-year statutory amortization period. Also, assume Company A has a calendar information year. For the 2009 information year, Company A must report under ERISA section 4010. However, for the 2010 information year, Company A, assuming no other obligation to report under ERISA section 4010, is not required to report.

(e) *Certain plans to which special funding rules apply.* Except for purposes of determining the information to be submitted under § 4010.8(h) (in connection with the actuarial valuation report), the following statutory provisions are disregarded for purposes of this part:

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

[74 FR 11030, Mar. 16, 2009, as amended at 81 FR 15439, Mar. 23, 2016; 85 FR 6059, Feb. 4, 2020]

§ 4010.5 Information year.

(a) *Determinations based on information year.* An information year is used under this part to determine which persons are filers (§ 4010.4), what information a filer must submit (§§ 4010.6–4010.9), whether a plan is an exempt plan (§ 4010.8(c)), and the due date for submitting the information (§ 4010.10(a)).

(b) *General.* Except as provided in paragraph (c) of this section, a person's information year is the fiscal year of the person. A filer is not required to change its fiscal year or the plan year of a plan, to report financial information for any accounting period other than an existing fiscal year, or to report actuarial information for any plan year other than an existing plan year.

(c) *Controlled group members with different fiscal years.* If members of a controlled group (disregarding any exempt entity) report financial information on the basis of different fiscal years, the information year is the calendar year. (If any two members of the controlled group report financial information on the basis of different fiscal years, the determination of whether an entity is an exempt entity is based on a calendar year information year for purposes of this paragraph (c) and § 4010.4(c).)

(d) *Examples.* The following examples illustrate the rule in paragraph (c) of this section.

(1) *Example 1.* Companies A and B are the only members of the same controlled group, and both are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year,

and Company B has an October 1 fiscal year. The information year is the calendar year. Company A's financial information with respect to its fiscal year ending June 30, 2009, and Company B's financial information with respect to its fiscal year ending September 30, 2009, must be submitted to the PBGC following the end of the 2009 calendar year information year.

(2) *Example 2.* The facts are the same as in Example 1 except that Company B is not a contributing sponsor of a plan and would be an exempt entity using the calendar year as the information year. Because Company B is an exempt entity based on a calendar year information year, it is excluded when determining the information year. Thus, the information year is the July 1 fiscal year. Note that Company B is an exempt entity even if it would not be exempt based on the July information year.

(3) *Example 3.* The facts are the same as in Example 2 except that Company B would not be an exempt entity using the calendar year information year but would be exempt based on an information year that is the July 1 fiscal year. Since Company B is not exempt based on a calendar year information year, it may not be excluded when determining the information year. Therefore, the information year is the calendar year and Company B is not an exempt entity.

(e) *Special rules for certain plan years.* If a plan maintained by the members of the contributing sponsor's controlled group has two plan years that end in the information year or has no plan year that ends in the information year, the last plan year ending on or immediately before the end of information year is deemed to be the plan year ending within the information year.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005; 74 FR 11031, Mar. 16, 2009]

§ 4010.6 Information to be filed.

(a) *General*—(1) *Current filers.* A filer must submit the information specified in §4010.7 (identifying information), §4010.8 (plan actuarial information) and §4010.9 (financial information) with respect to each member of the filer's controlled group and each plan maintained by any member of the filer's controlled group, and any other information relating to the information specified in §§4010.7 through 4010.9, as specified in the instructions on PBGC's Web site, *http://www.pbgc.gov*.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

(c) *Previous submissions.* If any required information has been previously submitted to PBGC, a filer may incorporate this information into the required submission by referring to the previous submission.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11544, Mar. 9, 2005; 74 FR 11031, Mar. 16, 2009]

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on PBGC's website, *http://www.pbgc.gov*, the following identifying information with respect to each member of the filer's controlled group (excluding exempt entities)—

(1) *Current members; individual member information.* For each entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity;

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation); and

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group.

(2) *Current members; legal relationships of members.* If, as of the end of the filer's information year, the filer's controlled group consists of—

(i) Ten or fewer members (excluding exempt entities), the legal relationship of each entity to the plan sponsor (for example, parent, subsidiary).

(ii) More than ten members (excluding exempt entities), an organizational chart or other diagram showing the members of the filer's controlled group as of the end of the filer's information year and the legal relationships of the members to each other. Exempt entities may, but need not, be included in this organizational chart or diagram.

(3) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the day before the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the filer's controlled group (including exempt entities)—

(1) *Current plans.* For a plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed during the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan was not maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year;

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (e.g., service is frozen but pay is not); and

(vi) In the case of a multiple employer plan, a list of the contributing sponsors as of the end of the plan year ending within the filer's information year, including the name, employer identification number, contact information, fiscal year, and a statement as to whether each contributing sponsor is a publicly-traded company; and

(2) *Former plans.* For a plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan (if applicable), and the identifying information required by paragraph (b)(1) of this section as of the day before that date.

[70 FR 11544, Mar. 9, 2005, as amended at 74 FR 11031, Mar. 16, 2009; 85 FR 6059, Feb. 4, 2020]

§ 4010.8 Plan actuarial information.

(a) *Required information.* Except as provided elsewhere in this part, for each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on PBGC's Web site, *http://www.pbgc.gov*, the following actuarial information determined (except as specified below) as of the end of plan year ending within the filer's information year—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments,

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets (excluding any contributions received after year-end);

(3) The amount of benefit liabilities under the plan, setting forth separately the amount of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active

participants, determined, for this purpose in accordance with paragraph (d) of this section;

(4) A description of the actuarial assumptions used to determine the benefit liabilities in paragraph (a)(3) of this section;

(5) The at-risk funding target for the plan year ending within the information year determined under ERISA section 303(i) and Code section 430(i)—

(i) As if the plan has been in at-risk status for a consecutive period of at least five years, and

(ii) Without regard to the interest rate stabilization provisions of ERISA section 303(h)(2)(C)(iv) and Code section 430(h)(2)(C)(iv);

(6) The 4010 funding target attainment percentage (as of the valuation date) for the plan year ending within the information year;

(7) The adjusted funding target attainment percentage as defined in ERISA section 206(g)(9)(B) and Code section 436(j)(2) for the plan year ending within the information year;

(8) Whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) and Code section 436, and, if so, which limitations applied, when such limitations applied, and when (if applicable) they were lifted;

(9) Whether a required installment or other required payment to the plan was not made, and, as a result, a lien described in ERISA section 303(k) or 306(g) and Code section 430(k) or 433(g) was triggered during the information year, and the required installment or other required payment was not made within ten days after its due date;

(10) Whether any portion of the total minimum funding waiver(s) in excess of $1 million granted with respect to such plan is outstanding;

(11) A copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information for that plan year—

(i) The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1) (and Code section 430 without regard to subsection 430(i)(1)), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving payment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);

(ii) A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 and Code section 430, including the form of payment and benefit commencement date assumptions for all active and deferred vested participants not yet receiving benefits, information on how lump sums are valued (for plans that provide lump sums other than *de minimis* lump sums), and any changes in those assumptions and methods since the previous valuation and the justifications for such changes.

(iii) The effective interest rate (as defined in ERISA section 303(h)(2)(A) and Code section 430(h)(2)(A));

(iv) The target normal cost calculated pursuant to ERISA section 303 without regard to subsection 303(i)(2) (and Code section 430 without regard to subsection 430(i)(2));

(v) For the plan year and each of the four preceding plan years, a statement as to whether the plan was in at-risk status for that plan year;

(vi) In the case of a plan that is in at-risk status, the target normal cost and funding target calculated pursuant to ERISA section 303 and Code section 430 as if the plan has been in at-risk status for five consecutive years;

(vii) The value of the plan's assets (reflecting any averaging method) as of the valuation date and the fair market value of the plan's assets as of the valuation date;

(viii) The funding standard carryover balance and the prefunding balance (maintained pursuant to ERISA section 303(f)(1) and Code section 430(f)(1)) as of the beginning of the plan year and a summary of any changes in such balances in the past year (e.g., amounts used to offset the minimum funding requirement, amounts reduced in accordance with any elections under ERISA section 303(f)(5) and Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);

(ix) A list of amortization bases (shortfall and waiver) under ERISA

section 303 and Code section 430, including the year each base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;

(x) An age/service scatter for active participants including average compensation information for pay-related plans and average account balance information for hybrid plans presented in a format similar to that described in the instructions to Schedule SB of the Form 5500;

(xi) Expected disbursements (benefit payments and expenses) during the plan year;

(xii) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during the plan year, and the plan's early retirement factors; in the case of a plan that provides lump sums, other than de minimis lump sums, the summary must include information on how annuity benefits are converted to lump sum amounts (e.g., whether early retirement subsidies are reflected); and

(xiii) Any other similar information as specified in instructions on PBGC's Web site, *http://www.pbgc.gov;* and

(12) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059–1(d).

(b) *Alternative methods of compliance*—(1) *At-risk funding target.* Notwithstanding any other provision of this section, a filer is not required to provide the information specified in paragraph (a)(5) of this section for the plan year for which actuarial information is being reported unless PBGC requests in writing that the information be provided, in which case the filer must provide the information within 30 days of such request or such later date as PBGC specifies in the request.

(2) *Actuarial valuation report.* If any of the information specified in paragraph (a)(11) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(i) Including a statement, with the material that is submitted to PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(ii) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(12) of this section) with PBGC by that alternative due date.

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan if the plan satisfies the conditions in paragraph (c)(1) through (3).

(1) The plan—

(i) Has fewer than 500 participants as of the end of the plan year ending within the information year or as of the valuation date for that plan year and has a 4010 funding shortfall (as defined in § 4010.11(a)(1)) for the plan year ending within the information year that is not in excess of $15 million, or

(ii) Has benefit liabilities as of the end of the plan year ending within the filer's information year, (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets.

(2) The plan has received, by or within ten days after the due dates, all required installments or other payments required to be made during the information year under ERISA sections 302 and 303 and Code sections 412 and 430.

(3) The plan has no outstanding minimum funding waivers (as described in § 4010.4(a)(3)) as of the end of the plan year ending within the information year.

(d) *Value of benefit liabilities.* The value of a plan's benefit liabilities at the end of a plan year must be determined using the plan census data described in paragraph (d)(1) of this section and the actuarial assumptions and methods described in paragraph (d)(2) or, where applicable, (d)(3) of this section.

(1) *Census data*—(i) *Census data period.* Plan census data must be determined (for all plans for any information year)

either as of the end of the plan year or as of the beginning of the next plan year.

(ii) *Projected census data.* If actual plan census data are not available, a plan may use a projection of plan census data from a date within the plan year. The projection must be consistent with projections used to measure pension obligations of the plan for financial statement purposes and must give a result appropriate for the end of the plan year for these obligations. For example, adjustments to the projection process are required where there has been a significant event (such as a plan amendment or a plant shutdown) that has not been reflected in the projection data.

(2) *Actuarial assumptions and methods.* The value of benefit liabilities must be determined using the rules in paragraphs (d)(2)(i) through (iii) of this section.

(i) *Benefits to be valued.* Benefits to be valued include all benefits earned or accrued under the plan as of the end of the plan year ending within the information year and other benefits payable from the plan including, but not limited to, ancillary benefits and retirement supplements, regardless of whether such benefits are protected by the anti-cutback provisions of section 411(d)(6) of the Code.

(ii) *Actuarial assumptions.* The value of benefit liabilities must be determined using the actuarial assumptions described in the following table:

TABLE 1 TO PARAGRAPH (d)(2)(ii)

Assumptions:	As prescribed in accordance with	
Interest	§ 4044.52(a).	
Form of payment	§ 4044.51.	
Expenses	§ 4044.52(d).	
Decrements		
• Mortality	§ 4044.53.	
• Retirement	§§ 4044.55–4044.57.	
• Other decrements (*e.g.,* turnover, disability).	Either Option 1 or Option 2—	
	Option 1	*Option 2*
	Disregard (*i.e.,* assume 0% probability of decrements other than mortality or retirement occurring).	Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer's information year. If there is no distinction between termination and retirement assumptions, reflect only rates for ages before the Earliest PBGC Retirement Date (as defined in § 4022.10 of this chapter).
Cash balance plan account conversions.	Section 204(b)(5)(B)(vi) of ERISA and section 411(b)(5)(B)(vi) of the Code (which deal with the interest crediting rate and annuity conversion rates), as if the plan terminated on the last day of the plan year ending within the filer's information year. Expected improvements in mortality experience that apply under the plan for periods after the information year may be disregarded for valuing benefit liabilities for 4010 reporting purposes.	

TABLE 1 TO PARAGRAPH (d)(2)(ii)—Continued

Other (*e.g.,* cost-of-living increases, marital status).	Use the same assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within the filer's information year.

(iii) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine benefit liabilities) must be included in determining the earliest and unreduced retirement ages used to determine the expected retirement age and in determining an active participant's entitlement to early retirement subsidies and supplements at the expected retirement age. See the examples in paragraph (e) of this section.

(3) *Special actuarial assumptions for exempt plan determination.* Solely for purposes of determining whether a plan is an exempt plan for an information year, the value of benefit liabilities may be determined using the same retirement assumptions as used to determine the minimum required contribution under section 303 of ERISA and section 430 of the Code for the plan year ending within that information year without regard to the at-risk assumptions of section 303(i) of ERISA and section 430(i) of the Code.

(e) *Examples.* The following examples demonstrate how XRA is determined and applied for purposes of determining benefit liabilities under paragraph (d) of this section:

(1) *Example 1*—(i) *Facts.* Plan X has a normal retirement age of 65, but allows benefits to commence as early as age 55 for participants who complete at least 10 years of service before termination. Early retirement benefits are reduced for participants with fewer than 25 years of service. Employee A is an active participant who is age 40 and has completed 5 years of service. Assume the ''medium'' XRA look-up table applies, and that for purposes of §4010.8(d), the filer has decided not to take pre-retirement decrements other than mortality table into account as permitted under §4010.8(d)(2)(i).

(ii) *Determination of XRA.* If A continues working, the earliest age A could start receiving benefit is age 55. Therefore, A's earliest retirement age at valuation (ERA) is 55. Because the earliest that A can receive an unreduced benefit is when A completed 25 years of service (at age 60), A's URA is age 60. Under the medium XRA look-up table, A's XRA is 58.

(iii) *Determination of Benefit Liabilities.* The benefit liability is the present value of A's benefit accrued as of the measurement date assuming A retires at age 58 and elects to have benefits commence immediately. Since A will not be eligible to receive unreduced benefits at that time, the accrued benefit is reduced in accordance with the plan's early retirement reduction provisions, including any subsidies to which A will be entitled under the assumption that A works until age 58.

(2) *Example 2.* Employee B is also an active participant in plan X and is age 40 with 15 years of service. B will complete 25 years of service at age 50. However, because the plan does not allow for benefit commencement before age 55, B's ERA, URA and thus, XRA are all age 55. The benefit liability is the present value of B's benefit accrued as of the measurement date assuming B retires at age 55 and elects to commence benefits immediately. Since B will be eligible to receive an unreduced benefit at that time, the full unreduced benefit amount is valued.

(3) *Example 3*—(i) *Facts.* Assume the same facts as in Example 1, except that for purposes of §4010.8(d), the filer has decided to take pre-retirement decrements other than mortality into account as permitted under §4010.8(d)(2)(i). Assume the only pre-retirement decrement other than mortality is turnover. The plan's turnover rates go from age 21 to age 54, and the retirement rates go from age 55 to age 65.

(ii) *Determination of XRA.* If A terminates employment at or before age 45,

A will not be eligible to receive benefits until age 65. Therefore, the portion of Employee A that is assumed to terminate before age 45 has an ERA, URA, and XRA of age 65. The portion of A that remains in service to age 45, after the application of the applicable turnover decrements, and then terminates at or after age 45, but before age 55, will be entitled to receive a reduced benefit as early as 55. Therefore, the portion of A that is assumed to terminate during this period has an ERA of 55, a URA of 65 and an XRA of 60. Since the turnover rates stop at age 55, the portion of A that remains in service to age 55 is assumed to remain in service until the XRA for that portion of A. For that portion of A, the ERA is 55, the URA is 60 and the XRA is 58. (For purposes of §4010.8(d), the plan's assumed retirement rates are replaced by XRAs.)

(iii) *Determination of benefit liabilities.* The benefit liability of A is the sum of the present value of A's full accrued benefit at age 65 for the portion of A that terminates between age 40 and age 45, the present value of A's accrued benefit reduced for commencement at age 60 for the portion of A that terminates between age 45 and age 54, and the present value of A's accrued benefit reduced for commencement at age 58 for the portion of A that remains employed until age 55.

(4) *Example 4.* Assume the same facts as in Example 3, except that Employee B, the sole active participant, is age 40 with 15 years of service. The portion of B that is assumed to terminate before age 50 would be entitled to receive a reduced benefit as early as age 55 or an unreduced benefit at age 65. That portion of B has an ERA of 55, a URA of 65, and an XRA of 60. The benefit liability for that portion of B is the present value of B's benefit accrued as of the measurement date assuming B commences a reduced benefit at age 60. The portion of B that survives to age 50 would be entitled to receive an unreduced benefit as early as age 55. That portion of B has an ERA, URA and XRA of 55. The benefit liability for this portion of B is the present value of B's benefit accrued as of the measurement date assuming B retires and commences unreduced payments at age 55.

(f) *Multiple employer plans.* If, with respect to a multiple employer plan, the actuarial information required under this section 4010 for the plan year ending within the filer's information year has been filed under part 4010 by another filer, the filer may include this actuarial information by reference. The filer must report the name, EIN and plan number of the multiple employer plan and the name of the other filer that submitted this information.

(g) *Previous filing for plan year.* If the actuarial information for the plan year as required under this §4010.8 has been submitted by the filer in a previous 4010 submission, the filing may include that actuarial information by reference to the previous submission.

(h) *Plans subject to special funding rules.* Instead of the requirements of paragraph (a)(11) of this section:

(1) In the case of a plan year for which a plan is subject to section 402(b) of the Pension Protection Act of 2006, Public Law 109–280, dealing with certain frozen plans of commercial passenger airlines and airline caterers, the plan must meet the requirements in connection with the actuarial valuation report in accordance with instructions on PBGC's Web site, *http://www.pbgc.gov*.

(2) In the case of a plan year for which the application of new funding rules is deferred for a plan under section 104 of the Pension Protection Act of 2006, Public Law 109–280, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Public Law 111–192, dealing with eligible charity plans and plans of certain rural cooperatives, the plan must meet the requirements in paragraph (a)(5) of this section (in connection with the actuarial valuation report) in effect as of December 31, 2007.

(3) In the case of a plan year for which a plan is subject to the Cooperative and Small Employer Charity Pension Flexibility Act, Public Law 113–97, dealing with certain defined benefit pension plans maintained by more than one employer, the plan must meet the requirements in connection with the

actuarial valuation report in accordance with instructions on PBGC's Web site, *http://www.pbgc.gov*.

[74 FR 11031, Mar. 16, 2009, as amended at 81 FR 15439, Mar. 23, 2016; 85 FR 6059, Feb. 4, 2020]

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on PBGC's website, *http://www.pbgc.gov*, the following financial information for each member of the filer's controlled group (other than an exempt entity)—

(1) Audited financial statements for the fiscal year ending within the information year (including balance sheets, income statements, cash flow statements, and notes to the financial statements);

(2) If audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

(3) If neither audited nor unaudited financial statements are available by the date specified in § 4010.10(a), copies of federal tax returns for the tax year ending within the information year.

(b) *Consolidated financial statements.* If the financial information of a controlled group member is combined with the information of other group members in consolidated financial statements, a filer may provide the following financial information in lieu of the information required in paragraph (a) of this section—

(1) The audited consolidated financial statements for the controlled group for the filer's information year or, if the audited consolidated financial statements are not available by the date specified in § 4010.10(a), unaudited consolidated financial statements for the fiscal year ending within the information year; and

(2) If the ultimate parent of the controlled group is a foreign entity, financial information on the U.S. entities (other than an exempt entity) that are members of the controlled group. The information required by this paragraph (b)(2) may be provided in the form of consolidated financial statements if the financial information of each controlled group member that is a U.S. entity is combined with the information of other group members that are U.S. entities. Otherwise, for each U.S. entity that is a controlled group member, provide the financial information required in paragraph (a) of this section.

(c) *Subsequent submissions.* If unaudited financial statements are submitted as provided in paragraph (a)(2) or (b)(1) of this section, audited financial statements must thereafter be filed within 15 days after they are prepared, if they are prepared. If federal tax returns are submitted as provided in paragraph (a)(3) of this section, audited and unaudited financial statements, if prepared must thereafter be filed within 15 days after they are prepared.

(d) *Submission of public information.* If any of the financial information required by paragraphs (a) through (c) of this section is publicly available, the filer, in lieu of submitting such information to PBGC, may include a statement with the other information that is submitted to PBGC indicating when such financial information was made available to the public and where PBGC may obtain it (including the exact URL for the web page where the financial information is located). For example, if the controlled group member has filed audited financial statements with the Securities and Exchange Commission, it need not file the financial statements with PBGC but instead can identify the SEC filing and the exact URL for the web page where the filing can be retrieved as part of its submission under this part.

(e) *Inclusion of information about non-filers and exempt entities.* Consolidated financial statements provided pursuant to paragraph (b) of this section may include financial information of persons who are not controlled group members (*e.g.*, joint ventures) or are exempt entities.

[61 FR 34022, July 1, 1996, as amended at 70 FR 11545, Mar. 9, 2005; 74 FR 11034, Mar. 16, 2009; 85 FR 6060, Feb. 4, 2020]

§ 4010.10 Due date and filing with the PBGC.

(a) *Due date.* Except as permitted under paragraph (b) of this section, a filer must file the information required

under this part with PBGC on or before the 105th day after the close of the filer's information year. The filing deadline is extended to the 106th date after the close of the filer's information year if the 105-day reporting period includes February 29.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(e) *Computation of time.* PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[61 FR 34022, July 1, 1996, as amended at 68 FR 61353, Oct. 28, 2003; 74 FR 11034, Mar. 16, 2009]

§ 4010.11 Waivers.

(a) *Aggregate funding shortfall not in excess of $15 million waiver.* Unless reporting is required by § 4010.4(a)(2) or (3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year (disregarding plans with no 4010 funding shortfall) does not exceed $15 million, as determined under paragraphs (a)(1) and (2) of this section.

(1) *4010 funding shortfall; in general.* A plan's 4010 funding shortfall for a plan year equals the funding shortfall for the plan year as provided under section 303(c)(4) of ERISA and section 430(c)(4) of the Code, with the following exceptions:

(i) The funding target used to calculate the 4010 funding shortfall is determined without regard to the interest rate stabilization provisions of section 303(h)(2)(C)(iv) of ERISA and section 430(h)(2)(C)(iv) of the Code and without regard to the at-risk plan provisions in section 303(i) of ERISA and section 430(i) of the Code.

(ii) The value of plan assets used to calculate the 4010 funding shortfall is determined without regard to the reduction under section 303(f)(4)(B) of ERISA and section 430(f)(4)(B) of the Code (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

(2) *Multiple employer plans.* For purposes of § 4010.8(c) and paragraph (a) of this section, the entire 4010 funding shortfall of any multiple employer plan of which the filer or any member of the filer's controlled group is a contributing sponsor is included.

(b) *Smaller plans waiver*—(1) *General.* Unless reporting is required by § 4010.4(a)(2) or (a)(3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate number of participants in all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year is fewer than 500. For this purpose, the number of participants in any plan may be determined either as of the end of the plan year ending within the information year or as of the valuation date for that plan year.

(2) *Multiple employer plans.* For purposes of this paragraph (b), the aggregate number of participants in all plans maintained by a person's controlled group includes any participants covered by a multiple employer plan in which the person participates (including participants covered by the multiple employer plan who are not or were not employed by the person).

(c) *Missed contributions resulting in a lien or outstanding minimum funding waivers.* Reporting is waived for a person (that would be a filer if not for the

waiver) for an information year if, for the plan year ending within the information year, reporting would have been required solely under § 4010.4(a)(2) or (3), provided that the missed contributions or applications for minimum funding waivers (as applicable) were reported to PBGC under part 4043 of this chapter by the due date for the 4010 filing.

(d) *Other waiver authority.* PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10. PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable due date specified in § 4010.10, and must state the facts and circumstances on which the request is based.

[81 FR 15440, Mar. 23, 2016, as amended at 85 FR 6060, Feb. 4, 2020]

§ 4010.12 Alternative method of compliance for certain sponsors of multiple employer plans.

(a) *In general.* Subject to paragraph (b) of this section, an eligible contributing sponsor (as defined in paragraph (c) of this section) of a multiple employer plan satisfies the requirements of this part for an information year if any contributing sponsor of the multiple employer plan provides a timely filing under this part for an information year that coincides with or overlaps with the eligible contributing sponsor's information year.

(b) *PBGC request for additional information.* PBGC may request some or all of the information that would otherwise be required under this part from an eligible contributing sponsor that uses the alternative method of compliance in this section. PBGC will make such a request no earlier than the date the information would otherwise have been due. The eligible contributing sponsor must provide the requested information no later than 30 days after PBGC makes the request. The requested information need not be submitted electronically.

(c) *Eligible contributing sponsor.* For purposes of this section, an eligible contributing sponsor of a multiple employer plan is a contributing sponsor that would not be subject to reporting if the plan were disregarded in applying the gateway tests in § 4010.4(a).

[74 FR 11035, Mar. 16, 2009]

§ 4010.13 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and ERISA section 4010(c), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

[61 FR 34022, July 1, 1996. Redesignated and amended at 74 FR 11035, Mar. 16, 2009]

§ 4010.14 Penalties.

If all of the information required under this part is not provided within the specified time limit, PBGC may assess a separate penalty under ERISA section 4071 against the filer and each member of the filer's controlled group (other than an exempt entity). PBGC may also pursue other equitable or legal remedies available to it under the law.

[61 FR 34022, July 1, 1996, as amended at 62 FR 36994, July 10, 1997. Redesignated and amended at 74 FR 11035, Mar. 16, 2009; 81 FR 29766, May 13, 2016]

§ 4010.15 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0049.

[61 FR 34022, July 1, 1996. Redesignated at 74 FR 11035, Mar. 16, 2009]

SUBCHAPTER D—COVERAGE AND BENEFITS

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

Subpart A—General Provisions; Guaranteed Benefits

Subpart B—Limitations on Guaranteed Benefits

Subpart C—Section 4022(c) Benefits

Subpart D—Benefit Reductions in Terminating Plans

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

Subpart F—Certain Payments Owed Upon Death

Subpart G—Certain-and-Continuous and Similar Annuity Payments Owed for Future Periods After Death

AUTHORITY: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

SOURCE: 61 FR 34028, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions; Guaranteed Benefits

§ 4022.1 Purpose and scope.

The purpose of this part is to prescribe rules governing the calculation and payment of benefits payable in terminated single-employer plans under section 4022 of ERISA. Subpart A, which applies to each plan providing benefits guaranteed under title IV of ERISA, contains definitions applicable to all subparts, and describes benefits that are guaranteed by the PBGC subject to the limitations set forth in subpart B. Subpart C is reserved for rules relating to the calculation and payment of unfunded nonguaranteed benefits under section 4022(c) of ERISA. Subpart D prescribes procedures that minimize the overpayment of benefits by plan administrators after initiating

distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusteed plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

[61 FR 34028, July 1, 1996, as amended at 62 FR 67728, Dec. 30, 1997]

§ 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, bankruptcy filing date, Code, employer, ERISA, guaranteed benefit, majority owner, mandatory employee contributions, nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

Accumulated mandatory employee contributions means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

Benefit in pay status means that one or more benefit payments have been made or would have been made except for administrative delay.

Benefit increase means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, an unpredictable contingent event benefit, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

Covered employment means employment with respect to which benefits accrue under a plan.

Pension benefit means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient. An annuity benefit resulting from a rollover amount is a pension benefit.

Straight life annuity means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

Unpredictable contingent event (UCE) has the same meaning as unpredictable contingent event in section 206(g)(1)(C) of ERISA and Treas. Reg. §1.436–1(j)(9) (26 CFR 1.436–1(j)(9)). It includes a plant shutdown (full or partial) or a similar event (such as a full or partial closing of another type of facility, or a layoff or other workforce reduction), or any event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

Unpredictable contingent event benefit (UCEB) has the same meaning as unpredictable contingent event benefit in section 206(g)(1)(C) of ERISA and Treas. Reg. §1.436–1(j)(9) (26 CFR 1.436–1(j)(9)). Thus, a UCEB is any benefit or benefit increase to the extent that it would not be payable but for the occurrence of a UCE. A benefit or benefit increase that is conditioned upon the occurrence of a UCE does not cease to be a UCEB as a result of the contingent event having occurred or its occurrence having become reasonably predictable.

[61 FR 34028, July 1, 1996, as amended at 74 FR 59096, Nov. 17, 2009; 76 FR 34601, June 14, 2011; 79 FR 25672, May 6, 2014; 79 FR 70094, Nov. 25, 2014; 83 FR 49803, Oct. 3, 2018]

§ 4022.3 Guaranteed benefits.

(a) *General.* Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(1) The benefit is, on the termination date, a nonforfeitable benefit;

(2) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(3) The participant is entitled to the benefit under § 4022.4.

(b) *PPA 2006 bankruptcy termination—*(1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraph (a) of this section.

(2) *Condition for entitlement satisfied between bankruptcy filing date and termination date.* If a participant becomes entitled to a subsidized early retirement or other benefit before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) but on or after the bankruptcy filing date (or after the bankruptcy filing date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die), the subsidy or other benefit is not guaranteed because the participant had not satisfied the conditions for entitlement by the bankruptcy filing date. In such a case, the participant may have been put into pay status with the subsidized early retirement or other benefit by the plan administrator, because the plan was ongoing at the time. Even though the subsidy or other benefit is not guaranteed, the participant may be entitled to another benefit from PBGC (at that time or in the future). If so, PBGC will continue paying the participant a benefit, but in an amount reduced to reflect that the subsidy or other benefit is not guaranteed. PBGC will also allow a similarly situated participant who had not started receiving a subsidized early retirement or other benefit before PBGC became trustee of the plan to begin receiving a benefit (if the participant would have been allowed under the plan to begin receiving benefits and has reached his Earliest PBGC Retirement Date, as defined in § 4022.10), but in an amount that does not include the subsidy or other benefit.

(3) *Examples*—(i) *Vesting.* A plan provides for 5-year ''cliff'' vesting—*i.e.*, benefits become 100% vested when the participant completes five years of service; before the five-year mark, benefits are 0% vested. The contributing sponsor of the plan files a bankruptcy petition on November 15, 2006. The plan terminates with a termination date of December 4, 2007, and PBGC becomes statutory trustee of the plan. A participant had four years and six months of service at the bankruptcy filing date and became vested in May 2007. None of the participant's benefit is guaranteed because none of the benefit was nonforfeitable as of the bankruptcy filing date.

(ii) *Subsidized early retirement benefit.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section), but the plan also provides that a participant may retire from active employment at any age with a fully subsidized (*i.e.*, not actuarially reduced) early retirement benefit if he has completed 30 years of service. The plan also provides that a participant who is age 60 and has completed 20 years of service may retire from active employment with an early retirement benefit, reduced by three

percent for each year by which the participant's age at benefit commencement is less than 65. A participant was age 61 and had 29 years and 6 months of service at the bankruptcy filing date. The participant continued working for another six months, then retired as of June 1, 2007, and immediately began receiving from the plan the fully subsidized ''30-and-out'' early retirement benefit. PBGC will continue paying the participant a benefit, but PBGC's guarantee does not include the full subsidy for the ''30-and-out'' benefit, because the participant satisfied the conditions for that benefit after the bankruptcy filing date. The guarantee does include, however, the partial subsidy associated with the ''60/20'' early retirement benefit, because the participant satisfied the conditions for that benefit before the bankruptcy filing date.

(iii) *Accruals after bankruptcy filing date.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section). A participant has a vested, accrued benefit of $500 per month as of the bankruptcy filing date. At the plan's termination date, the participant has a vested, accrued benefit of $512 per month. His guaranteed benefit is limited to $500 per month—the accrued, nonforfeitable benefit as of the bankruptcy filing date.

[61 FR 34028, July 1, 1996; 61 FR 67943, Dec. 26, 1996; 76 FR 34601, June 14, 2011]

§ 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

(1) The benefit was in pay status on the termination date of the plan.

(2) The benefit is payable in an optional life-annuity form of benefit that the participant or beneficiary elected on or before the termination date of the plan or, if later, the date on which PBGC became statutory trustee of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit prior to such date (prior to or on such date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

(c) In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (a)(1) and (3) of this section. In making this substitution for purposes of paragraph (a)(3) of this section, the rule in § 4022.3(b)(2) (dealing with the situation where the condition for entitlement was satisfied between the bankruptcy filing date and the termination date) shall apply.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

§ 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will

cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

§ 4022.6 Annuity payable for total disability.

(a) Except as otherwise provided in this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began on or before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability benefits payable to a participant under such standard shall not be guaranteed unless the participant meets the standards of the Social Security Act and the regulations promulgated thereunder for determining total disability.

(c) For the purpose of this section, a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit.

(d) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' in paragraph (a) of this section.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

§ 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient. If the plan provides more than one such annuity, the recipient may within 30 days after notification of the proposed termination of the plan elect to receive one of those annuities. If the plan does not provide such an annuity, the PBGC will guarantee an actuarially equivalent life annuity.

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit (or of an estimated benefit) payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit (or estimated benefit) may be paid in a lump sum.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraph (b)(1)(i) of this section and the monthly benefit (or the estimated monthly benefit) is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC will provide the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of annuity payments under a qualified preretirement survivor annuity (or under an estimated qualified preretirement survivor annuity) is $5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit (or estimated benefit) may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Payments to estates.* The PBGC may pay any annuity payments payable to an estate in a single installment without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The PBGC will discount the annuity payments using

the federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) applicable for the month the participant died based on monthly compounding.

(2) *Return of employee contributions*—(i) *General.* Notwithstanding any other provision of this part, except as provided in paragraph (b)(2)(iii) of this section, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic-type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions. For purposes of this part, the portion of an individual's basic-type benefit derived from mandatory employee contributions is determined under § 4044.12 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in part 4044, subpart B, of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the termination date exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the termination date.

Example: Participant A is receiving a benefit of $600 per month when the plan terminates, $200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the termination date, his benefit would have been reduced to $400 per month. The participant receives two monthly payments after the termination date. The set-off amount is $400. (The $600 actual payment minus the $400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(iii) *Rollover amounts.* The rule in paragraph (b)(2) of this section (dealing with return of employee contributions) does not apply to a participant's accumulated mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter) or the benefit derived from such mandatory employee contributions.

(c) *Death benefits*—(1) *General.* Notwithstanding paragraph (a) of this section, a benefit that would otherwise be guaranteed under the provisions of this subpart, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity that has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Except in the case of accumulated mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter), upon the death of a participant the PBGC may pay in a single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1) of this section—

(1) *Benefits disregarded.* In determining whether the lump-sum value of a benefit is $5,000 or less, the PBGC may disregard the value of any benefits the plan or the PBGC previously paid in lump-sum form or the plan paid by purchasing an annuity contract, the value of any benefits returned under paragraph (b)(2) of this section, and the value of any benefits the PBGC has not yet determined under section 4022(c) of ERISA.

(2) *Actuarial assumptions.* PBGC will calculate the lump sum value of a benefit by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter.

The actuarial assumptions used will be those described in § 4044.52 of this chapter, except as follows:

(i) *Loading for expenses.* There will be no adjustment to reflect the loading for expenses.

(ii) *Mortality assumption.* The ''applicable mortality table'' specified in section 205(g)(3)(B)(i) of ERISA and section 417(e)(3)(B) of the Code for the year containing the termination date will apply.

(iii) *Interest rate assumption.* The ''applicable interest rate'' specified in section 205(g)(3)(B)(ii) of ERISA and section 417(e)(3)(C) of the Code for the month containing the termination date will apply.

(iv) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

(e) *Private-sector lump sum rates.* PBGC provides lump sum interest rates for private-sector payments in appendix C to this part.

[61 FR 34028, July 1, 1996, as amended at 63 FR 38306, July 16, 1998; 65 FR 14752, 14755, Mar. 17, 2000; 67 FR 16954, Apr. 8, 2002; 79 FR 70094, Nov. 25, 2014; 85 FR 55591, Sept. 9, 2020]

§ 4022.8 Form of payment.

(a) *In general.* This section applies where benefits are not already in pay status. Except as provided in § 4022.7 (relating to the payment of lump sums), the PBGC will pay benefits—

(1) In the automatic PBGC form described in paragraph (b) of this section; or

(2) If an optional PBGC form described in paragraph (c) of this section is elected, in that optional form.

(b) *Automatic PBGC form*—(1) *Participants*—(i) *Married participants.* The automatic PBGC form with respect to a participant who is married at the time the benefit enters pay status is the form a married participant would be entitled to receive from the plan in the absence of an election.

(ii) *Unmarried participants.* The automatic PBGC form with respect to a participant who is unmarried at the time the benefit enters pay status is the form an unmarried person would be entitled to receive from the plan in the absence of an election.

(2) *Beneficiaries*—(i) *QPSA beneficiaries.* The automatic PBGC form with respect to the spouse of a married participant in a plan with a termination date on or after August 23, 1984, who dies before his or her benefit enters pay status is the qualified preretirement survivor annuity such a spouse would be entitled to receive from the plan in the absence of an election. The PBGC will not charge the participant or beneficiary for this survivor benefit coverage for the time period beginning on the plan's termination date (regardless of whether the plan would have charged).

(ii) *Alternate payees.* The automatic PBGC form with respect to an alternate payee with a separate interest under a qualified domestic relations order is the form an unmarried participant would be entitled to receive from the plan in the absence of an election.

(c) *Optional PBGC forms*—(1) *Participant and beneficiary elections.* A participant may elect any optional form described in paragraphs (c)(4) or (c)(5) of this section. A beneficiary described in paragraph (b)(2) of this section (a QPSA beneficiary or an alternate payee) may elect any optional form described in paragraphs (c)(4)(i) through (c)(4)(iv) of this section.

(2) *Permitted designees.* A participant or beneficiary, whether married or unmarried, who elects an optional form with a survivor feature (e.g., a 5-year certain-and-continuous annuity or, in the case of a participant, a joint-and-50%-survivor annuity) may designate either a spouse or a non-spouse beneficiary to receive survivor benefits. An optional joint-life form must be payable to a natural person or (with the consent of the PBGC) to a trust for the benefit of one or more natural persons.

(3) *Spousal consent.* In the case of a participant who is married at the time the benefit enters pay status, the election of an optional form or the designation of a non-spouse beneficiary is valid only if the participant's spouse consents.

(4) *Permitted optional single-life forms.* The PBGC may offer benefits in the following single-life forms:

(i) A straight-life annuity;

(ii) A 5-year certain-and-continuous annuity;

(iii) A 10-year certain-and-continuous annuity;

(iv) A 15-year certain-and-continuous annuity; and

(v) The form an unmarried person would be entitled to receive from the plan in the absence of an election.

(5) *Permitted optional joint-life forms.* The PBGC may offer benefits in the following joint-life forms:

(i) A joint-and-50%-survivor annuity;

(ii) A joint-and-50%-survivor-''pop-up'' annuity (*i.e.,* where the participant's benefit ''pops up'' to the unreduced level if the beneficiary dies first);

(iii) A joint-and-75%-survivor annuity; and

(iv) A joint-and-100%-survivor annuity.

(6) *Determination of benefit amount; starting benefit.* To determine the amount of the benefit in an optional PBGC form—

(i) *Single-life forms.* In the case of an optional PBGC form under paragraph (c)(4) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to an unmarried participant in the absence of an election.

(ii) *Joint-life forms.* In the case of an optional PBGC form under paragraph (c)(5) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to a married participant in the absence of an election. For this purpose, the PBGC will treat a participant who designates a non-spouse beneficiary as being married to a person who is the same age as that non-spouse beneficiary.

(7) *Determination of benefit amount; conversion factors.* The PBGC will convert the benefit amount determined under paragraph (c)(6) of this section to the optional form elected, using PBGC factors based on—

(i) *Mortality.* Unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Internal Revenue Service Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); and

(ii) *Interest.* An interest rate of six percent.

(8) *Determination of benefit amount; limitation.* The PBGC will limit the benefit amount determined under paragraph (c)(7) of this section to the amount of the benefit it would pay in the form of a straight life annuity under paragraph (c)(4)(i) of this section.

(9) *Incidental benefits.* The PBGC will not pay an optional PBGC form with a death benefit (e.g., a joint-and-50%-survivor annuity) unless the death benefit would be an ''incidental death benefit'' under 26 CFR 1.401–1(b)(1)(i). If the death benefit would not be an ''incidental death benefit,'' the PBGC may instead offer a modified version of the optional form under which the death benefit would be an ''incidental death benefit.''

(d) *Change in benefit form.* Once payment of a benefit starts, the benefit form cannot be changed.

(e) *PBGC discretion.* The PBGC may make other optional annuity forms available subject to the rules in paragraph (c) of this section.

(f) *Rollover amounts.* The annuity benefit resulting from rollover amounts (as determined under § 4044.12(c)(4) of this chapter) is combined with any other benefit under the plan and paid in the same form and at the same time as the other benefit.

[67 FR 16954, Apr. 8, 2002, as amended at 79 FR 70095, Nov. 25, 2014]

§ 4022.9 Time of payment; benefit applications.

(a) *Time of payment.* A participant may start receiving an annuity benefit from the PBGC (subject to the PBGC's rules for starting benefit payments) on his or her Earliest PBGC Retirement Date as determined under § 4022.10 of this subchapter or, if later, the plan's termination date.

(b) *Elections and consents.* The PBGC may prescribe the time and manner for benefit elections to be made and spousal consents to be provided.

(c) *Benefit applications.* The PBGC is not required to accept any application

for benefits not made in accordance with its forms and instructions.

(d) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Where to file.* See §4000.4 of this chapter for information on where to file.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

[67 FR 16955, Apr. 8, 2002, as amended at 68 FR 61353, Oct. 28, 2003]

§ 4022.10 Earliest PBGC Retirement Date.

The Earliest PBGC Retirement Date for a participant is the earliest date on which the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA. The Earliest PBGC Retirement Date is determined in accordance with this §4022.10. For purposes of this §4022.10, ''age'' means the participant's age as of his or her last birthday (unless otherwise required by the context).

(a) *Immediate annuity at or after age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the earliest date on which the participant could separate from service with the right to receive an immediate annuity.

(b) *Immediate annuity before age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is before the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the date the participant reaches age 55 (except as provided in paragraph (c) of this section).

(c) *Facts and circumstances.* If a participant could separate from service with the right to receive an immediate annuity before the date the participant reaches age 55, the PBGC will make a determination, under the facts and circumstances, as to whether the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA on an earlier date. If the PBGC determines, under the facts and circumstances, that the participant could retire under plan provisions for those purposes on an earlier date, that earlier date is the Earliest PBGC Retirement Date for the participant. In making this determination, the PBGC will take into account plan provisions (e.g., the general structure of the provisions, the extent to which the benefit is subsidized, and whether eligibility for the benefit is based on a substantial service or age-and-service requirement), the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. Neither a plan's reference to a separation from service at a particular age as a ''retirement'' nor the ability of a participant to receive an immediate annuity at a particular age necessarily makes the date the participant reaches that age the Earliest PBGC Retirement Date for the participant. The Earliest PBGC Retirement Date determined by the PBGC under this paragraph (c) will never be earlier than the earliest date the participant could separate from service with the right to receive an immediate annuity.

(d) *Examples.* The following examples illustrate the operation of the rules in paragraphs (a) through (c) of this section.

(1) *Normal retirement age.* A plan's normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon separation before normal retirement age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 50 is the date the participant reaches age 65.

(2) *Early retirement age.* A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 with 10 years of service. The plan does

not offer a consensual lump sum or an immediate annuity upon separation before early retirement age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 55 and has completed 10 years of service is the date the participant reaches age 60.

(3) *Separation at any age.* A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 35 is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could ''retire'' for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date.

(4) *Age 50 retirement common.* A plan's normal retirement age is age 60. The plan specifies an early retirement age of 50 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 35 is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. For example, if it were common for participants to retire at age 50, the PBGC could determine that the participant's Earliest PBGC Retirement Date would be the date the participant reached age 50.

(5) *''30-and-out'' benefit.* A plan's normal retirement age is age 65. The plan offers an immediate annuity upon separation regardless of age and a fully-subsidized annuity upon separation with 30 years of service. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 48 and has completed 30 years of service is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that the participant's Earliest PBGC Retirement Date is the date the participant completed 30 years of service.

(6) *Typical airline pilots' plan.* An airline pilots' plan has a normal retirement age of 60. The plan specifies an early retirement age of 50 (with 5 years of service). The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 48 and has completed five years of service would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that the participant's Earliest PBGC Retirement Date is the date the participant reaches age 50. If the plan instead had provided for early retirement before age 50, the PBGC would consider all the facts and circumstances (including the plan's normal retirement age and the age at which employees customarily retire in the airline industry) in determining whether to treat the date the participant reaches the plan's early retirement age as the participant's Earliest PBGC Retirement Date.

(e) *Special rule for ''window'' provisions.* For purposes of paragraphs (a), (b), and (c) of this section, the PBGC will treat a participant as being able, under plan provisions, to separate from service with the right to receive an immediate annuity on a date before the plan's termination date only if—

(1) Eligibility for that immediate annuity continues through the earlier of—

(i) The plan's termination date; or

(ii) The date the participant actually separates from service with the right to receive an immediate annuity; and

(2) The participant satisfies the conditions for eligibility for that immediate annuity on or before the plan's termination date.

[67 FR 16955, Apr. 8, 2002]

§ 4022.11 Guarantee of benefits relating to uniformed service.

This section applies to a benefit of a participant who becomes reemployed after service in the uniformed services that is covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(a) A benefit described in paragraph (b) of this section that would satisfy the requirements of §4022.3(a) and (c) (together with any benefit earned for the period preceding military service) except for the fact that the participant was not reemployed on or before the termination date will be deemed to satisfy those requirements if PBGC determines, based upon a demonstration by the participant or otherwise, that he or she became reemployed after the termination date and entitled to the benefit under USERRA.

(b) A benefit described in this paragraph (b) is a benefit attributable to a period of service commencing before the termination date and ending on the termination date during which the participant was serving in the uniformed services as defined in 38 U.S.C. 4303(13) (or was in a subsequent reemployment eligibility period) and to which the participant is entitled under USERRA.

(c) Example: A plan's vesting requirement is 5 years of service with the employer. A participant has completed 4 years of service when he leaves employment for uniformed service. The plan terminates while the participant is in military service. As of the termination date, the participant would have had 5 years of service and 5 years of benefit accruals if he had remained continuously employed. Upon reemployment after the termination date but within the time limits set by USERRA, the participant would have had 6 years of service under the plan for vesting and benefit accrual purposes, if the plan had not terminated. PBGC would treat the participant as having a vested, nonforfeitable plan benefit with 5 years of vesting service and benefit accruals as of the termination date.

(d) In the case of a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in this section.

[74 FR 59096, Nov. 17, 2009]

Subpart B—Limitations on Guaranteed Benefits

§ 4022.21 Limitations; in general.

(a)(1) Subject to paragraphs (b), (c), (d), and (e) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) The limitation of paragraph (a)(1) of this section shall not apply to:

(i) A survivor's benefit payable as an annuity on account of the death of a participant that occurred on or before the plan's termination date and before the participant retired;

(ii) A disability pension described in §4022.6 of this part; or

(iii) A benefit payable in non-level installments that in combination with Social Security, Railroad Retirement, or workman's compensation benefits yields a substantially level income if the projected income from the plan benefit over the expected life of the recipient does not exceed the value of the straight life annuity described in paragraph (a)(1) of this section.

(b) The PBGC will not guarantee the payment of that part of any benefit that exceeds the limitations in section 4022(b) of ERISA and this subpart B.

(c)(1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a

single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

(d) The PBGC will not guarantee a joint-life annuity benefit payable to other than—

(1) Natural persons; or

(2) A trust or estate for the benefit of one or more natural persons.

(e) *PPA 2006 bankruptcy termination*—(1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraph (a)(1) of this section.

(2) *Examples*—(i) *Straight-life annuity.* A plan provides for normal retirement at age 65. If a participant terminates employment at or after age 55 with 25 years of service, the plan will pay an unreduced early retirement benefit, plus a temporary supplement of $400 per month until the participant reaches age 62. When the plan's contributing sponsor files a bankruptcy petition in 2008, a participant who is still working has a vested, accrued benefit of $1,500 per month (as a straight-life annuity) and has satisfied the age and service requirements for the unreduced early retirement benefit. The participant retires eight months later, when his vested, accrued benefit is $1,530 per month (as a straight-life annuity). He elects to receive his benefit as a straight-life annuity, and begins receiving a total benefit of $1,930: His $1,530 accrued benefit plus the $400 temporary supplement. The plan terminates six months later, during the sponsor's bankruptcy. No Title IV limitations apply to the participant's benefit, other than the limitation in paragraph (a)(1) of this section. PBGC will guarantee $1,500, the amount of the participant's accrued benefit (as a straight-life annuity) as of the bankruptcy filing date.

(ii) *Joint-and-survivor annuity.* The facts are the same as Example (i) (paragraph (e)(2)(i) of this section), except that the participant elects to receive his benefit as a 50% joint-and-survivor annuity. Before plan termination, the participant was receiving a total benefit of $1,777: His $1,530 accrued benefit, reduced by 10% for the survivor benefit, plus the $400 temporary supplement. From the termination date until the participant reaches age 62, PBGC will guarantee $1,500: The $1,500 accrued benefit (as a straight-life annuity) as of the bankruptcy filing date, reduced to $1,350 to reflect the 10% reduction for the survivor benefit, plus $150 of the temporary supplement that, in combination with the $1,350, does not exceed the $1,500 accrued-at-normal limit. When the participant reaches age 62, his guaranteed benefit is reduced to $1,350, because under plan provisions the temporary supplement ceases at that time.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

§ 4022.22 Maximum guaranteeable benefit.

(a) *In general.* Subject to section 4022B of ERISA and part 4022B of this chapter, and except as provided in paragraph (b) of this section, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65, equal to the lesser of—

(1) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan; or

(2) $750 multiplied by the fraction x/$13,200 where ''x'' is the Social Security

contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

(b) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination—

(1) The five-year period described in paragraph (a)(1) of this section shall not include any calendar years that end after the bankruptcy filing date.

(2) ''Bankruptcy filing date'' is substituted for ''termination date of the plan'' in paragraph (a)(2) of this section. Example: A contributing sponsor files a bankruptcy petition in 2007. The sponsor's plan terminates in a distress termination with a termination date in 2008. PBGC will compute participants' maximum guaranteeable benefits based on the amount determined under paragraph (a)(2) for 2007 ($4,125.00 as a straight-life annuity starting at age 65).

(c) *Gross income.* For purposes of paragraph (a)(1) of this section—

(1) Gross income means ''earned income'' as defined in section 911(d)(2) of the Code, determined without regard to any community property laws.

(2) If the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

(d) *Rollover amounts.* Any portion of a benefit derived from mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter) is disregarded in applying the provisions of §§ 4022.22 and 4022.23. However, any portion of a benefit derived from employer contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(ii) of this chapter) is combined with any other benefit under the plan for purposes of determining the maximum guaranteeable benefit under §§ 4022.22 and 4022.23. For example, assume that a participant has an $80,000 total annual plan benefit at age 65, of which $15,000 is derived from mandatory employee contributions resulting from rollover amounts and $5,000 is derived from employer contributions resulting from rollover amounts. The $15,000 benefit derived from employee contributions resulting from rollover amounts would be excluded in the determination of the participant's maximum guaranteeable amount. The participant's remaining $65,000 benefit (including the $5,000 benefit derived from employer contributions resulting from rollover amounts) would be subject to the maximum guaranteeable benefit limitation. Assuming the plan terminated in 2014, the participant's maximum guaranteeable benefit of approximately $59,000 for a straight life annuity at age 65 would effectively be increased by the $15,000 benefit derived from employee contributions resulting from rollover amounts, resulting in total guaranteeable benefits of approximately $74,000. (The maximum guaranteeable benefit limitation would apply to the participant's benefit derived from employer contributions; as a result, $6,000 of the participant's benefit derived from employer contributions would not be guaranteeable by PBGC.)

[76 FR 34602, June 14, 2011, as amended at 79 FR 70095, Nov. 25, 2014]

§ 4022.23 Computation of maximum guaranteeable benefits.

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to

paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be 7/12 of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be 4/12 of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be 2/12 of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be ½ of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date:

For each month up to 60 months deduct 1/24 of 1%;

For each month beyond 60 months deduct 1/12 of 1%.

(i) A cash refund annuity means an annuity under which if the participant dies prior to the time when he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit. A cash refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit. An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (contingent basis) computed under § 4022.22 shall be reduced by an amount equal to 10% plus 2/10 of 1% for each percentage point in excess of 50% of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) means an annuity which is payable in periodic installments to a participant and upon his death or the death of his beneficiary is payable to the survivor for the survivor's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (joint basis) computed under § 4022.22 shall be reduced by an

amount equal to 4/10 of 1% for each percentage point in excess of 50% of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraph (d)(2) or (3) of this section, and the beneficiary's age is different from the participant's age, by 15 years or less, the monthly amount computed under §4022.22 shall be adjusted by the following amounts: If the beneficiary is younger than the participant, deduct 1% for each year of the age difference; If the beneficiary is older than the participant, add ½ of 1% for each year of the age difference. In computing the difference in ages, years over 65 years of age shall not be counted. If the difference in age between the beneficiary and the participant is greater than 15 years, PBGC shall provide the adjustment factors to be used.

(f) *Step-down life annuity.* A step-down life annuity means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

(1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY

Age of participant[1] at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination[2]									
	1	2	3	4	5	6	7	8	9	10
45	0.060	0.117	0.170	0.220	0.268	0.315	0.355	0.395	0.435	0.475
46	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
53	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
54	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56	.072	.141	.206	.268	.328	.387	.439	.491	.543	.....
57	.074	.145	.212	.276	.338	.399	.453	.507	.....	.....
58	.076	.149	.218	.284	.348	.411	.467	.....	.....	.....
59	.078	153	.224	.292	.358	.423	.....	.....	.....	.....
60	.080	.157	.230	.300	.368	.....	.....	.....	.....	.....
61	.082	.161	.236	.308	.....	.....	.....	.....	.....	.....
62	.084	.165	.242	.....	.....	.....	.....	.....	.....	.....
63	.086	.169	.....	.....	.....	.....	.....	.....	.....	.....
64	.088	.....	.....	.....	.....	.....	.....	.....	.....	.....

[1] At last birthday.

[2] If the benefit is payable for less than 1 yr, the appropriate factor is obtained by multiplying the factor for 1 yr by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under §4022.22 shall be adjusted by applying the factors set forth in paragraph (c) of this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f)(1) of this section exceeds the monthly

amount calculated pursuant to paragraph (f)(2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f)(2) of this section bears to the monthly benefit calculated pursuant to paragraph (f)(1) of this section.

(g) *PPA 2006 bankruptcy termination.* (1) In a PPA 2006 bankruptcy termination, except as provided in the next sentence, ''bankruptcy filing date'' is substituted for ''termination date'' and ''date of plan termination'' each place that ''termination date'' or ''date of plan termination'' appears in paragraphs (c), (d), and (f) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will determine the factors in paragraphs (d), (e), and (f) based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date. (The case of Participant C in the example below illustrates this exception.)

(2) *Example.* (i) *Facts.* The contributing sponsor of a plan files a bankruptcy petition in July 2007, and the sponsor's plan terminates in a PBGC-initiated termination with a termination date in July 2008. At the bankruptcy filing date:

(A) Participant A was age 64 and receiving a benefit from the plan in the form of a 10-year certain-and-continuous annuity, with 4 years remaining in the certain period.

(B) Participant B was age 60 and 6 months and was still working. She began receiving a benefit from the plan in the form of a 50% joint-and-survivor annuity when she turned 61 in January 2008. Her spouse was the same age as she.

(C) Participant C was age 60 and was receiving a $3,000/month benefit from the plan in the form of a 50% joint-and-survivor annuity, with his spouse, age 58, as his beneficiary. Participant C he died in February 2008 and in March 2008 his spouse began receiving a 50% survivor annuity of $1,500/month.

(D) Participant D was age 59 and was still working; he began receiving a straight-life annuity from the PBGC in July 2010 when he was 62 years old.

(ii) *Conclusions.* In accordance with § 4022.22(b)(2), PBGC computes the maximum guaranteeable monthly benefit for Participants A, B, and D and for the spouse of Participant C based on the $4,125.00 amount determined under § 4022.22(a)(2) for 2007. (The gross-income-based limitation in § 4022.22(a)(1) does not apply to any of these participants.)

(A) Participant A's maximum guaranteeable monthly benefit is $3,759.53 [$4,125.00 × .93 (7% reduction for a benefit starting at age 64) × .98 (2% reduction for a certain-and-continuous annuity with 4 years remaining in the certain period)].

(B) Participant B's maximum guaranteeable monthly benefit is $2,673.00 [$4,125.00 × .72 (28% reduction for a benefit starting at age 61) × .90 (10% reduction due to the 50% joint-and-survivor feature)].

(C) Participant C's spouse's maximum guaranteeable monthly benefit is $2,351.25 [$4,125.00 × .57 (43% reduction for a benefit starting at age 58; no reduction for the form of benefit because the spouse's survivor benefit is a straight-life annuity)]. Because that amount exceeds the spouse's $1,500 monthly survivor benefit, the spouse's benefit is not reduced by the maximum guaranteeable benefit limitation.

(D) Participant D's maximum guaranteeable monthly benefit is $3,258.75 [$4,125.00 × .79 (21% reduction for a benefit starting at age 62)].

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996; 76 FR 34603, June 14, 2011]

§ 4022.24 Benefit increases.

(a) *Scope.* This section applies to all benefit increases, as defined in § 4022.2, that have been in effect for less than

five years preceding the termination date.

(b) *General rule.* Benefit increases described in paragraph (a) of this section are guaranteeable only to the extent provided in § 4022.25.

(c) *Computation of guaranteeable benefit increases.* Except as provided in paragraph (d) of this section pertaining to multiple benefit increases, the amount of a guaranteeable benefit increase shall be the amount, if any, by which the monthly benefit calculated pursuant to paragraph (c)(1) of this section (the monthly benefit provided under the terms of the plan as of the termination date, as limited by § 4022.22) exceeds the monthly benefit calculated pursuant to paragraph (c)(4) of this section (the monthly benefit which would have been payable on the termination date if the benefit provided subsequent to the increase were equivalent, as of the date of the increase, to the benefit provided prior to the increase).

(1) Determine the amount of the monthly benefit payable on the termination date (or, in the case of a deferred benefit, the monthly benefit which will become payable thereafter) under the terms of the plan subsequent to the increase, using service credited to the participant as of the termination date, that is guaranteeable pursuant to § 4022.22;

(2) Determine, as of the date of the benefit increase, in accordance with the provisions of § 4022.23, the factors which would be used to calculate the monthly maximum benefit guaranteeable (i) under the terms of the plan prior to the increase and (ii) under the terms of the plan subsequent to the increase. However, when the benefit referred to in paragraph (c)(2)(ii) of this section is a joint and survivor benefit deferred as of the termination date and there is no beneficiary on that date, the factors computed in paragraph (c)(2)(ii) of this section shall be determined as if the benefit were payable only to the participant. Each set of factors determined under this paragraph shall be stated in the manner set forth in § 4022.23(b)(1);

(3) Multiply the monthly benefit which would have been payable (or, in the case of a deferred benefit, would have become payable) under the terms of the plan prior to the increase based on service credited to the participant as of the termination date by a fraction, the numerator of which is the product of the factors computed pursuant to paragraph (c)(2)(ii) of this section and the denominator of which is the product of the factors computed pursuant to paragraph (c)(2)(i) of this section.

(4) Calculate the amount of the monthly benefit which would be payable on the termination date if the monthly benefit computed in paragraph (c)(3) of this section had been payable commencing on the date of the benefit increase (or, in the case of a deferred benefit, would have become payable thereafter). In the case of a benefit which does not become payable until subsequent to the termination date, the amount of the monthly benefit determined pursuant to this paragraph is the same as the amount of the monthly benefit calculated pursuant to paragraph (c)(3) of this section.

(d) *Multiple benefit increases.* (1) Where there has been more than one benefit increase described in paragraph (a) of this section, the amounts of guaranteeable benefit increases shall be calculated beginning with the earliest increase, and each such amount (except for the amount resulting from the final benefit increase) shall be multiplied by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 4022.23(b)(1), used to calculate the monthly maximum guaranteeable benefit under § 4022.22 and the denominator of which is the product of the factors used in the calculation under paragraph (c)(2)(i) of this section.

(2) Each benefit increase shall be treated separately for the purposes of § 4022.25, except as otherwise provided in paragraph (d) of that section, and for the purposes of § 4022.26, as appropriate.

(e) Except as provided in § 4022.27(c), for the purposes of §§ 4022.22 through 4022.28, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination,

except as provided in the next sentence, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (a) and (c) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will compute the benefit based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date, consistent with § 4022.23(g).

(g) *Rollover amounts.* Any portion of a benefit derived from mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12 (c)(4)(i) of this chapter) is disregarded in applying the provisions of §§ 4022.24 through 4022.26. However, any portion of a benefit derived from employer contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(ii) of this chapter) is combined with any other benefit under the plan in applying the provisions of §§ 4022.24 through 4022.26. In such case, the benefit increase is deemed to be in effect on the date the rollover amounts are received by the plan.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 62 FR 67728, Dec. 30, 1997; 76 FR 34603, June 14, 2011; 79 FR 25672, May 6, 2014; 79 FR 70095, Nov. 25, 2014; 83 FR 49803, Oct. 3, 2018]

§ 4022.25 Five-year phase-in of benefit guarantee.

(a) *Scope.* This section applies to the guarantee of benefit increases which have been in effect for less than five years.

(b) *Phase-in formula.* The amount of a benefit increase computed pursuant to § 4022.24 shall be guaranteed to the extent provided in the following formula: the number of years the benefit increase has been in effect, not to exceed five, multiplied by the greater of (1) 20 percent of the amount computed pursuant to § 4022.24; or (2) $20 per month.

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (c) and (d) of this section. Example: A plan amendment that was adopted and effective in February 2007 increased a participant's benefit by $300 per month (as computed under § 4022.24). The contributing sponsor of the plan filed a bankruptcy petition in March 2009 and the plan has a termination date in April 2010. PBGC's guarantee of the participant's benefit increase is limited to $120 ($300 × 40%), because the increase was made more than 2 years but less than 3 years before the bankruptcy filing date.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34603, June 14, 2011; 83 FR 49804, Oct. 3, 2018]

§ 4022.26 Benefit guarantee for participants who are majority owners.

(a) *Scope.* This section applies to the guarantee of all benefits described in subpart A of this part (subject to the limitations in § 4022.21) with respect to participants who are majority owners at the termination date or who were majority owners at any time within the five-year period preceding that date.

(b) *Formula.* Benefits provided by a plan are guaranteed to the extent provided in the following formula: The amount of the participant's benefit

that PBGC would otherwise guarantee under section 4022 of ERISA and this part if the participant were not a majority owner, multiplied by a fraction not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10.

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' in paragraph (b) of this section.

[83 FR 49804, Oct. 3, 2018]

§ 4022.27 Phase-in of guarantee of unpredictable contingent event benefits.

(a) *Scope.* This section applies to a benefit increase, as defined in §4022.2, that is an unpredictable contingent event benefit (UCEB) and that is payable with respect to an unpredictable contingent event (UCE) that occurs after July 26, 2005.

(1) Examples of benefit increases within the scope of this section include unreduced early retirement benefits or other early retirement subsidies, or other benefits to the extent that such benefits would not be payable but for the occurrence of one or more UCEs.

(2) Examples of UCEs within the scope of this section include full and partial closings of plants or other facilities, and permanent workforce reductions, such as permanent layoffs. Permanent layoffs include layoffs during which an idled employee continues to earn credited service (creep-type layoff) for a period of time at the end of which the layoff is deemed to be permanent. Permanent layoffs also include layoffs that become permanent upon the occurrence of an additional event such as a declaration by the employer that the participant's return to work is unlikely or a failure by the employer to offer the employee suitable work in a specified area.

(3) The examples in this section are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definitions, as further delineated in Treasury Regulations.

(b) *Facts and circumstances.* If PBGC determines that a benefit is a shutdown benefit or other type of UCEB, the benefit will be treated as a UCEB for purposes of this subpart. PBGC will make such determinations based on the facts and circumstances, consistent with these regulations; how a benefit is characterized by the employer or other parties may be relevant but is not determinative.

(c) *Date phase-in begins.* (1) The date the phase-in of PBGC's guarantee of a UCEB begins is determined in accordance with subpart B of this part. For purposes of this subpart, a UCEB is deemed to be in effect as of the latest of—

(i) The adoption date of the plan provision that provides for the UCEB,

(ii) The effective date of the UCEB, or

(iii) The date the UCE occurs.

(2) The date the phase-in of PBGC's guarantee of a UCEB begins is not affected by any delay that may occur in placing participants in pay status due to removal of a restriction under section 436(b) of the Code. See the example in paragraph (e)(8) of this section.

(d) *Date UCE occurs.* For purposes of this section, PBGC will determine the date the UCE occurs based on plan provisions and other facts and circumstances, including the nature and level of activity at a facility that is closing and the permanence of the event. PBGC will also consider, to the extent relevant, statements or determinations by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court, but will not treat such statements or determinations as controlling.

(1) The date a UCE occurs is determined on a participant-by-participant basis, or on a different basis, such as a facility-wide or company-wide basis, depending upon plan provisions and the facts and circumstances. For example, a benefit triggered by a permanent layoff of a participant would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. In contrast, a benefit payable only upon a complete plant shutdown would apply facility-wide, and generally the shutdown date would be the date of the UCE for all participants

who work at that plant. Similarly, a benefit payable only upon the complete shutdown of the employer's entire operations would apply plan-wide, and thus the shutdown date of company operations generally would be the date of the UCE for all participants.

(2) For purposes of paragraph (c)(1)(iii) of this section, if a benefit is contingent upon more than one UCE, PBGC will apply the rule under Treas. Reg. §1.436–1(b)(3)(ii) (26 CFR 1.436–1(b)(3)(ii)) (i.e., the date the UCE occurs is the date of the latest UCE).

(e) *Examples.* The following examples illustrate the operation of the rules in this section. Except as provided in Example 8, no benefit limitation under Code section 436 applies in any of these examples. Unless otherwise stated, the termination is not a PPA 2006 bankruptcy termination.

Example 1. Date of UCE. (i) *Facts:* On January 1, 2006, a Company adopts a plan that provides an unreduced early retirement benefit for participants with specified age and service whose continuous service is broken by a permanent plant closing or permanent layoff that occurs on or after January 1, 2007. On January 1, 2013, the Company informally and without announcement decides to close Facility A within a two-year period. On January 1, 2014, the Company's Board of Directors passes a resolution directing the Company's officers to close Facility A on or before September 1, 2014. On June 1, 2014, the Company issues a notice pursuant to the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101, *et seq.*, that Facility A will close, and all employees will be permanently laid off, on or about August 1, 2014. The Company and the Union representing the employees enter into collective bargaining concerning the closing of Facility A and on July 1, 2014, they jointly agree and announce that Facility A will close and employees who work there will be permanently laid off as of November 1, 2014. However, due to unanticipated business conditions, Facility A continues to operate until December 31, 2014, when operations cease and all employees are permanently laid off. The plan terminates as of December 1, 2015.

(ii) *Conclusion:* PBGC would determine that the UCE is the facility closing and permanent layoff that occurred on December 31, 2014. Because the date that the UCE occurred (December 31, 2014) is later than both the date the plan provision that established the UCEB was adopted (January 1, 2006) and the date the UCEB became effective (January 1, 2007), December 31, 2014, would be the date the phase-in period under ERISA section 4022 begins. In light of the plan termination date of December 1, 2015, the guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

Example 2. Sequential layoffs. (i) *Facts:* The same facts as Example 1, with these exceptions: Not all employees are laid off on December 31, 2014. The Company and Union agree to and subsequently implement a shutdown in which employees are permanently laid off in stages—one third of the employees are laid off on October 31, 2014, another third are laid off on November 30, 2014, and the remaining one-third are laid off on December 31, 2014.

(ii) *Conclusion:* Because the plan provides that a UCEB is payable in the event of either a permanent layoff or a plant shutdown, PBGC would determine that phase-in begins on the date of the UCE applicable to each of the three groups of employees. Because the first two groups of employees were permanently laid off before the plant closed, October 31, 2014, and November 30, 2014, are the dates that the phase-in period under ERISA section 4022 begins for those groups. Because the third group was permanently laid off on December 31, 2014, the same date the plant closed, the phase-in period would begin on that date for that group. Based on the plan termination date of December 1, 2015, participants laid off on October 31, 2014, and November 30, 2014, would have 20 percent of the UCEBs (or $20 per month, if greater) guaranteed under the phase-in rule. The guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

Example 3. Skeleton shutdown crews. (i) *Facts:* The same facts as Example 1, with these exceptions: The plan provides for an unreduced early retirement benefit for age/service-qualified participants only in the event of a break in continuous service due to a permanent and complete plant closing. A minimal skeleton crew remains to perform primarily security and basic maintenance functions until March 31, 2015, when skeleton crew members are permanently laid off and the facility is sold to an unrelated investment group that does not assume the plan or resume business operations at the facility. The plan has no specific provision or past practice governing benefits of skeleton shutdown crews. The plan terminates as of January 1, 2015.

(ii) *Conclusion:* Because the continued employment of the skeleton crew does not effectively continue operations of the facility, PBGC would determine that there is a permanent and complete plant closing (for purposes of the plan's plant closing provision) as of December 31, 2014, which is the date the phase-in period under ERISA section 4022 begins with respect to employees who incurred a break in continuous service at that time. The UCEB of those participants would be a

nonforfeitable benefit as of the plan termination date, but PBGC's guarantee of the UCEB would be 0 percent phased in. In the case of the skeleton crew members, such participants would not be eligible for the UCEB because they did not incur a break in continuous service until after the plan termination date. (If the plan had a provision that there is no shutdown until all employees, including any skeleton crew are terminated, or if the plan were reasonably interpreted to so provide in light of past practice, PBGC would determine that the date that the UCE occurred was after the plan termination date. Thus the UCEB would not be a nonforfeitable benefit as of the plan termination date and therefore would not be guaranteeable.)

Example 4. Creep-type layoff benefit/bankruptcy of contributing sponsor. (i) *Facts:* A plan provides that participants who are at least age 55 and whose age plus years of continuous service equal at least 80 are entitled to an unreduced early retirement benefit if their continuous service is broken due to a permanent layoff. The plan further provides that a participant's continuous service is broken due to a permanent layoff when the participant is terminated due to the permanent shutdown of a facility, or the participant has been on layoff status for two years. These provisions were adopted and effective in 1990. Participant A is 56 years old and has 25 years of continuous service when he is laid off in a reduction-in-force on May 15, 2014. He is not recalled to employment, and on May 15, 2016, under the terms of the plan, his continuous service is broken due to the layoff. He goes into pay status on June 1, 2016, with an unreduced early retirement benefit. The contributing sponsor of Participant A's plan files a bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code on September 1, 2017, and the plan terminates during the bankruptcy proceedings with a termination date of October 1, 2018. Under section 4022(g) of ERISA, because the plan terminated while the contributing sponsor was in bankruptcy, the five-year phase-in period ended on the bankruptcy filing date.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on May 15, 2016, the date of the later of the two UCEs necessary to make this benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the expiration of the two-year period without rehire). Since that date is more than one year (but less than two years) before the September 1, 2017, bankruptcy filing date, 20 percent of Participant A's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 5. Creep-type layoff benefit with provision for declaration that return to work unlikely. (i) *Facts:* A plan provides that participants who are at least age 60 and have at least 20 years of continuous service are entitled to an unreduced early retirement benefit if their continuous service is broken by a permanent layoff. The plan further provides that a participant's continuous service is broken by a permanent layoff if the participant is laid off and the employer declares that the participant's return to work is unlikely. Participants may earn up to 2 years of credited service while on layoff. The plan was adopted and effective in 1990. On March 1, 2014, Participant B, who is age 60 and has 20 years of service, is laid off. On June 15, 2014, the employer declares that Participant B's return to work is unlikely. Participant B retires and goes into pay status as of July 1, 2014. The employer files for bankruptcy on September 1, 2016, and the plan terminates during the bankruptcy.

(ii) *Conclusion:* PBGC would determine that the phase-in period of the guarantee of the UCEB would begin on June 15, 2014—the later of the two UCEs necessary to make the benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the employer's declaration that it is unlikely that Participant B will return to work). The phase-in period would end on September 1, 2016, the date of the bankruptcy filing. Thus 40 percent of Participant B's UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

Example 6. Shutdown benefit with special post-employment eligibility provision. (i) *Facts:* A plan provides that, in the event of a permanent shutdown of a plant, a participant age 60 or older who terminates employment due to the shutdown and who has at least 20 years of service is entitled to an unreduced early retirement benefit. The plan also provides that a participant with at least 20 years of service who terminates employment due to a plant shutdown at a time when the participant is under age 60 also will be entitled to an unreduced early retirement benefit, provided the participant's commencement of benefits is on or after attainment of age 60 and the time required to attain age 60 does not exceed the participant's years of service with the plan sponsor. The plan imposes no other conditions on receipt of the benefit. Plan provisions were adopted and effective in 1990. On January 1, 2014, Participant C's plant is permanently shut down. At the time of the shutdown, Participant C had 20 years of service and was age 58. On June 1, 2015, Participant C reaches age 60 and retires. The plan terminates as of September 1, 2015.

(ii) *Conclusion:* PBGC would determine that the guarantee of the shutdown benefit is phased in from January 1, 2014, which is the date of the only UCE (the permanent shutdown of the plant) necessary to make the benefit payable. Thus 20 percent of Participant C's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 7. Phase-in of retroactive UCEB. (i) *Facts:* As the result of a settlement in a

class-action lawsuit, a plan provision is adopted on September 1, 2014, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring on or after January 1, 2014. Benefits under the provision are payable prospectively only, beginning March 1, 2015. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on January 1, 2014, and therefore he is scheduled to be placed in pay status as of March 1, 2015. The unreduced early retirement benefit is paid to Participant A beginning on March 1, 2015. The plan terminates as of February 1, 2017.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on March 1, 2015. This is the date the benefit was effective (since it was the first date on which the new benefit was payable), and it is later than the adoption date of the plan provision (September 1, 2014) and the date of the UCE (January 1, 2014). Thus 20 percent of Participant A's UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 8. Removal of IRC section 436 restriction. (i)(A) *Facts:* A plan provision was adopted on September 1, 1989, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring after January 1, 1990. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on April 15, 2014. The plan is a calendar year plan.

(B) Under the rules of Code section 436 (ERISA section 206(g)) and Treasury regulations thereunder, a plan cannot provide a UCEB payable with respect to an unpredictable contingent event, if the event occurs during a plan year in which the plan's adjusted funding target attainment percentage is less than 60%. On March 17, 2014, the plan's enrolled actuary issued a certification stating that the plan's adjusted funding target attainment percentage for 2014 is 58%. Therefore, the plan restricts payment of the unreduced early retirement benefit payable with respect to the shutdown on April 15, 2014.

(C) On August 15, 2014, the plan sponsor makes an additional contribution to the plan that is designated as a contribution under Code section 436(b)(2) to eliminate the restriction on payment of the shutdown benefits. On September 15, 2014, the plan's enrolled actuary issues a certification stating that, due to the additional section 436(b)(2) contribution, the plan's adjusted funding target attainment percentage for 2014 is 60%. On October 1, 2014, Participant A is placed in pay status for the unreduced early retirement benefit and, as required under Code section 436 and Treasury regulations thereunder, is in addition paid retroactively the unreduced benefit for the period May 1, 2014 (the date the unreduced early retirements would have become payable) through September 1, 2014. The plan terminates as of September 1, 2016.

(ii) *Conclusion:* PBGC would determine that the guarantee of the UCEB is phased in beginning on April 15, 2014, the date the UCE occurred. Because April 15, 2014, is later than both the date the UCEB was adopted (September 1, 1989) and the date the UCEB became effective (January 1, 1990), it would be the date the phase-in period under ERISA section 4022 begins. Commencement of the phase-in period is not affected by the delay in providing the unreduced early retirement benefit to Participant A due to the operation of the rules of Code section 436 and the Treasury regulations thereunder. Thus 40 percent of Participant A's UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

[79 FR 25672, May 6, 2014]

§ 4022.28 Effect of tax disqualification.

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Section 4022(c) Benefits

§ 4022.51 Determination of section 4022(c) benefits in a PPA 2006 bankruptcy termination.

(a) *Amount of unfunded nonguaranteed benefits.* For purposes of this section, and subject to paragraph (b) of this section, a plan's amount of unfunded nonguaranteed benefits means the plan's outstanding amount of benefit liabilities, as defined in section 4001(a)(19) of ERISA, determined as of the plan's termination date. A plan's amount of unfunded nonguaranteed benefits is multiplied by the applicable recovery ratio to determine the aggregate amount to be allocated with respect to participants of the plan under section 4022(c)(1) of ERISA.

(b) *Benefits included in unfunded nonguaranteed benefits.* For purposes of computing benefits under section 4022(c) of ERISA in a PPA 2006 bankruptcy termination, unfunded nonguaranteed benefits are benefits under a plan as of the plan's termination date that are neither guaranteed by PBGC (taking into account section 4022(g) of ERISA) nor funded by the plan's assets (taking into account section 4044(e) of ERISA).

(c) *Determination of recovery ratio.* In a PPA 2006 bankruptcy termination, the recovery ratio under section 4022(c)(3) of ERISA is determined as follows. The numerator is based on PBGC's recoveries under section 4062, 4063, or 4064, valued as of the plan's (or plans') termination date (or dates). The denominator of the recovery ratio is based on the amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA, as of the plan's (or plans') termination date (or dates).

[76 FR 34603, June 14, 2011]

Subpart D—Benefit Reductions in Terminating Plans

§ 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When § 4041.42 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(a)(2) of this part, adjusted for age and benefit form, for the year of the proposed termination date. In a PPA 2006 bankruptcy termination, the maximum guaranteeable benefit is determined as of the bankruptcy filing date, in accordance with §§ 4022.22(b) and 4022.23(g).

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under § 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples. (For

examples addressing issues specific to a PPA 2006 bankruptcy termination, see §§ 4022.21(e), 4022.22(b), and 4022.23(g).)

Example 1. Facts. On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of $2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, $1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

Benefit reductions. Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is $2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is $1,926.51 ($2,352.27 × 0.90 × 0.91) per month. Therefore, the plan administrator must reduce the participant's benefit payment from $2,500 to $1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse $963.26 (0.50 × $1,926.51) per month.

Example 2. Facts. The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of $400 per month plus a temporary supplement of $400 per month payable until age 62 (*i.e.*, a step-down benefit). The participant's accrued benefit under the plan is $450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 4022.23(c) of this chapter is $1,693.63 ($2,352.27 × 0.72) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 4022.23(d) for benefit form.

Benefit reductions. The plan benefit of $800 per month payable until age 62 exceeds the participant's accrued benefit at normal requirement age of $450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to $450 per month. Since the levelized benefit of $404.10 ((0.082 × 50) + $400) per month, determined under § 4022.23(f), is less than the adjusted maximum guaranteeable benefit of $1,693.63 per month, no further reduction in the $450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

Example 3. Facts. A retired participant is receiving a reduced early retirement benefit of $1,100 per month plus a temporary supplement of $700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $1,200 per month. The maximum guaranteeable benefit adjusted for age is $1,152.61 ($2,352.27 × 0.49) per month. A form adjustment is not required.

Benefit reductions. The plan benefit of $1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of $1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to $100 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of $1,100 per month and a temporary annuity supplement of $100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of $100 per month is converted to a level-life annuity equivalent in accordance with § 4022.23(f) of this chapter. The level-life annuity equivalent is $38.70 ($100 × 0.387). This, added to the life annuity of $1,100 per month, equals $1,138.70. Since the maximum guaranteeable benefit of $1,152.61 per month exceeds $1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit

under paragraph (d). Assume that the estimated benefit under paragraph (d) is $780 per month until age 62 and $715 per month thereafter. The plan administrator would pay the participant $780 per month, reduced to $715 per month at age 62, subject to the final benefit determination made under title IV.

Example 4. Facts. A retired participant is receiving a reduced early retirement benefit of $2,650 per month plus a temporary supplement of $800 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is $3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is $1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

Benefit reductions. The plan benefit of $3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is $3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed $3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 4022.23(f) adjustment factor, is $2,785.45 (($350 × 0.387) + $2,650) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of $1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the ''accrued for normal retirement age'' limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the ''accrued for normal retirement age'' limitation is 37.24 percent ($1,037.35/$2,785.45). Thus, the plan administrator must reduce the participant's level-life benefit of $2,650 per month to $986.86 ($2,650 × 0.3724) and must further reduce the reduced temporary benefit of $350 per month to $130.34 ($350 × 0.3724). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is $1,117.20 ($986.86 + $130.34) per month to age 62 and $986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is $1,005.48 per month to age 62 and $888.17 per month thereafter. The plan administrator would reduce the participant's benefit from $3,450 per month to $1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to $888.17 per month, subject to the final benefit determination made under title IV.

[61 FR 34028, July 1, 1996, as amended at 62 FR 60428, Nov. 7, 1997; 76 FR 34604, June 14, 2011]

§ 4022.62 Estimated guaranteed benefit.

(a) *General.* The estimated guaranteed benefit payable with respect to each participant who is not a majority owner is computed under paragraph (c) of this section. The estimated guaranteed benefit payable with respect to each participant who is a majority owner is computed under paragraph (d) of this section.

(b) *Rules for determining benefits.* For the purposes of determining entitlement to a benefit and the amount of the estimated benefit under this section, the following rules apply:

(1) *Non-PPA 2006 bankruptcy termination.* In a non-PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(ii) For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the proposed termination date.

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the bankruptcy filing date, the plan administrator shall use the participant's age and benefit payable under the plan as of the bankruptcy filing date.

(ii) For benefits payable with respect to a participant who enters pay status after the bankruptcy filing date, the

plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the bankruptcy filing date.

(3) *Participants with new benefits or benefit improvements.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) of this section, only new benefits and benefit improvements that affect the benefit of the participant or beneficiary for whom the determination is made are taken into account.

(4) *Limitations on estimated guaranteed benefits.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) or (d) of this section, the benefit determined under paragraph (b)(1) or (b)(2) of this section is subject to the limitations set forth in § 4022.61 (b) and (c).

(5) Nothing in this paragraph (b) overrides the provisions of subparts A and B of part 4022 with respect to the requirements necessary for a benefit to be guaranteed by PBGC.

(c) *Estimated guaranteed benefit payable with respect to a participant who is not a majority owner.* For benefits payable with respect to a participant who is not a majority owner, the estimated guaranteed benefit is determined under paragraph (c)(1) of this section, if no portion of the benefit is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA. In any other case, the estimated guaranteed benefit is determined under paragraph (c)(2). ''Benefit subject to phase-in'' means a benefit that is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA, determined without regard to section 4022(b)(7) of ERISA.

(1) *Participants with no benefits subject to phase-in.* In the case of a participant or beneficiary with no benefit improvement (as defined in paragraph (c)(2)(ii)) or new benefit (as defined in paragraph (c)(2)(i)) in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section.

(2) *Participants with benefits subject to phase-in.* In the case of a participant or beneficiary with a benefit improvement or new benefit in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section, multiplied by the multiplier determined according to paragraphs (i), (ii), and (iii), but not less than the benefit to which he or she would have been entitled if the benefit improvement or new benefit had not been adopted.

(i) From column (a) of Table I, select the line that applies according to the number of full years before the proposed termination date since the plan was last amended to provide for a new benefit (or the number of full years since the plan was established, if it has never been amended to provide for a new benefit). ''New benefit'' means a change in the terms of the plan that results in (a) a participant's or a beneficiary's eligibility for a benefit that was not previously available or to which he or she was not entitled (excluding a benefit that is actuarially equivalent to the normal retirement benefit to which the participant was previously entitled) or (b) an increase of more than twenty percent in the benefit to which a participant is entitled upon entering pay status before his or her normal retirement age under the plan. ''New benefits'' result from liberalized participation or vesting requirements, reductions in the age or service requirements for receiving unreduced benefits, additions of actuarially subsidized benefits, and increases in actuarial subsidies. ''New benefits'' also result from increases that become payable by reason of the occurrence of an unpredictable contingent event (provided the event occurred after July 26, 2005), to the extent the increase would not be payable but for the occurrence of the event; in the case of such new benefits, the date of the occurrence of the unpredictable contingent event is treated as the amendment date for purposes of Table I. The establishment of a plan creates a new benefit as of the effective date of the plan. A change in the amount of a benefit is not deemed to be a ''new benefit'' if it

results solely from a benefit improvement. ''New benefit'' and ''benefit improvement'' are mutually exclusive terms.

(ii) If there was no benefit improvement under the plan during the one-year period ending on the proposed termination date, use the multiplier set forth in column (b) of Table I on the line selected from column (a). ''Benefit improvement'' means a change in the terms of the plan that results in (a) an increase in the benefit to which a participant is entitled at his or her normal retirement age under the plan or (b) an increase in the benefit to which a participant or beneficiary in pay status is entitled.

(iii) If there was any benefit improvement during the one-year period ending on the proposed termination date, use the multiplier set forth in column (c) of Table I on the line selected from column (a).

TABLE I—APPLICABLE MULTIPLIER IF—

Full years since last new benefit (a)	No benefit improvement during last year (b)	Benefit improvement during last year (c)
Five or more	.90	.80
Four	.80	.70
Three	.65	.55
Two	.50	.45
Fewer than two	.35	.30

NOTE: The foregoing method of estimating guaranteed benefits is based upon the PBGC's experience with a wide range of plans and may not provide accurate estimates in certain circumstances. In accordance with § 4022.61(e), a plan administrator may use a different method of estimation if he or she demonstrates to the PBGC that his proposed method will be more equitable to participants and beneficiaries. The PBGC may require the use of a different method in certain cases.

(d) *Estimated guaranteed benefit payable with respect to a majority owner.* For benefits payable with respect to each participant who is a majority owner, the estimated guaranteed benefit is the benefit to which he or she would be entitled under paragraph (c) of this section but for his or her status as a majority owner, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the proposed termination date and the denominator of which is 10.

(e) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in paragraphs (c) and (d) of this section.

(f) *Examples.* This section is illustrated by the following examples. (For an example addressing issues specific to a PPA 2006 bankruptcy termination, see § 4022.25(f).)

(1) *Example 1*—(i) *Facts.* A participant who is not a majority owner retired on December 31, 2011, at age 60 and began receiving a benefit of $600 per month. On January 1, 2009, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of 1/15 for each year by which his or her actual retirement age preceded age 65. On January 1, 2012, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 2012. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 2012.

(ii) *Estimated guaranteed benefit.* (A) No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

(B) The amendment as of January 1, 2009, resulted in a ''new benefit'' because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by 5/15, which is more than the 20-percent increase threshold under paragraph (c)(2)(i) of this section. The amendment of January 1, 2012, which increased the participant's benefit to $750 per month, is a ''benefit improvement'' because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether an increase in a pay status benefit is a benefit improvement.)

(C) The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of

Table I of this section (because the last new benefit had been in effect for three full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the one-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 (0.55 × $750) per month.

(2) *Example 2*—(i) *Facts.* A participant who is not a majority owner terminated employment on December 31, 2010. On January 1, 2012, she reached age 65 and began receiving a benefit of $250 per month. She had completed three years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 2008. Under the schedule in effect before the amendment, a participant with five years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 2012.

(ii) *Estimated guaranteed benefit.* No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for four full years before the proposed termination date, the second row of Table I of this section is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 (0.80 × $250) per month.

(3) *Example 3*—(i) *Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for seven full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Consequently, the amount of this participant's estimated guaranteed benefit is $1,400 ($2,000 × 7/10) per month.

(4) *Example 4*—(i) *Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for 12 full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Since the plan was in effect for more than 10 years as of the proposed termination date, the amount of this participant's estimated guaranteed benefit is $2,000 per month.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996; 76 FR 34604, June 14, 2011; 79 FR 25674, May 6, 2014; 83 FR 49804, Oct. 3, 2018]

§ 4022.63 Estimated asset-funded benefit.

(a) *General.* If the conditions specified in paragraph (b) exist, the plan administrator shall determine each participant's estimated asset-funded benefit. The estimated asset-funded benefit payable with respect to each participant who is not a majority owner is computed under paragraph (c) of this section. The estimated asset-funded benefit payable with respect to each participant who is a majority owner is computed under paragraph (d) of this section.

(b) *Conditions for use of this section.* The conditions set forth in this paragraph must be satisfied in order to make use of the procedures set forth in this section. If the specified conditions exist, estimated asset-funded benefits must be determined in accordance with these procedures (or in accordance with alternative procedures authorized by the PBGC under § 4022.61(f)) for each

participant and beneficiary whose benefit under the plan exceeds the limitations contained in § 4022.61(b) or (c) or who is a majority owner or the beneficiary of a majority owner. If the specified conditions do not exist, title IV benefits may be estimated by the plan administrator in accordance with procedures authorized by the PBGC, but no such estimate is required. The conditions are as follows:

(1) An actuarial valuation of the plan has been performed for a plan year beginning not more than eighteen months before the proposed termination date. If the interest rate used to value plan liabilities in this valuation exceeded the applicable valuation interest rates and factors under appendix B to part 4044 of this chapter in effect on the proposed termination date, the value of benefits in pay status and the value of vested benefits not in pay status on the valuation date must be converted to the PBGC's valuation rates and factors.

(2) The plan has been in effect for at least five full years before the proposed termination date, and the most recent actuarial valuation demonstrates that the value of plan assets, reduced by employee contributions remaining in the plan and interest credited thereon under the terms of the plan, exceeds the present value, adjusted as required under paragraph (b)(1), of all plan benefits in pay status on the valuation date.

(3) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' in the first sentence of paragraph (b)(2) of this section.

(c) *In general*—(1) *Estimated asset-funded benefit payable with respect to a participant who is not a majority owner.* For benefits payable with respect to a participant who is not a majority owner, the estimated asset-funded benefit is the estimated priority category 3 benefit computed under this paragraph. Priority category 3 benefits are payable with respect to participants who were, or could have been, in pay status three full years prior to the proposed termination date. The estimated priority category 3 benefit is computed by multiplying the benefit payable with respect to the participant under § 4022.62 (b)(1) and (b)(2) by a fraction, not to exceed one—

(i) The numerator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the date five full years before the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date, and

(ii) The denominator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date.

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in paragraph (c)(1) of this section.

(d) *Estimated asset-funded benefit payable with respect to a majority owner.* For benefits payable with respect to a participant who is a majority owner, the estimated asset-funded benefit is the higher of the benefit computed under paragraph (c) of this section or the benefit computed under this paragraph.

(1) The plan administrator shall first calculate the estimated guaranteed benefit payable with respect to the majority owner as if he or she were not a majority owner, using the method set forth in § 4022.62(c).

(2) The benefit computed under paragraph (d)(1) shall be multiplied by the priority category 4 funding ratio. The category 4 funding ratio is the ratio of x to y, not to exceed one, where—

(i) In a plan with priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and the present value of benefits in pay status, and y equals the present value of all vested benefits not

in pay status minus such employee contributions and interest; or

(ii) In a plan with no priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and y equals the present value of all vested benefits minus such employee contributions and interest.

(e) *Examples.* This section is illustrated by the following examples:

(1) *Example 1*—(i) *Facts.* (A) A participant who is not a majority owner was eligible to retire 3.5 years before the proposed termination date. The participant retired two years before the proposed termination date with 20 years of service. Her final five years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61(b) or (c).

(B) On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final five years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1.5 percent. The amendments improving benefits were put into effect 3.5 years before the proposed termination date. There were no other amendments during the five-year period.

(C) The participant's estimated guaranteed benefit computed under § 4022.62(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the asset-funded benefit.

(ii) *Estimated asset-funded benefit.* (A) For a participant who is not a majority owner, the amount of the estimated asset-funded benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of the normal retirement benefit under the provisions of the plan in effect five years before the proposed termination date and the normal retirement benefit under the plan provisions in effect on the proposed termination date.

(B) Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan five years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated asset-funded benefit is $1,125 (0.015/0.020 × $1,500) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is $1,350 per month.

(iii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, the methodology would be the same, but ''bankruptcy filing date'' would be substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in the example, and the numbers would change accordingly.

(2) *Example 2*—(i) *Facts.* (A) A participant who is a majority owner retired on the proposed termination date of October 31, 2012. The original plan had been in effect for seven full years as of the proposed termination date. Under the provisions of the plan in effect five years before the proposed termination date, the participant is entitled to a single life annuity of $500 per month. The plan was amended to increase benefits three full years before the proposed termination date. Under these plan amendments, the participant is entitled to a single life annuity of $1,000 per month.

(B) The participant's estimated guaranteed benefit computed under

§ 4022.62(d) is $455 per month ($1,000 × 0.65 × 7/10).

(C) It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

(ii) *Estimated asset-funded benefit.* (A) Paragraph (d) of this section provides that the amount of the estimated asset-funded benefit payable with respect to a participant who is a majority owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

(B) Under paragraph (c) of this section, the participant's estimated priority category 3 benefit is $500 ($1,000 × $500/$1,000) per month.

(C) Under paragraph (d) of this section, the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (*i.e.*, as if the participant were not a majority owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i) of this section. The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is $1,000 per month times 0.65 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $650 per month. Multiplying $650 by the category 4 funding ratio of ⅔ (($2 million − $1.5 million)/$0.75 million) produces an estimated category 4 benefit of $433.33 per month.

(D) Because the estimated category 4 benefit so computed is less than the estimated category 3 benefit so computed, the estimated category 3 benefit is the estimated asset-funded benefit. Because the estimated category 3 benefit so computed is greater than the estimated guaranteed benefit of $455 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated priority category 3 benefit of $500 per month.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 76 FR 34604, June 14, 2011; 83 FR 49805, Oct. 3, 2018]

Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

§ 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* If at any time the PBGC determines that net benefits paid with respect to any participant in a PBGC-trusteed plan exceed the total amount to which the participant (and any beneficiary) is entitled up to that time under title IV of ERISA, and the participant (or beneficiary) is, as of the termination date, entitled to receive future benefit payments, the PBGC will recoup the net overpayment in accordance with paragraph (c) of this section and § 4022.82. Notwithstanding the previous sentence, the PBGC may, in its discretion, recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally do so unless net benefits paid after the termination date exceed those to which a participant (and any beneficiary) is entitled under the terms of the plan before any reductions under subpart D.

(b) *Reimbursement of benefit underpayments.* If at any time the PBGC determines that net benefits paid with respect to a participant in a PBGC-trusteed plan are less than the amount to which the participant (and any beneficiary) is entitled up to that time under title IV of ERISA, the PBGC will reimburse the participant or beneficiary for the net underpayment in accordance with paragraph (c) of this section and § 4022.83.

(c) *Amount to be recouped or reimbursed.* In order to determine the amount to be recouped from, or reimbursed to, a participant (or beneficiary), the PBGC will calculate a monthly account balance for each month ending after the termination

date. The PBGC will start with a balance of zero as of the end of the calendar month ending immediately prior to the termination date and determine the account balance as of the end of each month thereafter as follows:

(1) *Debit for overpayments.* The PBGC will subtract from the account balance the amount of overpayments made in that month. Only overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA will be included.

(2) *Credit for underpayments.* The PBGC will add to the account balance the amount of underpayments made in that month. Only underpayments made on or after the termination date will be included.

(3) *PPA 2006 bankruptcy termination.* The provisions of paragraphs (c)(1) and (2) of this section regarding the overpayments and underpayments that will be included in the account balance apply regardless of whether the termination is a PPA 2006 bankruptcy termination.

(4) *Credit for interest on net underpayments.* If at the end of a month there is a positive account balance (a net underpayment), the PBGC will add to the account balance interest thereon for that month using—

(i) For months after May 1998, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month (or, where the rate for a month is not available at the time the PBGC calculates the amount to be recouped or reimbursed, the most recent month for which the rate is available) based on monthly compounding; and

(ii) For May 1998 and earlier months, the immediate annuity rate established for lump sum valuations as set forth in Table II of appendix B of part 4044 of this chapter.

(5) *No interest on net overpayments.* If at the end of a month, there is a negative account balance (a net overpayment), there will be no interest adjustment for that month.

(d) *Death of participant*—(1) *Benefit overpayments.* If the PBGC determines that, at the time of a participant's death, there was a net overpayment to the participant—

(i) *Future annuity payments.* If the participant was entitled to future annuity payments as of the plan's termination date, the PBGC will (except as provided in paragraph (a) of this section) recoup the overpayment from the person (if any) who is receiving survivor benefits under the annuity.

(ii) *No future annuity payments.* If the participant was not entitled to future annuity benefits as of the plan's termination date, the PBGC may seek repayment of the overpayment from the participant's estate.

(2) *Benefit underpayments.* If the PBGC determines that, at the time of a participant's death, there was a net underpayment to the participant—

(i) *Future annuity payments.* If the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC will pay the underpayment to the person who is receiving survivor benefits; for this purpose, if the person receiving survivor benefits is an alternate payee under a qualified domestic relations order, the PBGC will treat the benefit as if payments do not continue after the participant's death (see paragraph (d)(2)(ii) of this section).

(ii) *No future annuity payments.* If the benefit is not in the form of a joint-and-survivor or other annuity (e.g., a certain-and-continuous annuity) under which payments may continue after the participant's death or although the benefit is in such a form payments do not continue after the participant's death (*i.e.*, in the case of a joint-and-survivor annuity, the person designated to receive survivor benefits predeceased the participant or, in the case of another annuity under which payments may continue after the participant's death the participant died with no payments owed for future periods), the PBGC will pay the underpayment to the person determined

under the rules in §§ 4022.91 through 4022.95.

[63 FR 29354, May 29, 1998, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34604, June 14, 2011]

§ 4022.82 Method of recoupment.

(a) *Future benefit reduction.* The PBGC will recoup net overpayments of benefits by reducing the amount of each future benefit payment to which the participant or any beneficiary is entitled by the fraction determined under paragraphs (a)(1) and (a)(2) of this section, except that benefit reduction will cease when the amount (without interest) of the net overpayment is recouped. Notwithstanding the preceding sentence, the PBGC may accept repayment ahead of the recoupment schedule.

(1) *Computation.* The PBGC will determine the fractional multiplier by dividing the amount of the net overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA.

(i) *Non-PPA 2006 bankruptcy termination.* In a non-PPA bankruptcy termination, the PBGC will determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date.

(ii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, PBGC will determine the amount of benefit payable with respect to the participant under title IV of ERISA taking into account the limitations in sections 4022(g) and 4044(e) (and corresponding provisions of these regulations), and will determine the present value of that amount as of the termination date, using PBGC interest rates and factors in effect on the termination date.

(iii) *Facts and circumstances.* The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

(2) *Limitation on benefit reduction.* Except as provided in paragraph (a)(1) of this section, the PBGC will reduce benefits with respect to a participant or beneficiary by no more than the greater of—

(i) Ten percent per month; or

(ii) The amount of benefit per month in excess of the maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA, determined without adjustment for age and benefit form.

(3) *PBGC notice to participant or beneficiary.* Before effecting a benefit reduction pursuant to this paragraph, the PBGC will notify the participant or beneficiary in writing of the amount of the net overpayment and of the amount of the reduced benefit computed under this section.

(4) *Waiver of de minimis amounts.* The PBGC may, in its discretion, decide not to recoup net overpayments that it determines to be *de minimis.*

(5) *Final installment.* The PBGC will cease recoupment one month early if the amount remaining to be recouped in the final month is less than the amount of the monthly reduction.

(b) *Full repayment through recoupment.* Recoupment under this section constitutes full repayment of the net overpayment.

[63 FR 29354, May 29, 1998, as amended at 76 FR 34604, June 14, 2011]

§ 4022.83 PBGC reimbursement of benefit underpayments.

When the PBGC determines that there has been a net benefit underpayment made with respect to a participant, it shall pay the participant or beneficiary the amount of the net underpayment, determined in accordance with § 4022.81(c), in a single payment.

[61 FR 34028, July 1, 1996, as amended at 63 FR 29355, May 29, 1998]

Subpart F—Certain Payments Owed Upon Death

SOURCE: 67 FR 16957, Apr. 8, 2002, unless otherwise noted.

§ 4022.91 When do these rules apply?

(a) *Types of benefits.* Provided the conditions in paragraphs (b) and (c) of this section are satisfied, these rules (§§ 4022.91 through 4022.95) apply to any benefits we may owe you (including benefits we owe you because your plan owed them) at the time of your death,

such as a payment of a lump-sum benefit that we calculated as of your plan's termination date but have not yet paid you or a back payment to reimburse you for monthly underpayments. We may owe you benefits at the time of your death if—

(1) You are a participant in a terminated plan;

(2) You are a beneficiary (including an alternate payee) of a participant; or

(3) You are a designee or other payee (e.g., a participant's next of kin) under these rules, as explained in § 4022.93.

(b) *Payments do not continue after death.* These rules apply only if payments do not continue after your death. (If payments continue after your death, we will make up any underpayment to you at the time of your death under the rule in § 4022.81(d)(2)(i) by paying it to the person who is entitled to receive those continuing payments.) Payments do not continue after your death if—

(1) Your benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after your death (e.g., a certain-and-continuous annuity);

(2) Your benefit is in the form of a joint-and-survivor annuity and the person designated to receive survivor benefits died before you; or

(3) Your benefit is in the form of another type of annuity under which payments may continue after your death (e.g., a certain-and-continuous annuity) but you die with no payments owed for future periods.

(c) *Time of death.* These rules apply only if you die—

(1) On or after the date we take over your plan (as trustee); or

(2) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid all benefits owed to you at the time of your death.

(d) *Effect of plan or will.* These rules apply even if there is a contrary provision in a plan or will.

§ 4022.92 What definitions do I need to know for these rules?

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

''We'' means the PBGC.

''You'' means the person to whom we may owe benefits at the time of death.

§ 4022.93 Who will get benefits the PBGC may owe me at the time of my death?

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section (which explain what happens if you die before the date we take over your plan or within 180 days after the date we take over your plan), we will pay any benefits we owe you at the time of your death to the person(s) surviving you in the following order—

(1) *Designee with the PBGC.* The person(s) you designated with us to get any benefits we may owe you at the time of your death. See § 4022.94 for information on designating with us.

(2) *Spouse.* Your spouse. We will consider a person to whom you are married to be your spouse even if you and that person are separated, unless a decree of divorce or annulment has been entered in a court.

(3) *Children.* Your children and descendants of your deceased children.

(i) *Adopted children.* In determining who is a child or descendant, an adopted child is treated the same way as a natural child.

(ii) *Child dies before parent.* If one of your children dies before you, any of your grandchildren through that deceased child will equally divide that deceased child's share; if one of your grandchildren through that deceased child dies before that deceased child, any of your great-grandchildren through that deceased grandchild will equally divide that deceased grandchild's share; and so on.

(4) *Parents.* Your parents. A parent includes an adoptive parent.

(5) *Estate.* Your estate, provided your estate is open.

(6) *Next of kin.* Your next of kin in accordance with applicable state law.

(b) *Pre-trusteeship deaths.* If you die before the date we take over your plan and, by that date, the plan administrator has not paid all benefits owed to you at the time of your death, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get

those benefits (provided the designation clearly applies to those benefits). If there is no such designation, we will pay those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

(c) *Deaths shortly after trusteeship.* If you die within 180 days after the date we take over your plan and you have not designated anyone with the PBGC under paragraph (a)(1) of this section, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits) before paying those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

§ 4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?

(a) *When you may designate.* At any time on or after the date we take over your plan, you may designate with us who will get any benefits we owe you at the time of your death.

(b) *Change of designee.* If you want to change the person(s) you designate with us, you must submit another designation to us.

(c) *If your designee dies before you*—(1) *In general.* If the person(s) you designate with us dies before you or at the same time as you, we will treat you as not having designated anyone with us (unless you named an alternate designee who survives you). Therefore, you should keep your designation with us current.

(2) *Simultaneous deaths.* If you and a person you designated die as a result of the same event, we will treat you and that person as having died at the same time, provided you and that person die within 30 days of each other.

§ 4022.95 Examples.

The following examples show how the rules in §§ 4022.91 through 4022.94 apply. For examples on how these rules apply in the case of a certain-and-continuous annuity, see § 4022.104.

At the time of his death, Charlie was receiving payments under a joint-and-survivor annuity. Charlie designated Ellen to receive survivor benefits under his joint-and-survivor annuity. We underpaid Charlie for periods before his death. At the time of his death, we owed Charlie a back payment to reimburse him for those underpayments.

(a) *Example 1: where surviving beneficiary is alive at participant's death.* Ellen survived Charlie. As explained in § 4022.91(b), because Ellen is entitled to survivor benefits under the joint-and-survivor annuity, we would pay Ellen the back payment.

(b) *Example 2: where surviving beneficiary predeceases participant.* Ellen died before Charlie. As explained in §§ 4022.91(b) and 4022.93, because benefits do not continue after Charlie's death under the joint-and-survivor annuity, we would pay the back payment to the person(s) Charlie designated to receive any payments we might owe him at the time of his death. If Charlie did not designate anyone to receive those payments or his designee died before him, we would pay the back payment to the person(s) surviving Charlie in the following order: spouse, children, parents, estate and next of kin.

Subpart G—Certain-and-Continuous and Similar Annuity Payments Owed for Future Periods After Death

SOURCE: 67 FR 16958, Apr. 8, 2002, unless otherwise noted.

§ 4022.101 When do these rules apply?

(a) *In general.* These rules (§§ 4022.101 through 4022.104) apply only if you die—

(1) *Required payments for future periods.* Without having received all required payments for future periods under a form of annuity promising that, regardless of a participant's death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity);

(2) *No surviving beneficiary.* Without a surviving beneficiary designated to receive the payments described in paragraph (a)(1) of this section; and

(3) *Time of death.* (i) On or after the date we take over your plan (as trustee); or

(ii) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid any required payments for future periods.

(b) *Effect of plan or will.* These rules apply even if there is a contrary provision in a plan or will.

(c) *Payments owed at time of death.* See §§ 4022.91 through 4022.95 for rules that apply to benefits we may owe you at the time of your death, such as a correction for monthly underpayments.

§ 4022.102 What definitions do I need to know for these rules?

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

''We'' means the PBGC.

''You'' means the person who might die—

(1) Without having received all required payments for future periods under a form of annuity promising that, regardless of a participant's death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity); and

(2) Without a surviving beneficiary designated to receive the payments described in paragraph (1) of this definition.

§ 4022.103 Who will get benefits if I die when payments for future periods under a certain-and-continuous or similar annuity are owed upon my death?

If you die at a time when payments are owed for future periods under a form of annuity promising that, regardless of a participant's death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity), and there is no surviving beneficiary designated to receive such payments, we will pay the remaining payments to the person determined under the rules in § 4022.93.

§ 4022.104 Examples.

The following examples show how the rules in §§ 4022.101 through 4022.103 and 4022.91 through 4022.94 apply in the case of a certain-and-continuous annuity.

(a) *C&C annuity with no underpayment.* At the time of his death, Charlie was receiving payments (in the correct amount) under a 5-year certain-and-continuous annuity. Charlie designated Ellen to receive any payments we might owe for periods after his death (but did not designate an alternate beneficiary to receive those payments in case Ellen died before him). Charlie died with three years of payments remaining.

(1) *Example 1: where surviving beneficiary predeceases participant.* Ellen died before Charlie. As explained in §§ 4022.103 and 4022.93, we would pay the remaining three years of payments to the person(s) surviving Charlie in the following order: spouse, children, parents, estate and next of kin.

(2) *Example 2: where surviving beneficiary dies during certain period.* Ellen survived Charlie and lived another year. We pay Ellen one year of payments. As explained in §§ 4022.103 and 4022.93, we would pay the remaining two years of payments to the person Ellen designated to receive any payments we might owe for periods after Ellen's death. If Ellen did not designate anyone to receive those payments or her designee died before her, we would pay the remaining year of payments to the person(s) surviving Ellen in the following order: spouse, children, parents, estate, next of kin.

(b) *C&C annuity with underpayment.* At the time of his death, Charlie was receiving payments under a 5-year certain-and-continuous annuity. Charlie designated Ellen to receive any payments we might owe for periods after his death. We underpaid Charlie for periods before his death. At the time of his death, we owed Charlie a back payment to reimburse him for those underpayments.

(1) *Example 3: where participant dies during certain period.* Charlie died with three years of payments remaining. Ellen survived Charlie and lived at least another three years. We pay Ellen the remaining three years of payments. As explained in § 4022.91(b), because Ellen is entitled to survivor benefits under the certain-and-continuous annuity, we would pay Ellen the back payment for the underpayments to Charlie (and for any underpayments to Ellen).

(2) *Example 4: where participant and surviving beneficiary die during certain period.*

Charlie died with three years of payments remaining. Ellen survived Charlie and lived another year. We paid Ellen one year of payments. Ellen designated Jean to receive any payments we might owe for periods after Ellen's death. Jean survived Ellen and lives at least another two years. We pay Jean the remaining two years of payments. As explained in §4022.91(b), because Jean is entitled to survivor benefits under the certain-and-continuous annuity, we would pay Jean the back payment for the underpayments to Charlie (and for any underpayments to Ellen).

(3) *Example 5: where participant dies after certain period.* Charlie died after receiving seven years of payments. As explained in §§4022.91(b) and 4022.93, because benefits do not continue after Charlie's death under the certain-and-continuous annuity, we would pay the back payment to the person(s) Charlie designated to receive any payments we might owe him at the time of his death in case he died after the end of certain period. If Charlie did not designate anyone to receive those payments or his designee died before him, we would pay the back payment to the person(s) surviving Charlie in the following order: spouse, children, parents, estate and next of kin.

APPENDIXES A AND B TO PART 4022 [RESERVED]

APPENDIX C TO PART 4022—LUMP SUM INTEREST RATES FOR PRIVATE-SECTOR PAYMENTS

[In using this table:

(1) To determine the applicable rate set for any given month (month x), use the applicable 12-year rate for the second preceding month (month $x-2$) to find the corresponding rate set. The applicable 12-year rate for the second preceding month is the 12-year rate from the corporate bond yield curve described in section 430(h)(2)(D)(ii) of the Code determined without regard to 24-month averaging for the second month preceding the month of the desired applicable rate set.

(2) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq 7$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (where y is an integer and $7 < y \leq 15$), interest rate i_2 shall apply from the valuation date for a period of $y-7$ years; interest rate i_1 shall apply for the following 7 years; thereafter the immediate annuity rate shall apply.

(5) For benefits for which the deferral period is y years (where y is an integer and $y > 15$), interest rate i_3 shall apply from the valuation date for a period of $y-15$ years; interest rate i_2 shall apply for the following 8 years; interest rate i_1 shall apply for the following 7 years; thereafter the immediate annuity rate shall apply.]

FOR PLANS WITH A VALUATION DATE ON OR AFTER JANUARY 1, 2021

Applicable 12-year rate for month $x-2$ (percent)	Applicable rate set for month x			
	Immediate annuity rate (percent)	Deferred annuity rates (percent)		
		i_1	i_2	i_3
Below 3.18	0.00	4.00	4.00	4.00
3.18 to 3.40	0.25	4.00	4.00	4.00
3.41 to 3.63	0.50	4.00	4.00	4.00
3.64 to 3.87	0.75	4.00	4.00	4.00
3.88 to 4.10	1.00	4.00	4.00	4.00
4.11 to 4.34	1.25	4.00	4.00	4.00
4.35 to 4.57	1.50	4.00	4.00	4.00
4.58 to 4.81	1.75	4.00	4.00	4.00
4.82 to 5.04	2.00	4.00	4.00	4.00
5.05 to 5.28	2.25	4.00	4.00	4.00
5.29 to 5.51	2.50	4.00	4.00	4.00
5.52 to 5.75	2.75	4.00	4.00	4.00
5.76 to 5.98	3.00	4.00	4.00	4.00
5.99 to 6.22	3.25	4.00	4.00	4.00
6.23 to 6.46	3.50	4.00	4.00	4.00
6.47 to 6.69	3.75	4.00	4.00	4.00
6.70 to 6.93	4.00	4.00	4.00	4.00
6.94 to 7.16	4.25	4.00	4.00	4.00
7.17 to 7.40	4.50	4.00	4.00	4.00
7.41 to 7.64	4.75	4.00	4.00	4.00
7.65 to 7.87	5.00	4.25	4.00	4.00
7.88 to 8.11	5.25	4.50	4.00	4.00
8.12 to 8.35	5.50	4.75	4.00	4.00

FOR PLANS WITH A VALUATION DATE ON OR AFTER JANUARY 1, 2021—Continued

Applicable 12-year rate for month x – 2 (percent)	Applicable rate set for month x			
	Immediate annuity rate (percent)	Deferred annuity rates (percent)		
		i_1	i_2	i_3
8.36 to 8.58	5.75	5.00	4.00	4.00
8.59 to 8.82	6.00	5.25	4.00	4.00
8.83 to 9.06	6.25	5.50	4.25	4.00
9.07 to 9.30	6.50	5.75	4.50	4.00
9.31 to 9.53	6.75	6.00	4.75	4.00
9.54 to 9.78	7.00	6.25	5.00	4.00
9.79 to 10.02	7.25	6.50	5.25	4.00
Above 10.02	7.50	6.75	5.50	4.00

[85 FR 55591, Sept. 9, 2020]

PART 4022B—AGGREGATE LIMITS ON GUARANTEED BENEFITS

AUTHORITY: 29 U.S.C. 1302(b)(3), 1322B.

§ 4022B.1 Aggregate payments limitation.

(a) *Benefits with respect to two or more plans.* If a person (or persons) is entitled to benefits payable with respect to one participant in two or more plans, the aggregate benefits payable by PBGC from its funds is limited by § 4022.22 of this chapter (without regard to § 4022.22(a)). The PBGC will determine the limitation as of the date of the last plan termination.

(b) *Benefits with respect to two or more participants.* The PBGC will not aggregate the benefits payable with respect to one participant with the benefits payable with respect to any other participant (e.g., if an individual is entitled to benefits both as a participant and as the spouse of a deceased participant).

[67 FR 16959, Apr. 8, 2002]

SUBCHAPTER E—PLAN TERMINATIONS

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Subpart B—Standard Termination Process

Subpart C—Distress Termination Process

AUTHORITY: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

SOURCE: 62 FR 60428, Nov. 7, 1997, unless otherwise noted.

Subpart A—General Provisions

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer plan in a standard or distress termination under section 4041 of ERISA, the exclusive means of voluntarily terminating a plan.

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, EIN, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan administrator, plan year, PN, single-employer plan, standard termination, termination date, and title IV benefit. In addition, for purposes of this part:

Distress termination notice means the notice filed with the PBGC pursuant to § 4041.45.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.47(c) upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of section 414(b) and (c) of the Code) of—

(1) An unincorporated trade or business;

(2) The capital interest or the profits interest in a partnership; or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to § 4041.31 advising the plan administrator that the requirements for a standard termination

have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by § 4041.24.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Plan benefits means benefit liabilities determined as of the termination date (taking into account the rules in § 4041.8(a)).

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard or distress termination notice.

Residual assets means the plan assets remaining after all plan benefits and other liabilities (e.g., PBGC premiums) of the plan have been satisfied (taking into account the rules in § 4041.8(b)).

Standard termination notice means the notice filed with the PBGC pursuant to § 4041.25.

State guaranty association means an association of insurers created by a State, the District of Columbia, or the Commonwealth of Puerto Rico to pay benefits and to continue coverage, within statutory limits, under life and health insurance policies and annuity contracts when an insurer fails.

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. A proposed termination date may be any day, including a weekend or Federal holiday.

(b) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Issuance to third parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of § 4041.23(c) or § 4041.24(f) is treated as an affected party.

(1) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(2) *Omission of affected parties.* The failure to issue any notice to an affected party (other than any employee organization) within the specified time period will not cause the notice to be untimely if—

(i) *After-discovered affected parties.* The plan administrator could not reasonably have been expected to know of the affected party, and issues the notice promptly after discovering the affected party; or

(ii) *Unlocated participants.* The plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly in the event the affected party is located.

(3) *Deceased participants.* In the case of a deceased participant, the plan administrator need not issue a notice to

the participant's estate if the estate is not entitled to a distribution.

(4) *Form of notices to affected parties.* All notices to affected parties must be readable and written in a manner calculated to be understood by the average plan participant. The plan administrator may provide additional information with a notice only if the information is not misleading.

(5) *Foreign languages.* The plan administrator of a plan that (as of the proposed termination date) covers the numbers or percentages in § 2520.104b–10(e) of this title of participants literate only in the same non-English language must, for any notice to affected parties—

(i) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or

(ii) Provide the notice in that common non-English language to those affected parties literate only in that language.

[62 FR 60428, Nov. 7, 1997, as amended at 68 FR 61353, Oct. 28, 2003]

§ 4041.4 Disaster relief.

When the President of the United States declares that, under the Disaster Relief Act (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days any due date under this part.

§ 4041.5 Record retention and availability.

(a) *Retention requirement*—(1) *Persons subject to requirement; records to be retained.* Each contributing sponsor and the plan administrator of a plan terminating in a standard termination, or in a distress termination that closes out in accordance with § 4041.50, must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and this part. If a contributing sponsor or the plan administrator maintains information in accordance with this section, the other(s) need not maintain that information.

(2) *Retention period.* The records described in paragraph (a)(1) of this section must be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(3) *Electronic recordkeeping.* The contributing sponsor or plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(b) *Availability of records.* The contributing sponsor or plan administrator must make all records needed to determine compliance with section 4041 of ERISA and this part available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and must submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein.

[68 FR 61353, Oct. 28, 2003]

§ 4041.6 Effect of failure to provide required information.

If a plan administrator fails to provide any information required under this part within the specified time limit, the PBGC may assess a penalty under section 4071 of ERISA. The PBGC may also pursue any other equitable or legal remedies available to it under the law, including, if appropriate, the issuance of a notice of noncompliance under § 4041.31.

[62 FR 60428, Nov. 7, 1997, as amended at 81 FR 29766, May 13, 2016]

§ 4041.7 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination*—(1) *Notice of formal challenge.* (i) If the PBGC is advised, before its review period under § 4041.26(a) ends, or before issuance of a notice of inability to determine sufficiency or a distribution notice under § 4041.47(b) or (c), that a formal challenge to the termination has been initiated as described in paragraph (c) of this section, the PBGC will suspend the termination proceeding and so advise the plan administrator in writing.

(ii) If the PBGC is advised of a challenge described in paragraph (a)(1)(i) of this section after the time specified therein, the PBGC may suspend the termination proceeding and will so advise the plan administrator in writing.

(2) *Standard terminations.* During any period of suspension in a standard termination—

(i) The running of all time periods specified in ERISA or this part relevant to the termination will be suspended; and

(ii) The plan administrator must comply with the prohibitions in § 4041.22.

(3) *Distress terminations.* During any period of suspension in a distress termination—

(i) The issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice will be stayed or, if any such notice was previously issued, its effectiveness will be stayed;

(ii) The plan administrator must comply with the prohibitions in § 4041.42; and

(iii) The plan administrator must file a distress termination notice with the PBGC pursuant to § 4041.45.

(b) *Existing collective bargaining agreement.* For purposes of this section, an existing collective bargaining agreement means a collective bargaining agreement that has not been made inoperative by a judicial ruling and, by its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it. When a collective bargaining agreement no longer meets these conditions, it ceases to be an ''existing collective bargaining agreement,'' whether or not any or all of its terms may continue to apply by operation of law.

(c) *Formal challenge to termination.* A formal challenge to a plan termination asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement is initiated when—

(1) Any procedure specified in the collective bargaining agreement for resolving disputes under the agreement commences; or

(2) Any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law commences.

(d) *Resolution of challenge.* Immediately upon the final resolution of the challenge, the plan administrator must notify the PBGC in writing of the outcome of the challenge, provide the PBGC with a copy of any award or order, and, if the validity of the proposed termination has been upheld, advise the PBGC whether the proposed termination is to proceed. The final resolution ends the suspension period under paragraph (a) of this section.

(1) *Challenge sustained.* If the final resolution is that the proposed termination violates an existing collective bargaining agreement, the PBGC will dismiss the termination proceeding, all actions taken to effect the plan termination will be null and void, and the plan will be an ongoing plan. In this event, in a distress termination, § 4041.42(d) will apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the final resolution is that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator has notified the PBGC that the termination is to proceed, the PBGC will reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and—

(i) The termination proceeding will continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension will be effective;

(iii) Any time periods that were suspended will resume running from the date of the PBGC's notice of the reactivation of the proceeding;

(iv) Any time periods that had fewer than 15 days remaining will be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify; and

(v) In a distress termination, the PBGC will proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or

without first requesting updated information from the plan administrator pursuant to § 4041.45(c).

(e) *Final resolution of challenge.* A formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(f) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.8 Post-termination amendments.

(a) *Plan benefits.* A participant's or beneficiary's plan benefits are determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment that is adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's plan benefits to the extent the amendment—

(1) Does not decrease the value of the participant's or beneficiary's plan benefits under the plan's provisions in effect on the termination date; and

(2) Does not eliminate or restrict any form of benefit available to the participant or beneficiary on the plan's termination date.

(b) *Residual assets.* In a plan in which participants or beneficiaries will receive some or all of the plan's residual assets based on an allocation formula, the amount of the plan's residual assets and each participant's or beneficiary's share thereof is determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets to the extent the amendment does not decrease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

(c) *Permitted decreases.* For purposes of this section, an amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits or allocation of residual assets to the extent—

(1) The decrease is necessary to meet a qualification requirement under section 401 of the Code;

(2) The participant's or beneficiary's allocation of residual assets is paid in the form of an increase in the participant's or beneficiary's plan benefits; or

(3) The decrease is offset by assets that would otherwise revert to the contributing sponsor or by additional contributions.

(d) *Distress terminations.* In the case of a distress termination, a participant's or beneficiary's benefit liabilities are determined as of the termination date in the same manner as plan benefits under this section.

Subpart B—Standard Termination Process

§ 4041.21 Requirements for a standard termination.

(a) *Notice and distribution requirements.* A standard termination is valid if the plan administrator—

(1) Issues a notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(2) Issues notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(3) Files a standard termination notice with the PBGC in accordance with § 4041.25;

(4) Distributes the plan's assets in satisfaction of plan benefits in accordance with § 4041.28(a) and (c); and

(5) In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), issues the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2) in accordance with such sections.

(b) *Plan sufficiency*—(1) *Commitment to make plan sufficient.* A contributing sponsor of a plan or any other member of the plan's controlled group may make a commitment to contribute any

additional sums necessary to enable the plan to satisfy plan benefits in accordance with § 4041.28. A commitment will be valid only if—

(i) It is made to the plan;

(ii) It is in writing, signed by the contributing sponsor or controlled group member(s); and

(iii) In any case in which the person making the commitment is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.41(c)(1) or (c)(2), the commitment is approved by the court before which the liquidation or reorganization proceeding is pending or a person not in bankruptcy unconditionally guarantees to meet the commitment at or before the time distribution of assets is required.

(2) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits in accordance with § 4041.28. Any such alternative treatment of the majority owner's plan benefits is valid only if—

(i) The majority owner's election is in writing;

(ii) In any case in which the plan would require the spouse of the majority owner to consent to distribution of the majority owner's receipt of his or her plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election;

(iii) The majority owner makes the election and the spouse consents during the time period beginning with the date of issuance of the first notice of intent to terminate and ending with the date of the last distribution; and

(iv) Neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.22 Administration of plan during pendency of termination process.

(a) *In general.* A plan administrator may distribute plan assets in connection with the termination of the plan only in accordance with the provisions of this part. From the first day the plan administrator issues a notice of intent to terminate to the last day of the PBGC's review period under § 4041.26(a), the plan administrator must continue to carry out the normal operations of the plan. During that time period, except as provided in paragraph (b) of this section, the plan administrator may not—

(1) Purchase irrevocable commitments to provide any plan benefits; or

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than an annuity.

(b) *Exception.* The plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments or in a form other than an annuity if—

(1) The participant has separated from active employment or is otherwise permitted under the Code to receive the distribution;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

§ 4041.23 Notice of intent to terminate.

(a) *Notice requirement*—(1) *In general.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a notice of intent to terminate to each person (other than the PBGC) that is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(2) *Early issuance of NOIT.* The PBGC may consider a notice of intent to terminate to be timely under paragraph (a)(1) of this section if the notice was early by a *de minimis* number of days and the PBGC finds that the early issuance was the result of administrative error.

(b) *Contents of notice.* The PBGC's standard termination forms and instructions package includes a model

notice of intent to terminate. The notice of intent to terminate must include—

(1) *Identifying information.* The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(2) *Intent to terminate plan.* A statement that the plan administrator intends to terminate the plan in a standard termination as of a specified proposed termination date and will notify the affected party if the proposed termination date is changed to a later date or if the termination does not occur;

(3) *Sufficiency requirement.* A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all plan benefits under the plan;

(4) *Cessation of accruals.* A statement (as applicable) that—

(i) Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;

(ii) A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of the proposed termination date or a specified date before the proposed termination date, whether or not the plan is terminated; or

(iii) Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of a specified date before the notice of intent to terminate was issued;

(5) *Annuity information.* If required under § 4041.27, the annuity information described therein;

(6) *Benefit information.* A statement that each affected party entitled to plan benefits will receive a written notification regarding his or her plan benefits;

(7) *Summary plan description.* A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it.

(8) *Continuation of monthly benefits.* For persons who are, as of the proposed termination date, in pay status, a statement (as applicable)—

(i) That their monthly (or other periodic) benefit amounts will not be affected by the plan's termination; or

(ii) Explaining how their monthly (or other periodic) benefit amounts will be affected under plan provisions); and

(9) *Extinguishment of guarantee.* A statement that after plan assets have been distributed in full satisfaction of all plan benefits under the plan with respect to a participant or a beneficiary of a deceased participant, either by the purchase of irrevocable commitments (annuity contracts) or by an alternative form of distribution provided for under the plan, the PBGC no longer guarantees that participant's or beneficiary's plan benefits.

(c) *Spin-off/termination transactions.* In the case of a transaction in which a single defined benefit plan is split into two or more plans and there is a reversion of residual assets to an employer upon the termination of one or more but fewer than all of the resulting plans (a ''spin-off/termination transaction''), the plan administrator must, within the time period specified in paragraph (a) of this section, provide a notice describing the transaction to all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are, as of the proposed termination date, covered by an ongoing plan.

§ 4041.24 Notices of plan benefits.

(a) *Notice requirement.* The plan administrator must, no later than the time the plan administrator files the standard termination notice with the PBGC, issue a notice of plan benefits to each person (other than the PBGC and any employee organization) who is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of plan benefits promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(b) *Contents of notice.* The plan administrator must include in each notice of plan benefits—

(1) The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and

telephone number of an individual who may be contacted to answer questions concerning plan benefits;

(2) The proposed termination date given in the notice of intent to terminate and any extended proposed termination date under § 4041.25(b);

(3) If the amount of plan benefits set forth in the notice is an estimate, a statement that the amount is an estimate and that plan benefits paid may be greater than or less than the estimate;

(4) Except in the case of an affected party in pay status for more than one year as of the proposed termination date—

(i) The personal data (if available) needed to calculate the affected party's plan benefits, along with a statement requesting that the affected party promptly correct any information he or she believes to be incorrect; and

(ii) If any of the personal data needed to calculate the affected party's plan benefits is not available, the best available data, along with a statement informing the affected party of the data not available and affording him or her the opportunity to provide it; and

(5) The information in paragraphs (c) through (e) of this section, as applicable.

(c) *Benefits of persons in pay status.* For an affected party in pay status as of the proposed termination date, the plan administrator must include in the notice of plan benefits—

(1) The amount and form of the participant's or beneficiary's plan benefits payable as of the proposed termination date;

(2) The amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary; and

(3) The amount and date of any increase or decrease in the benefit scheduled to occur (or that has already occurred) after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision.

(d) *Benefits of persons with valid elections or de minimis benefits.* For an affected party who, as of the proposed termination date, has validly elected a form and starting date with respect to plan benefits not yet in pay status, or with respect to whom the plan administrator has determined that a nonconsensual lump sum distribution will be made, the plan administrator must include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The information in paragraphs (c)(2) and (c)(3) of this section;

(3) If the plan benefits will be paid in any form other than a lump sum and the age at which, or form in which, the plan benefits will be paid differs from the normal retirement benefit—

(i) The age or form stated in the plan; and

(ii) The age or form adjustment factors; and

(4) If the plan benefits will be paid in a lump sum—

(i) An explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;

(ii) A description of the mortality table used to convert to the lump sum benefit (e.g., the mortality table published by the IRS in Revenue Ruling 95–6, 1995–1 C.B. 80) and a reference to the pertinent plan provisions;

(iii) A description of the interest rate to be used to convert to the lump sum benefit (e.g., the 30-year Treasury rate for the third month before the month in which the lump sum is distributed), a reference to the pertinent plan provision, and (if known) the applicable interest rate;

(iv) An explanation of how interest rates are used to calculate lump sums;

(v) A statement that the use of a higher interest rate results in a smaller lump sum amount; and

(vi) A statement that the applicable interest rate may change before the distribution date.

(e) *Benefits of all other persons not in pay status.* For any other affected party not described in paragraph (c) or (d) of this section (or described therein only with respect to a portion of the affected party's plan benefits), the plan administrator must include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable at normal

retirement age in any one form permitted under the plan;

(2) Any alternative benefit forms, including those payable to a beneficiary upon the person's death either before or after benefits commence;

(3) If the person is or may become entitled to a benefit that would be payable before normal retirement age, the amount and form of benefit that would be payable at the earliest benefit commencement date (or, if more than one such form is payable at the earliest benefit commencement date, any one of those forms) and whether the benefit commencing on such date would be subject to future reduction; and

(4) If the plan benefits may be paid in a lump sum, the information in paragraph (d)(4) of this section.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as defined in §4041.23(c)), the plan administrator must, no later than the time the plan administrator files the standard termination notice for any terminating plan, provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date) covered by an ongoing plan with a notice of plan benefits containing the information in paragraphs (b) through (e) of this section.

§4041.25 Standard termination notice.

(a) *Notice requirement.* The plan administrator must file with the PBGC a standard termination notice, consisting of the PBGC Form 500, completed in accordance with the instructions thereto, on or before the 180th day after the proposed termination date.

(b) *Change of proposed termination date.* The plan administrator may, in the standard termination notice, select a proposed termination date that is later than the date specified in the notice of intent to terminate, provided it is not later than 90 days after the earliest date on which a notice of intent to terminate was issued to any affected party.

(c) *Request for IRS determination letter.* To qualify for the distribution deadline in §4041.28(a)(1)(ii), the plan administrator must submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the time the standard termination notice is filed.

§4041.26 PBGC review of standard termination notice.

(a) *Review period*—(1) *In general.* The PBGC will notify the plan administrator in writing of the date on which it received a complete standard termination notice at the address provided in the PBGC's standard termination forms and instructions package. If the PBGC does not issue a notice of noncompliance under §4041.31 during its 60-day review period following such date, the plan administrator must proceed to close out the plan in accordance with §4041.28.

(2) *Extension of review period.* The PBGC and the plan administrator may, before the expiration of the PBGC review period in paragraph (a)(1) of this section, agree in writing to extend that period.

(b) *If standard termination notice is incomplete*—(1) *For purposes of timely filing.* If the standard termination notice is incomplete, the PBGC may, based on the nature and extent of the omission, provide the plan administrator an opportunity to complete the notice. In such a case, the standard termination notice will be deemed to have been complete as of the date when originally filed for purposes of §4041.25(a), provided the plan administrator provides the missing information by the later of—

(i) The 180th day after the proposed termination date; or

(ii) The 30th day after the date of the PBGC notice that the filing was incomplete.

(2) *For purposes of PBGC review period.* If the standard termination notice is completed under paragraph (b)(1) of this section, the PBGC will determine whether the notice will be deemed to have been complete as of the date when originally filed for purposes of determining when the PBGC's review period begins under §4041.26(a)(1).

(c) *Additional information*—(1) *Deadline for providing additional information.* The PBGC may in any case require the submission of additional information

relevant to the termination proceeding. Any such additional information becomes part of the standard termination notice and must be submitted within 30 days after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(2) *Effect on termination proceeding.* A request for additional information will suspend the running of the PBGC's 60-day review period. The review period will begin running again on the day the required information is received and continue for the greater of—

(i) The number of days remaining in the review period; or

(ii) Five regular business days.

§ 4041.27 Notice of annuity information.

(a) *Notice requirement*—(1) *In general.* The plan administrator must provide notices in accordance with this section to each affected party entitled to plan benefits other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum.

(2) *Spin-off/termination transactions.* The plan administrator must provide the information in paragraph (d) of this section to a person entitled to notice under §§ 4041.23(c) or 4041.24(f), at the same time and in the same manner as required for an affected party.

(b) *Content of notice.* The plan administrator must include, as part of the notice of intent to terminate—

(1) *Identity of insurers.* The name and address of the insurer or insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts);

(2) *Change in identity of insurers.* A statement that if the plan administrator later decides to select a different insurer, affected parties will receive a supplemental notice no later than 45 days before the distribution date; and

(3) *State guaranty association coverage information.* A statement informing the affected party—

(i) That once the plan distributes a benefit in the form of an annuity purchased from an insurance company, the insurance company takes over the responsibility for paying that benefit;

(ii) That all states, the District of Columbia, and the Commonwealth of Puerto Rico have established ''guaranty associations'' to protect policy holders in the event of an insurance company's financial failure;

(iii) That a guaranty association is responsible for all, part, or none of the annuity if the insurance company cannot pay;

(iv) That each guaranty association has dollar limits on the extent of its guaranty coverage, along with a general description of the applicable dollar coverage limits;

(v) That in most cases the policy holder is covered by the guaranty association for the state where he or she lives at the time the insurance company fails to pay; and

(vi) How to obtain the addresses and telephone numbers of guaranty association offices from the PBGC (as described in the applicable forms and instructions package).

(c) *Where insurer(s) not known*—(1) *Extension of deadline for notice.* If the identity-of-insurer information in paragraph (b)(1) of this section is not known at the time the plan administrator is required to provide it to an affected party as part of a notice of intent to terminate, the plan administrator must instead provide it in a supplemental notice under paragraph (d) of this section.

(2) *Alternative NOIT information.* A plan administrator that qualifies for the extension in paragraph (c)(1) of this section with respect to a notice of intent to terminate must include therein (in lieu of the information in paragraph (b) of this section) a statement that—

(i) Irrevocable commitments (annuity contracts) may be purchased from an insurer to provide some or all of the benefits under the plan;

(ii) The insurer or insurers have not yet been identified; and

(iii) Affected parties will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom (if known), or (if

not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts).

(d) *Supplemental notice.* The plan administrator must provide a supplemental notice to an affected party in accordance with this paragraph (d) if the plan administrator did not previously notify the affected party of the identity of insurer(s) or, after having previously notified the affected party of the identity of insurer(s), decides to select a different insurer. A failure to provide a required supplemental notice to an affected party will be deemed to be a failure to comply with the notice of intent to terminate requirements.

(1) *Deadline for supplemental notice.* The deadline for issuing the supplemental notice is 45 days before the affected party's distribution date (or, in the case of an employee organization, 45 days before the earliest distribution date for any affected party that it represents).

(2) *Content of supplemental notice.* The supplemental notice must include—

(i) The identity-of-insurer information in paragraph (b)(1) of this section;

(ii) The information regarding change of identity of insurer(s) in paragraph (b)(2) of this section; and

(iii) Unless the state guaranty association coverage information in paragraph (b)(3) of this section was previously provided to the affected party, such information and the extinguishment-of-guarantee information in § 4041.23(b)(9).

§ 4041.28 Closeout of plan.

(a) *Distribution deadline*—(1) *In general.* Unless a notice of noncompliance is issued under § 4041.31(a), the plan administrator must complete the distribution of plan assets in satisfaction of plan benefits (through priority category 6 under section 4044 of ERISA and part 4044 of this chapter) by the later of—

(i) 180 days after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a); or

(ii) If the plan administrator meets the requirements of § 4041.25(c), 120 days after receipt of a favorable determination from the IRS.

(2) *Revocation of notice of noncompliance.* If the PBGC revokes a notice of noncompliance issued under § 4041.31(a), the distribution deadline is extended until the 180th day after the date of the revocation.

(3) *Missing participants and beneficiaries.* The distribution deadline is considered met with respect to a missing distributee to whom subpart A of part 4050 of this chapter applies if the benefit transfer amount for the missing distributee is considered timely transferred to PBGC under subpart A of part 4050 of this chapter.

(b) *Assets insufficient to satisfy plan benefits.* If, at the time of any distribution, the plan administrator determines that plan assets are not sufficient to satisfy all plan benefits (with assets determined net of other liabilities, including PBGC premiums), the plan administrator may not make any further distribution of assets to effect the plan's termination and must promptly notify the PBGC.

(c) *Method of distribution*—(1) *In general.* The plan administrator must, in accordance with all applicable requirements under the Code and ERISA, distribute plan assets in satisfaction of all plan benefits by purchase of an irrevocable commitment from an insurer or in another permitted form.

(2) *Lump sum calculations.* In the absence of evidence establishing that another date is the ''annuity starting date'' under the Code, the distribution date is the ''annuity starting date'' for purposes of—

(i) Calculating the present value of plan benefits that may be provided in a form other than by purchase of an irrevocable commitment from an insurer (e.g., in selecting the interest rate(s) to be used to value a lump sum distribution); and

(ii) Determining whether plan benefits will be paid in such other form.

(3) *Selection of insurer.* In the case of plan benefits that will be provided by purchase of an irrevocable commitment from an insurer, the plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA.

(4) *Participating annuity contracts.* In the case of a plan in which any residual

assets will be distributed to participants, a participating annuity contract may be purchased to satisfy the requirement that annuities be provided by the purchase of irrevocable commitments only if the portion of the price of the contract that is attributable to the participation feature—

(i) Is not taken into account in determining the amount of residual assets; and

(ii) Is not paid from residual assets allocable to participants.

(5) *Missing participants.* The plan administrator must distribute plan benefits to missing participants in accordance with subpart A of part 4050 of this chapter.

(d) *Provision of annuity contract.* If plan benefits are provided through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer must, within 30 days after it is available, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits; and

(2) If such a contract or certificate is not provided to the participant or beneficiary by the date on which the post-distribution certification is required to be filed in order to avoid the assessment of penalties under § 4041.29(b), the plan administrator must, no later than that date, provide the participant and beneficiary with a notice that includes—

(i) A statement that the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) A statement that the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits.

[62 FR 60428, Nov. 7, 1997, as amended at 82 FR 60818, Dec. 22, 2017]

§ 4041.29 Post-distribution certification.

(a) *Filing requirement.* The plan administrator must either—

(1) Within 30 days after the last distribution date for any affected party, file with PBGC a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto; or

(2)(i) Within 30 days after the last distribution date for any affected party, certify to PBGC, in the manner prescribed in the instructions to PBGC Form 501, that the plan assets have been distributed as required, and

(ii) Within 60 days after the last distribution date for any affected party, file a post-distribution certification (PBGC Form 501), completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* PBGC will assess a penalty for a late filing under paragraph (a) of this section only if the required information is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

[85 FR 6060, Feb. 4, 2020]

§ 4041.30 Requests for deadline extensions.

(a) *In general.* The PBGC may in its discretion extend a deadline for taking action under this subpart to a later date. The PBGC will grant such an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC will consider—

(1) The length of the delay; and

(2) Whether ordinary business care and prudence in attempting to meet the deadline is exercised.

(b) *Time of extension request.* Any request for an extension under paragraph (a) of this section that is filed later than the 15th day before the applicable deadline must include a justification for not filing the request earlier.

(c) *IRS determination letter requests.* Any request for an extension under paragraph (a) of this section of the deadline in § 4041.25(c) for submitting a determination letter request to the IRS (in order to qualify for the distribution deadline in § 4041.28(a)(1)(ii)) will be deemed to be granted unless the PBGC notifies the plan administrator otherwise within 60 days after receipt of the request (or, if later, by the end of the PBGC's review period under § 4041.26(a)). The PBGC will notify the plan administrator in writing of the date on which it receives such request.

(d) *Statutory deadlines not extendable.* The PBGC will not—

(1) *Pre-distribution deadlines.* (i) Extend the 60-day time limit under § 4041.23(a) for issuing the notice of intent to terminate; or

(ii) Waive the requirement in § 4041.24(a) that the notice of plan benefits be issued by the time the plan administrator files the standard termination notice with the PBGC; or

(2) *Post-distribution deadlines.* Extend a filing deadline under § 4041.29(a).

[62 FR 60428, Nov. 7, 1997, as amended at 85 FR 6061, Feb. 4, 2020]

§ 4041.31 Notice of noncompliance.

(a) *Failure to meet pre-distribution requirements*—(1) *In general.* Except as provided in paragraphs (a)(2) and (c) of this section, the PBGC will issue a notice of noncompliance within the 60-day (or extended) time period prescribed by § 4041.26(a) whenever it determines that—

(i) The plan administrator failed to issue the notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(ii) The plan administrator failed to issue notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(iii) The plan administrator failed to file the standard termination notice in accordance with § 4041.25;

(iv) As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all plan benefits under the plan; or

(v) In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator failed to issue any notice required by § 4041.23(c), § 4041.24(f), or § 4041.27(a)(2) in accordance with such section.

(2) *Interests of participants.* The PBGC may decide not to issue a notice of noncompliance based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(iii) or (a)(1)(v) of this section if it determines that issuance of the notice would be inconsistent with the interests of participants and beneficiaries.

(3) *Continuing authority.* The PBGC may issue a notice of noncompliance or suspend the termination proceeding based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(v) of this section after expiration of the 60-day (or extended) time period prescribed by § 4041.26(a) (including upon audit) if the PBGC determines such action is necessary to carry out the purposes of Title IV.

(b) *Failure to meet distribution requirements*—(1) *In general.* If the PBGC determines, as part of an audit or otherwise, that the plan administrator has not satisfied any distribution requirement of § 4041.28(a) or (c), it may issue a notice of noncompliance.

(2) *Criteria.* In deciding whether to issue a notice of noncompliance under paragraph (b)(1) of this section, the PBGC may consider—

(i) The nature and extent of the failure to satisfy a requirement of § 4041.28(a) or (c);

(ii) Any corrective action taken by the plan administrator; and

(iii) The interests of participants and beneficiaries.

(3) *Late distributions.* The PBGC will not issue a notice of noncompliance for failure to distribute timely based on any facts disclosed in the post-distribution certification if 60 or more days have passed from the PBGC's receipt of the post-distribution certification. The 60-day period may be extended by agreement between the plan administrator and the PBGC.

(c) *Correction of errors.* The PBGC will not issue a notice of noncompliance based solely on the plan administrator's inclusion of erroneous information (or omission of correct information) in a notice required to be provided to any person under this part if—

(1) The PBGC determines that the plan administrator acted in good faith in connection with the error;

(2) The plan administrator corrects the error no later than—

(i) In the case of an error in the notice of plan benefits under § 4041.24, the latest date an election notice may be provided to the person; or

(ii) In any other case, as soon as practicable after the plan administrator knows or should know of the error, or by any later date specified by the PBGC; and

(3) The PBGC determines that the delay in providing the correct information will not substantially harm any person.

(d) *Reconsideration.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in part 4003, subpart C.

(e) *Consequences of notice of noncompliance*—(1) *Effect on termination.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. A notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration under paragraph (d) of this section or, if reconsideration is requested, a decision by the PBGC upholding the notice. However, once a notice is issued, the running of all time periods specified in ERISA or this part relevant to the termination will be suspended, and the plan administrator may take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked. A plan administrator that still desires to terminate a plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) *Effect on plan administration.* If the PBGC issues a notice of noncompliance, the prohibitions in § 4041.22(a)(1) and (a)(2) will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of a decision on reconsideration upholding the notice of noncompliance.

(3) *Revocation of notice of noncompliance.* If a notice of noncompliance is revoked, unless the PBGC provides otherwise, any time period suspended by the issuance of the notice will resume running from the date of the revocation. In no case will the review period under § 4041.26(a) end less than 60 days from the date the PBGC received the standard termination notice.

(f) *If no notice of noncompliance is issued.* A standard termination is deemed to be valid if—

(1) The plan administrator files a standard termination notice under § 4041.25 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(a); and

(2) The plan administrator files a post-distribution certification under § 4041.29 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(b).

(g) *Notice to affected parties.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance or, if earlier, upon the plan administrator's decision not to request reconsideration, the plan administrator must notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.23(c), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

Subpart C—Distress Termination Process

§ 4041.41 Requirements for a distress termination.

(a) *Distress requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.43 at least 60 days and (except with PBGC approval) not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the

PBGC in accordance with §4041.45 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (c) of this section.

(b) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (b)(2)(i) of this section, if the plan administrator does not satisfy all of the requirements for a distress termination, any action taken to effect the plan termination is null and void, and the plan is an ongoing plan. A plan administrator who still desires to terminate the plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (a)(1) or (a)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(ii) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

(c) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group must satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (e)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(d) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the contributing sponsor or controlled group member meets the distress test in paragraph (c)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (c)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and nonappealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (c)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(e) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the distress criteria contained in paragraph (c) of this section, rather than for a reasonable business purpose, the PBGC will disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

(f) *Requests for deadline extensions.* The PBGC may extend any deadline under this subpart in accordance with the rules described in section §4041.30, except that the PBGC will not extend—

(1) *Pre-distribution deadlines.* The 60-day time limit under §4041.43(a) for issuing the notice of intent to terminate; or

(2) *Post-distribution deadlines.* The deadline under §4041.50 for filing the post-distribution certification.

§4041.42 Administration of plan during termination process.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator must continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, and investing plan assets.

(b) *Prohibitions after issuing notice of intent to terminate.* The plan administrator may not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to §4041.50, the plan administrator may not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator must reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to §4041.44(c) or §4041.46(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions in paragraph (b) of this section, other than those in paragraph (b)(1), will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§4041.44(e) and 4041.46(e) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section will be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under §4022.81(c)(3) of this chapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to §4041.49(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to §4041.40(d), the prohibitions in paragraph (b) of

this section will apply in accordance with § 4041.49(e).

[62 FR 60428, Nov. 7, 1997, as amended at 63 FR 29355, May 29, 1998]

§ 4041.43 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and (except with PBGC approval) no more than 90 days before the proposed termination date, the plan administrator must issue a written notice of intent to terminate to each person who is an affected party as of the proposed termination date.

(2) The plan administrator must issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC must contain all of the information specified in paragraph (b) of this section.

(4) The notice to the PBGC must be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(5) In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the date a trustee is appointed for the plan pursuant to section 4042(c) of ERISA (or, in the case of a plan that distributes assets pursuant to § 4041.50, the distribution date).

(b) *Contents of notice to affected parties other than the PBGC.* The plan administrator must include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The EIN of the contributing sponsor and the PN; if there is no EIN or PN, the notice must so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date;

(5) The cessation of accruals information in § 4041.23(b)(4);

(6) A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it;

(7) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(8) A brief description of what benefits are guaranteed by the PBGC (e.g., if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(9) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(c) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator must provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 4041.44 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Will determine whether the notice was issued in compliance with § 4041.43; and

(2) Will advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.43, it will notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.45, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.43 (except for requirements that the PBGC elects to waive under § 4041.41(b)(2)(i) with respect to the notice filed with the PBGC), the PBGC will notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

§ 4041.45 Distress termination notice.

(a) *General rule.* The plan administrator must file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA-D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information*—(1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA-D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator must file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.46(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled

actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator must submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

§ 4041.46 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA-D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC will determine whether the requirements for a distress termination set forth in § 4041.41(c) have been met and will notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 4041.41(c) have been satisfied, it will so advise the plan administrator and will also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 4041.45(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 4041.41 have not been met, it will notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 4041.41(b)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC will advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

§ 4041.47 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 4041.45 (b)(1) or (c), the PBGC will determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it will issue a

''notice of inability to determine sufficiency'' notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator must continue to administer the plan under the restrictions imposed by § 4041.42; and

(2) The termination will be completed under section 4042 of ERISA.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC will issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 4041.48;

(2) To close out the plan in accordance with § 4041.50;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 4041.50(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 4041.5.

(d) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of all or part of his or her plan benefits in connection with a distress termination. Any such alternative treatment—

(1) Is valid only if the conditions in § 4041.21(b)(2) (i) through (iv) are met (except that, in the case of a plan that does not distribute assets pursuant to § 4041.50, the majority owner may make the election and the spouse may consent any time on or after the date of issuance of the first notice of intent to terminate); and—

(2) Is subject to the PBGC's approval if the election—

(i) Is made after the termination date; and

(ii) Would result in the PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c).

§ 4041.48 Sufficient plans; notice requirements.

(a) *Notices of benefit distribution.* When a distribution notice is issued by the PBGC pursuant to § 4041.47, the plan administrator must issue notices of benefit distribution in accordance with the rules regarding notices of plan benefits in § 4041.24, except that—

(1) The deadline for issuing the notices of benefit distribution is the 60th day after receipt of the distribution notice; and

(2) With respect to the information described in § 4041.24 (b) through (e), the term ''plan benefits'' is replaced with ''title IV benefits'' and the term ''proposed termination date'' is replaced with ''termination date''.

(b) *Certification to PBGC.* No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, the plan administrator must file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(c) *Notice of annuity information*—(1) *In general.* Unless all title IV benefits will be distributed in the form of nonconsensual lump sums, the plan administrator must provide a notice of annuity information to each affected party other than—

(i) An affected party whose title IV benefits will be distributed in the form of a nonconsensual lump sum; and

(ii) The PBGC.

(2) *Spin-off/termination transactions.* The plan administrator must provide the information in paragraph (c)(4) of this section to a person entitled to notice under § 4041.43(c), at the same time and in the same manner as required for an affected party described in paragraph (c)(1) of this section.

(3) *Selection of different insurer.* A plan administrator that decides to select a different insurer after having previously notified the affected party of the identity of insurer(s) under this paragraph must provide another notice of annuity information.

(4) *Content of notice.* The notice must include—

(i) The identity-of-insurer information in § 4041.27(b)(1);

(ii) The information regarding change in identity of insurer(s) in § 4041.27(b)(2); and

(iii) Unless the state guaranty coverage information in § 4041.27(b)(3) was previously provided to the affected party, such information and the extinguishment-of-guaranty information in

§ 4041.23(b)(9) (replacing the term ''plan benefits'' with ''title IV benefits'').

(5) *Deadline for notice.* The plan administrator must issue the notice of annuity information to each affected party by the deadline in § 4041.27(d)(1).

(d) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii) (as modified and made applicable by § 4041.50(c)), the plan administrator must submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the day on which the plan administrator completes the issuance of the notices of benefit distribution.

§ 4041.49 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 4041.50, the plan administrator must verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit liabilities. If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, will apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator must promptly notify the PBGC in writing of that fact and may take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice will be void, and the PBGC will—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 4041.47(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with §§ 4044.41 through 4044.57 of this chapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it will so notify the plan administrator in writing, and the distribution notice will remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator must immediately notify the PBGC in writing of this fact, but must continue with the distribution of assets in accordance with § 4041.50.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section will apply, except that the guaranteed benefits must be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator is (except to the extent the PBGC otherwise directs) subject to the prohibitions in § 4041.42.

§ 4041.50 Closeout of plan.

If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.47 and neither the plan administrator nor the PBGC makes the finding described in § 4041.49(b) or (d), the plan administrator must distribute plan assets in accordance with § 4041.28 and file a post-distribution certification in accordance with § 4041.29, except that—

(a) The term ''plan benefits'' is replaced with ''title IV benefits'';

(b) For purposes of applying the distribution deadline in § 4041.28(a)(1)(i), the phrase ''after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a)'' is replaced with ''the day on which the plan administrator completes the issuance of the

notices of benefit distribution pursuant to §4041.48(a)''; and

(c) For purposes of applying the distribution deadline in §4041.28(a)(1)(ii), the phrase ''the requirements of §4041.25(c)'' is replaced with ''the requirements of §4041.48(d)''.

§4041.51 Disclosure of information by plan administrator in distress termination.

(a) *Request for Information*—(1) *In general.* If a notice of intent to terminate under §4041.43 is issued with respect to a plan, an affected party may make a request to the plan administrator for information submitted to PBGC under sections 4041(a)(2) and 4041(c)(2) of ERISA and §§4041.43 and 4041.45.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator;

(ii) State the name of the plan and that the request is for information submitted to PBGC with respect to the application for a distress termination of the plan;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under §4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator*—(1) *Information.* The information that a plan administrator must provide in response to a request under paragraph (a) of this section includes PBGC Form 600, and any information submitted to PBGC pursuant to section 4041(c)(2) of ERISA and §4041.45.

(2) *Timing of response.* A plan administrator that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in §4000.22 of this chapter) after receipt of the request.

(3) *Deferral of due date.* If, at the time the plan administrator receives a request under paragraph (a) of this section, the plan administrator has not filed a PBGC Form 600, the plan administrator must provide the information requested under paragraph (a) not later than the 15th business day (as defined in §4000.22 of this chapter) after a PBGC Form 600 is filed with PBGC.

(4) *Supplemental responses.* If, at any time after the later of the receipt of a request under paragraph (a) of this section, or the filing of PBGC Form 600, the plan administrator submits additional information to PBGC with respect to the plan termination under section 4041(c)(2) of ERISA and §4041.45, the plan administrator must, not later than the 15th business day (as defined in §4000.22 of this chapter) after each additional submission, provide the additional information to any affected party that has made a request under paragraph (a) of this section.

(5) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator shall not provide information that may, directly or indirectly, identify an individual participant or beneficiary of the plan.

(ii) A plan administrator that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and,

(B) Will not be disclosed to other affected parties.

(6) *Reasonable fees.* Under section 4041(c)(2)(D)(iii)(II) of ERISA, a plan administrator may charge a reasonable fee for any information provided under this section in other than electronic form.

[73 FR 68337, Nov. 18, 2008]

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

Subpart A—General Provisions

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1441.

SOURCE: 61 FR 34052, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4041A.1 Purpose and scope.

The purpose of this part is to establish rules for notifying the PBGC of the termination of a multiemployer plan and rules for the administration of multiemployer plans that have terminated by mass withdrawal. Subpart B prescribes the contents of and procedures for filing a Notice of Termination for a multiemployer plan. Subpart C prescribes basic duties of plan sponsors of mass-withdrawal-terminated plans. (Other duties are prescribed in part 4281 of this chapter.) Subpart D contains procedures for closing out sufficient plans. This part applies to terminated multiemployer plans covered by title IV of ERISA but, in the case of subparts C and D, only to plans terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA).

§ 4041A.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, ERISA, insurer, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of part 4281 of this chapter.

Available resources means available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means unable to pay benefits when due during the plan year.

Nonguaranteed benefits means those benefits that are eligible for PBGC's guarantee under section 4022A(b) of ERISA, but exceed the guarantee limits under section 4022A(c).

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

[61 FR 34052, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 84 FR 18722, May 2, 2019]

§ 4041A.3 Method and date of filing; where to file; computation of time; issuances to third parties.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time

period for filing or issuance under this part.

(d) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61354, Oct. 28, 2003]

Subpart B—Notice of Termination

§4041A.11 Requirement of notice.

(a) *General.* A notice of termination must be filed with PBGC by a multiemployer plan when the plan has terminated as described in section 4041A(a) of ERISA.

(b) *Who must file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor must sign and file the notice.

(c) *When to file.* (1) For a termination pursuant to a plan amendment, the notice must be filed with PBGC within thirty days after the amendment is adopted or effective, whichever is later.

(2) For a termination that results from a mass withdrawal, the notice must be filed with PBGC within thirty days after the last employer withdrew from the plan or thirty days after the first day of the first plan year for which no employer contributions were required under the plan, whichever is earlier.

(d) *How and where to file.* Filings with PBGC under this subpart must be submitted in accordance with the rules in subpart A of part 4000 of this chapter. See §4000.4 of this chapter for information on where to file.

(Approved by the Office of Management and Budget under control number 1212–0020)

[61 FR 34052, July 1, 1996, as amended at 80 FR 55745, Sept. 17, 2015; 84 FR 18722, May 2, 2019]

§4041A.12 Contents of notice.

(a) *Information to be contained in notice.* A notice of termination under §4041A.11 required to be filed with PBGC must contain the information and certification specified in the instructions for the notice of termination on PBGC's website (*www.pbgc.gov*).

(b) *Additional information.* In addition to the information required under paragraph (a) of this section, PBGC may require the submission of any other information that PBGC determines is necessary for review of a notice of termination.

[84 FR 18722, May 2, 2019]

Subpart C—Plan Sponsor Duties

§4041A.21 General rule.

The plan sponsor of a multiemployer plan that terminates by mass withdrawal must continue to administer the plan in accordance with applicable statutory provisions, regulations, and plan provisions until a trustee is appointed under section 4042 of ERISA or until plan assets are distributed in accordance with subpart D of this part. In addition, the plan sponsor is responsible for the specific duties described in this subpart.

[61 FR 34052, July 1, 1996, as amended at 84 FR 18722, May 2, 2019]

§4041A.22 Payment of benefits.

(a) Except as provided in paragraph (b), the plan sponsor shall pay any benefit attributable to employer contributions, other than a death benefit, only in the form of an annuity.

(b) The plan sponsor may pay a benefit in a form other than an annuity if—

(1) The plan distributes plan assets in accordance with subpart D of this part;

(2) The PBGC approves the payment of the benefit in an alternative form pursuant to §4041A.27; or

(3) The value of the entire nonforfeitable benefit does not exceed $1,750.

(c) Except to the extent provided in the next sentence, the plan sponsor shall not pay benefits in excess of the amount that is nonforfeitable under the plan as of the date of termination, unless authorized to do so by the PBGC pursuant to §4041A.27. Subject to the restriction stated in paragraph (d) of this section, however, the plan sponsor may pay a qualified preretirement survivor annuity with respect to a participant who died after the date of termination.

(d) The payment of benefits subject to reduction shall be discontinued to the extent provided in § 4281.31 if the plan sponsor determines, in accordance with § 4041A.24, that the plan's assets are insufficient to provide all nonforfeitable benefits.

(e) The plan sponsor shall, to the extent provided in § 4281.41, suspend the payment of nonguaranteed benefits if the plan sponsor determines, in accordance with § 4041A.25, that the plan is insolvent.

(f) The plan sponsor shall, to the extent required by § 4281.42, make retroactive payments of suspended benefits if it determines under that section that the level of the plan's available resources requires such payments.

§ 4041A.23 Withdrawal liability.

(a) *Collection of withdrawal liability.* Until plan assets are distributed in accordance with subpart D of this part, or until the end of the plan year as of which PBGC determines that plan assets (exclusive of claims for withdrawal liability) are sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must determine, give notice of, and collect withdrawal liability (including the liability arising as a result of the mass withdrawal), in accordance with subpart C of part 4219 of this chapter and sections 4201 through 4225 of ERISA.

(b) *Filing of withdrawal liability information.* For each employer that has withdrawn from the plan, the plan sponsor must file with PBGC, not later than 180 days after the end of the plan year in which the plan terminates and each plan year thereafter, the information specified in the withdrawal liability instructions on PBGC's website (*www.pbgc.gov*).

[61 FR 34052, July 1, 1996, as amended at 84 FR 18722, May 2, 2019]

§ 4041A.24 Plan valuations and monitoring.

(a) *Annual valuation requirement.* The plan sponsor of a plan must have actuarial valuations performed in accordance with this section and with subpart B of part 4281 of this chapter.

(1) *Termination year valuation.* The plan sponsor of a plan must have an actuarial valuation performed for the plan for the plan year in which the plan terminates.

(2) *High-obligation valuations.* If the present value of a plan's nonforfeitable benefits exceeds $50 million according to the most recent actuarial valuation under this paragraph (a), the plan sponsor must have an actuarial valuation performed for the plan for each plan year.

(3) *Low-obligation valuations.* If the present value of a plan's nonforfeitable benefits does not exceed $50 million according to the most recent actuarial valuation under this paragraph (a), the plan sponsor may treat that actuarial valuation as the actuarial valuation for each of the four plan years following the plan year for which the actuarial valuation was performed.

(4) *Timing and filing.* Each actuarial valuation under this paragraph (a) must be performed within 150 days after the end of the plan year for which it is performed and must be filed with PBGC within 180 days after the end of that plan year in accordance with the valuation instructions on PBGC's website (*www.pbgc.gov*).

(5) *Exception for plans closing out.* Notwithstanding paragraphs (a)(1) through (4) of this section, no actuarial valuation is required for the plan year in which a plan closes out under subpart D of this part.

(b) *Plan monitoring; benefit reductions*—(1) *Applicability.* This paragraph (b) applies to a plan that is not receiving financial assistance from PBGC for the plan year following the plan year for which an actuarial valuation is performed under paragraph (a) of this section.

(2) *Funding level determination.* Upon the plan sponsor's receipt of each actuarial valuation under paragraph (a) of this section, the plan sponsor must determine whether the value of nonforfeitable benefits exceeds the value of plan assets (including withdrawal liability claims). If it does, then the plan sponsor must—

(i) Amend the plan to reduce benefits subject to reduction (if any) in accordance with the procedures in subpart C of part 4281 of this chapter to the extent necessary to ensure that the plan's assets are sufficient to discharge when due all of the plan's obligations

with respect to nonforfeitable benefits or, if that result cannot be achieved, to the maximum extent possible; and

(ii) If, after implementing the provisions of paragraph (b)(2)(i) of this section, the plan's assets are insufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits, make determinations of plan solvency in accordance with §4041A.25.

(3) *Notices of benefit reduction.* The plan sponsor of a plan that is amended to reduce benefits under paragraph (b)(2)(i) of this section must provide participants and beneficiaries and PBGC notice of the benefit reduction in accordance with §4281.32 of this chapter.

(c) *Alternative method of compliance*—(1) *Applicability.* This paragraph (c) applies to a plan that meets both of the following requirements—

(i) The plan is receiving financial assistance from PBGC for the plan year following the plan year for which an actuarial valuation is required under paragraph (a) of this section.

(ii) The present value of the plan's nonforfeitable benefits does not exceed $50 million according to the most recent actuarial valuation under paragraph (a) of this section.

(2) *Alternative compliance requirements.* A plan sponsor is considered to comply with the actuarial valuation and filing requirements of paragraph (a) of this section if both—

(i) The plan sponsor files with PBGC the information in paragraph (c)(3) of this section within the time required for filing the actuarial valuation under paragraph (a)(4) of this section; and

(ii) If, within 90 days after the plan sponsor makes the filing described in paragraph (c)(2)(i) of this section, PBGC requests other information reasonably required to determine the plan's assets and liabilities, the plan sponsor files such other information within 60 days after PBGC's request.

(3) *Information to be provided.* The information the plan sponsor must file with PBGC under paragraph (c)(2)(i) of this section is all of the following:

(i) The most recent summary plan description of the plan or the date the document was previously filed with PBGC.

(ii) The most recent actuarial valuation of the plan or the date the document was previously filed with PBGC.

(iii) Information reasonably necessary for PBGC to prepare an actuarial valuation as specified in the valuation instructions on PBGC's website (*www.pbgc.gov*).

[84 FR 18723, May 2, 2019]

§4041A.25 Periodic determinations of plan solvency.

(a) *Annual insolvency determination.* A plan that has no benefits subject to reduction and has assets insufficient to discharge when due all of the plan's obligations with respect to nonforfeitable benefits must make periodic determinations of plan solvency in accordance with this paragraph (a). No later than six months before the beginning of the applicable plan year described in this paragraph (a), or as soon as practicable after the plan sponsor determines the applicable plan year, and no later than six months before each plan year thereafter, the plan sponsor must determine in writing whether the plan is expected to be insolvent for such plan year. The applicable plan year is—

(1) For a plan that had no benefits subject to reduction when it terminated, the plan year the plan terminated; or

(2) For a plan that eliminated benefits subject to reduction by amendment after termination, the plan year in which the amendment that eliminated all (or all remaining) benefits subject to reduction is effective.

(b) *Other determination of insolvency.* Whether or not a prior determination of plan insolvency has been made under paragraph (a) of this section (or under section 4245 of ERISA), a plan sponsor that has reason to believe, taking into account the plan's recent and anticipated financial experience, that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must determine in writing whether the plan is or is expected to be insolvent for that plan year.

(c) *Benefit suspensions.* If the plan sponsor determines that the plan is, or is expected to be, insolvent for a plan year, it must suspend benefits in accordance with §4281.41.

(d) *Insolvency notices.* If the plan sponsor determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year it must provide notices of insolvency and notices of insolvency benefit level to PBGC and to participants and beneficiaries in accordance with subpart D of part 4281 of this chapter.

[61 FR 34052, July 1, 1996, as amended at 80 FR 55745, Sept. 17, 2015; 84 FR 18723, May 2, 2019]

§ 4041A.26 Financial assistance.

A plan sponsor that determines a resource benefit level under section 4245(b)(2) of ERISA that is below the level of guaranteed benefits or that determines that the plan will be unable to pay guaranteed benefits for any month during an insolvency year shall apply for financial assistance from the PBGC in accordance with § 4281.47.

§ 4041A.27 PBGC approval to pay benefits not otherwise permitted.

Upon written application by the plan sponsor, the PBGC may authorize the plan to pay benefits other than nonforfeitable benefits or to pay benefits valued at more than $1,750 in a form other than an annuity. The PBGC will approve such payments if it determines that the plan sponsor has demonstrated that the payments are not adverse to the interests of the plan's participants and beneficiaries generally and do not unreasonably increase the PBGC's risk of loss with respect to the plan.

Subpart D—Closeout of Sufficient Plans

§ 4041A.41 General rule.

If a plan's assets, excluding any claim of the plan for unpaid withdrawal liability, are sufficient to satisfy all obligations for nonforfeitable benefits provided under the plan, the plan sponsor may close out the plan in accordance with this subpart by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan.

§ 4041A.42 Method of distribution.

(a) *In general.* The plan sponsor shall distribute plan assets by purchasing from an insurer contracts to provide all benefits required by § 4041A.43 to be provided in annuity form and by paying in a lump sum (or other alternative elected by the participant) all other benefits.

(b) *Missing participants and beneficiaries.* The plan sponsor must distribute plan benefits of missing distributees in accordance with subpart D of part 4050 of this chapter.

[61 FR 34052, July 1, 1996, as amended at 82 FR 60818, Dec. 22, 2017]

§ 4041A.43 Benefit forms.

(a) *General rule.* Except as provided in paragraph (b) of this section, the sponsor of a plan that is closed out shall provide for the payment of any benefit attributable to employer contributions only in the form of an annuity.

(b) *Exceptions.* The plan sponsor may pay a benefit attributable to employer contributions in a form other than an annuity if:

(1) The present value of the participant's entire nonforfeitable benefit, determined using the interest assumption under §§ 4044.41 through 4044.57, does not exceed $5,000.

(2) The payment is for death benefits provided under the plan.

(3) The participant elects an alternative form of distribution under paragraph (c) of this section.

(c) *Alternative forms of distribution.* The plan sponsor may allow participants to elect alternative forms of distribution in accordance with this paragraph. When a form of distribution is offered as an alternative to the normal form, the plan sponsor shall notify each participant, in writing, of the form and estimated amount of the participant's normal form of distribution. The notification shall also describe any risks attendant to the alternative form. Participants' elections of alternative forms shall be in writing.

[61 FR 34052, July 1, 1996, as amended at 63 FR 38306, July 16, 1998]

§ 4041A.44 Cessation of withdrawal liability.

The obligation of an employer to make payments of initial withdrawal liability and mass withdrawal liability shall cease on the date on which the plan's assets are distributed in full satisfaction of all nonforfeitable benefits provided by the plan.

PART 4042—SINGLE-EMPLOYER PLAN TERMINATION INITIATED BY PBGC

Subpart A—General Provisions

Subpart B [Reserved]

Subpart C—Disclosure

AUTHORITY: 29 U.S.C. 1302(b)(3), 1342.

SOURCE: 73 FR 68338, Nov. 18, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 4042.1 Purpose and scope.

This part sets forth rules and procedures relating to single-employer plan terminations initiated by PBGC under section 4042 of ERISA.

§ 4042.2 Definitions.

The following terms used in this part are defined in § 4001.2 of this chapter: *Affected party*, *ERISA*, *PBGC*, and *plan administrator*.

§ 4042.3 Issuance rules.

PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

Subpart B [Reserved]

Subpart C—Disclosure

§ 4042.4 Disclosure of information by plan administrator or plan sponsor.

(a) *Request for Information*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party may make a request to the plan sponsor or the plan administrator (or both) for any information that such plan administrator or plan sponsor has submitted to PBGC in connection with the plan termination.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing to the plan administrator or plan sponsor;

(ii) State the name of the plan and that the request is for information submitted to PBGC in connection with the plan termination;

(iii) State the name of the person making the request for information and such person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(b) *Response by Plan Administrator or Plan Sponsor*—(1) *Timing of response.* A plan administrator or plan sponsor that receives a request under paragraph (a) of this section must provide the information requested not later than the 15th business day (as defined in § 4000.22 of this chapter) after receipt of the request.

(2) *Supplemental responses.* If, at any time after receipt of a request under paragraph (a), the plan administrator or plan sponsor submits additional information to PBGC in connection with the plan termination, the plan administrator or plan sponsor must provide such additional information to any affected party that has made a request under paragraph (a), not later than the 15th business day (as defined in § 4000.22 of this chapter) after the information is submitted to PBGC.

(3) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, the plan administrator or plan sponsor shall not provide

information that may, directly or indirectly, identify an individual participant or beneficiary.

(ii) A plan administrator or plan sponsor that has received a request under paragraph (a) of this section may seek a court order under which confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree, to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(4) *Reasonable fees.* Under section 4042(c)(3)(D)(ii) of ERISA, a plan administrator or plan sponsor may charge a reasonable fee for any information provided under this section in other than electronic form.

§ 4042.5 Disclosure of administrative record by PBGC.

(a) *Request for Administrative Record*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

(i) Be in writing;

(ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;

(iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and

(iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an ''Administrative Record Request.''

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

Subpart A—General Provisions

Subpart B—Post-Event Notice of Reportable Events

Subpart C—Advance Notice of Reportable Events

Subpart D—Notice of Failure to Make Required Contributions

AUTHORITY: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

SOURCE: 80 FR 55002, Sept. 11, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 4043.1 Purpose and scope.

This part prescribes the requirements for notifying PBGC of a reportable event under section 4043 of ERISA or of a failure to make certain required contributions under section 303(k)(4) of ERISA or section 430(k)(4) of the Code. Subpart A contains definitions and general rules. Subpart B contains rules for post-event notice of a reportable event. Subpart C contains rules for advance notice of a reportable event. Subpart D contains rules for notifying PBGC of a failure to make certain required contributions.

§ 4043.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, irrevocable commitment, multiemployer plan, PBGC, person, plan, plan administrator, plan year, single-employer plan, ultimate parent, and U.S. entity.

In addition, for purposes of this part:

De minimis 10-percent segment means, in connection with a plan's controlled group, one or more entities that in the aggregate have for a fiscal year—

(1) Revenue not exceeding 10 percent of the controlled group's revenue;

(2) Annual operating income not exceeding the greater of—

(i) 10 percent of the controlled group's annual operating income; or

(ii) $5 million; and

(3) Net tangible assets at the end of the fiscal year(s) not exceeding the greater of—

(i) 10 percent of the controlled group's net tangible assets at the end of the fiscal year(s); or

(ii) $5 million.

De minimis 5-percent segment has the same meaning as *de minimis* 10-percent segment, except that ''5 percent'' is substituted for ''10 percent'' each time it appears.

Event year means the plan year in which a reportable event occurs.

Foreign entity means a member of a controlled group that—

(1) Is not a contributing sponsor of a plan;

(2) Is not organized under the laws of (or, if an individual, is not a domiciliary of) any state (as defined in section 3(10) of ERISA); and

(3) For the fiscal year that includes the date the reportable event occurs, meets one of the following tests—

(i) Is not required to file any United States federal income tax form;

(ii) Has no income reportable on any United States federal income tax form other than passive income not exceeding $1,000; or

(iii) Does not own substantial assets in the United States (disregarding stock of a member of the plan's controlled group) and is not required to file any quarterly United States tax returns for employee withholding.

Foreign parent means a foreign entity that is a direct or indirect parent of a person that is a contributing sponsor of a plan.

Low-default-risk has the meaning described in § 4043.9.

Notice due date means the deadline (including extensions) for filing notice of a reportable event with PBGC.

Participant means a participant as defined in § 4006.2 of this chapter.

Public company means a person subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 or a subsidiary (as defined for purposes of the Securities Exchange Act of 1934) of a person subject to such reporting requirements.

Substantial owner means a substantial owner as defined in section 4021(d) of ERISA.

Well-funded plan safe harbor has the meaning described in § 4043.10.

[80 FR 55002, Sept. 11, 2015, as amended at 83 FR 49806, Oct. 3, 2018; 85 FR 6061, Feb. 4, 2020]

§ 4043.3 Requirement of notice.

(a) *Obligation to file*—(1) *In general.* Each person that is required to file a notice under this part, or a duly authorized representative, must submit the information required under this part by the time specified in § 4043.20 (for post-event notices), § 4043.61 (for advance notices), or § 4043.81 (for Form 200 filings). Any information filed with PBGC in connection with another matter may be incorporated by reference. If an event is subject to both post-event and advance notice requirements, the notice filed first satisfies both filing requirements.

(2) *Multiple plans.* If a reportable event occurs for more than one plan, the filing obligation with respect to each plan is independent of the filing obligation with respect to any other plan.

(3) *Optional consolidated filing.* A filing of a notice with respect to a reportable event by any person required to file will be deemed to be a filing by all persons required to give PBGC notice of the event under this part. If notices are required for two or more events, the notices may be combined in one filing.

(b) *Contents of reportable event notice.* A person required to file a reportable event notice under subpart B or C of this part must file, by the notice date, the form specified by PBGC for that purpose, with the information specified in PBGC's reportable events instructions.

(c) *Reportable event forms and instructions.* PBGC will issue reportable events forms and instructions and make them available on its website (*http://www.pbgc.gov*).

(d) *Requests for additional information.* PBGC may, in any case, require the submission of additional relevant information not specified in its forms and instructions. Any such information must be submitted for subpart B of this part within 30 days, and for subpart C or D of this part within 7 days, after the date of a written request by PBGC, or within a different time period specified therein. PBGC may in its discretion shorten the time period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

(e) *Effect of failure to file.* If a notice (or any other information required under this part) is not provided within the specified time limit, PBGC may pursue any equitable or legal remedies available to it under the law, including assessing against each person required

to provide the notice a separate penalty under section 4071 of ERISA.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6061, Feb. 4, 2020]

§ 4043.4 Waivers and extensions.

(a) *Waivers and extensions—in general.* PBGC may extend any deadline or waive any other requirement under this part where it finds convincing evidence that the waiver or extension is appropriate under the circumstances. Any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed with PBGC in writing (which may be in electronic form) and must state the facts and circumstances on which the request is based.

(b) *Waivers and extensions—specific events.* For some reportable events, automatic waivers from reporting and extensions of time are provided in subparts B and C of this part. If an occurrence constitutes two or more reportable events, reporting requirements for each event are determined independently. For example, reporting is automatically waived for an occurrence that constitutes a reportable event under more than one section only if the requirements for an automatic waiver under each section are satisfied.

(c) *Multiemployer plans.* The requirements of section 4043 of ERISA are waived with respect to multiemployer plans.

(d) *Terminating plans.* No notice is required from the plan administrator or contributing sponsor of a plan if the notice date is on or after the date on which—

(1) All of the plan's assets (other than any excess assets) are distributed pursuant to a termination under part 4041 of this chapter; or

(2) A trustee is appointed for the plan under section 4042 of ERISA.

(e) *Events not described in this part.* Notice of a reportable event described in section 4043(c) of ERISA is waived except to the extent that reporting is required under this part.

§ 4043.5 How and where to file.

Reportable event notices required under this part must be filed electronically in accordance with the instructions posted on PBGC's Web site, *http://www.pbgc.gov*. Filing guidance is provided by the instructions and by subpart A of part 4000 of this chapter.

§ 4043.6 Date of filing.

(a) *Post-event notice filings.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under subpart B of this part was filed with PBGC.

(b) *Advance notice and Form 200 filings.* Information filed under subpart C or D of this part is treated as filed on the date it is received by PBGC. Subpart C of part 4000 of this chapter provides rules for determining when PBGC receives a submission.

§ 4043.7 Computation of time.

PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

§ 4043.8 Confidentiality.

In accordance with section 4043(f) of ERISA and § 4901.21(a)(3) of this chapter, any information or documentary material that is not publicly available and is submitted to PBGC pursuant to subpart B or C of this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress. This provision does not apply to information or material submitted to PBGC pursuant to subpart D of this part, even where the submission serves as an alternative method of compliance with § 4043.25.

§ 4043.9 Company low-default-risk safe harbor.

(a) *Low-default-risk.* An entity (a ''company'') that is a contributing sponsor of a plan or the highest level U.S. parent of a contributing sponsor is ''low-default-risk'' on the date of an event if that date falls within a safe harbor period of the company as described in paragraph (b) of this section.

(b) *Safe harbor period.* A safe harbor period for a company means a period that—

(1) Begins on a financial information date (as described in paragraph (c) of this section) on which the company

satisfies the low-default-risk standard in paragraph (e) of this section, and

(2) Ends 13 months later or (if earlier) on the company's next financial information date.

(c) *Financial information date.* A financial information date for a company means—

(1) A date on which the company files on Form 10–K with the Securities and Exchange Commission (''SEC'') audited annual financial statements (including balance sheets, income statements, cash flow statements, and notes to the financial statements) for the company's most recent completed fiscal year preceding the date of such filing;

(2) The date (the ''closing date'') on which the company closes the annual accounting period that results in the production of audited or unaudited annual financial statements for the company's most recent completed fiscal year preceding the closing date, if audited annual financial statements are not required to be filed with the SEC; or

(3) A date on which the company files with IRS an annual federal income tax return or IRS Form 990 (in either case, a ''return'') for the company's most recent completed fiscal year preceding the date of such filing, if at the time the return is filed there are no annual financial statements for the year of the return.

(d) *Supporting financial information.* For purposes of this section, the ''supporting financial information'' is the annual financial statements or return associated with the establishment of the financial information date.

(e) *Low-default-risk standard*—(1) *Adequate capacity.* For purposes of this part, except as provided in paragraph (e)(4) of this section, a company meets the low-default-risk standard as of a financial information date (the ''qualifying date'') if the company has adequate capacity to meet its obligations in full and on time on the qualifying date as evidenced by satisfying either:

(i) Both of the criteria described in paragraphs (e)(2)(i) and (ii) of this section, or

(ii) Any four of the seven criteria described in paragraphs (e)(2)(i) through (vii) of this section.

(2) *Criteria evidencing adequate capacity.* The criteria referred to in paragraph (e)(1) of this section are:

(i) The probability that the company will default on its financial obligations is not more than four percent over the next five years or not more than 0.4 percent over the next year, in either case determined on the basis of widely available third-party financial information on the company's credit quality.

(ii) The company's secured debt (disregarding leases and debt incurred to acquire or improve property and secured only by that property) does not exceed 10 percent of the company's total assets.

(iii) The company has a ratio of retained-earnings-to-total-assets of 0.25 or more.

(iv) The company has a ratio of total-debt-to-EBITDA (earnings before interest, taxes, depreciation, and amortization) of 3.0 or less.

(v) The company has positive net income for the two most recently completed fiscal years preceding the qualifying date.

(vi) During the two-year period ending on the qualifying date, the company has not experienced an event described in § 4043.34(a)(1) or (2) (dealing with a default on a loan with an outstanding balance of $10 million or more) with respect to any loan with an outstanding balance of $10 million or more to the company regardless of whether reporting was waived under § 4043.34(b).

(vii) During the two-year period ending on the qualifying date, there has not been any failure to make when due any contribution described in § 4043.25(a)(1) or (2) (dealing with failure to make required minimum funding payments), unless reporting was waived under § 4043.25(c).

(3) *Using financial information to evaluate criteria.* (i) Subject to paragraph (e)(3)(ii) of this section with respect to evaluating the criterion described in paragraph (e)(2)(v) of this section, to evaluate whether criteria described in paragraphs (e)(2)(ii) through (v) of this section are met, a

company must use the supporting financial information described in paragraph (d) of this section associated with the qualifying date.

(ii) In addition to the use of the supporting financial information to evaluate criteria as described in paragraph (e)(3)(i) of this section, to evaluate whether the criterion described in paragraph (e)(2)(v) of this section is met, the company must also use the supporting financial information as described in paragraph (d) of this section associated with the financial information date for the fiscal year preceding the fiscal year covered by the supporting financial information associated with the qualifying date.

(iii) For purposes of paragraph (e)(2)(v) of this section, the excess of total revenue over total expenses as reported on the IRS Form 990 is considered to be net income.

(4) *Exception.* If a company receives an audit or review report for supporting financial information described in paragraph (d) of this section associated with the qualifying date that expresses a material adverse view or qualification, the company does not satisfy the low-default-risk standard.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6061, Feb. 4, 2020]

§ 4043.10 Well-funded plan safe harbor.

For purposes of this part, a plan is in the well-funded plan safe harbor for an event year if no variable-rate premium was required to be paid for the plan under parts 4006 and 4007 of this chapter for the plan year preceding the event year.

Subpart B—Post-Event Notice of Reportable Events

§ 4043.20 Post-event filing obligation.

The plan administrator and each contributing sponsor of a plan for which a reportable event under this subpart has occurred are required to notify PBGC within 30 days after that person knows or has reason to know that the reportable event has occurred, unless a waiver or extension applies. If there is a change in plan administrator or contributing sponsor, the responsibility for any failure to file or defective filing lies with the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.

§ 4043.21 Tax disqualification and Title I noncompliance.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 4021(a)(2) of ERISA, or when the Secretary of Labor determines that a plan is not in compliance with title I of ERISA.

(b) *Waiver.* Notice is waived for this event.

§ 4043.22 Amendment decreasing benefits payable.

(a) *Reportable event.* A reportable event occurs when an amendment to a plan is adopted under which the retirement benefit payable from employer contributions with respect to any participant may be decreased.

(b) *Waiver.* Notice is waived for this event.

§ 4043.23 Active participant reduction.

(a) *Reportable event.* A reportable event occurs for a plan:

(1) *Single-cause event.* (i) On each date in a plan year when, as a result of a new single cause, the ratio of the aggregate number of individuals who ceased to be active participants because of that single-cause, to the number of active participants at the beginning of such plan year, exceeds 20 percent.

(ii) Examples of single-cause events include a reorganization or restructuring, the discontinuance of an operation or business, a natural disaster, a mass layoff, or an early retirement incentive program.

(2) *Attrition event.* At the end of a plan year if the sum of the number of active participants covered by the plan at the end of such plan year, plus the number of individuals who ceased to be active participants during the same plan year that are reported to PBGC under paragraph (a)(1) of this section, is less than 80 percent of the number of active participants at the beginning of such plan year.

(b) *Determination rules*—(1) *Determination dates.* The number of active participants at the beginning of a plan year may be determined by using the number of active participants at the end of the previous plan year, and the number of active participants at the end of a plan year may be determined by using the number of active participants at the beginning of the next plan year.

(2) *Active participant.* ''Active participant'' for purposes of this section means a participant who—

(i) Is receiving compensation from any member of the plan's controlled group for work performed for any member of the plan's controlled group;

(ii) Is on paid or unpaid leave granted for a reason other than a layoff;

(iii) Is laid off from work for a period of time that has lasted less than 30 days; or

(iv) Is absent from work due to a recurring reduction in employment that occurs at least annually.

(3) *Employment relationship.* For purposes of determining whether a participant is an active participant, a participant does not cease to be active if the participant leaves employment with one member of a plan's controlled group to become employed by another controlled group member.

(c) *Reductions due to cessations and withdrawals.* For purposes of paragraph (a) of this section, a reduction in the number of active participants is to be disregarded to the extent that it—

(1) Is attributable to an event described in sections 4062(e) or 4063(a) of ERISA, and

(2) Is timely reported to PBGC under section 4062(e) and/or section 4063(a) of ERISA before the due date of the notice required by paragraph (a) of this section.

(d) *Waivers*—(1) *Small plan.* Notice under this section is waived if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Low-default-risk.* Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(3) *Well-funded plan.* Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(4) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(5) *Statutory events.* Notice is waived for an active participant reduction event described in section 4043(c)(3) of ERISA except to the extent required under this section.

(e) *Extension—attrition event.* For an event described in paragraph (a)(2) of this section, the notice date is extended until the premium due date for the plan year following the event year.

(f) *Examples*—(1) *Determining whether a single-cause event occurred (Example 1).* A calendar-year plan had 1,000 active participants at the beginning of the current plan year. As the result of a business unit being shut down, 160 participants are permanently laid off on July 30. Before July 30, and as part of the course of regular business operations, some active participants terminated employment, some retired and some new hires became covered by the plan. Because reductions due to attrition are disregarded for purposes of determining whether a single-cause event has occurred, it is not necessary for the sponsor to tabulate an exact active participant count as of July 30. Rather, the relevant percentage for determining whether a single-cause event occurred is determined by dividing the number of active participants laid-off as a result of the business unit shut down to the beginning of year active participant count. Because that ratio is less than 20 percent (*i.e.*, 160/1,000 = .16, or 16 percent), a single-cause event under paragraph (a)(1) of this section did not occur on July 30. However, if, as a result of the business unit shutdown, additional layoffs occur later in the same year, a single-cause event

may subsequently be triggered (See Example 3 in paragraph (f)(3) of this section).

(2) *Determining whether an attrition event occurred in year when a single-cause event occurred (Example 2).* (i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the number of active participants laid off on July 30 was 230 and thus, a single-cause event occurred. Further, assume that the event was timely reported to PBGC (*i.e.*, on or before August 30). Lastly, assume the active participant count as of year-end is 600.

(ii) To prevent duplicative reporting (*i.e.*, to ensure that the participants who triggered a single-cause reporting requirement do not also trigger an attrition event), the 230 participants who triggered that single-cause reporting requirement are not taken into account for purposes of determining whether an attrition event occurred. This is accomplished by increasing the year-end count by 230. Therefore, the applicable percentage for the attrition determination is 83 percent (*i.e.*, (600 + 230)/1,000 = .83). Because 83 percent is greater than 80 percent, an attrition event has not occurred.

(3) *Single-cause event spread out over multiple dates (Example 3).* (i) Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the layoffs resulting from the business unit shut down are spread out over several months. Table 1 to paragraph (f)(3) summarizes the applicable calculations:

TABLE 1 TO PARAGRAPH (f)(3)

Single-cause event spread out over multiple dates			
Date	Number laid-off	Aggregate reduction	Applicable percentage
February 1	50	50	50/1,000 = 5 percent.
May 15	50	100	100/1,000 = 10 percent.
September 1	110	210	210/1,000 = 21 percent.
November 1	40	250	250/1,000 = 25 percent.

(ii) A single-cause event occurs on September 1 because that is the first time the applicable percentage exceeds 20 percent. This event must be reported by October 1. The November 1 layoff does not trigger a subsequent single-cause event because the layoff is part of the same single-cause event already timely reported to PBGC. However, they will be considered in the determination of whether an attrition event occurs at year-end as explained in paragraph (f)(3)(iii) of this section.

(iii) As illustrated in Example 2 in paragraph (f)(2) of this section, for purposes of determining whether an attrition event has occurred, the year-end count is increased by the number of participants that triggered a single-cause event. In this case, that number is 210. The fact that an additional 40 active participants were laid off as a result of the business unit shut down after the single-cause event occurred does not affect the calculation because it was not already reported to PBGC. For example, if the year-end active participant count is 560, the number that gets compared to the beginning-of-year active participant count is 770 (*i.e.*, 560 + 210 = 770). Because 770 is less than 80 percent of 1,000, an attrition event has occurred and must be reported.

(4) *Multiple single-cause events in same plan year (Example 4).* Assume the same facts as in Example 1 in paragraph (f)(1) of this section except that the July 30 shutdown of the business unit resulted in 205 layoffs on that date. A single-cause event occurred and is timely reported. Later in the same plan year, the company announces an early retirement incentive program and 210 employees participate in the program with the last employees participating in the program retiring on November 15 of the plan year. A new single-cause event has occurred as of November 15 resulting in a reporting obligation of the active participant reduction due to the retirement incentive program (210/1000 = 21 percent).

[85 FR 6061, Feb. 4, 2020]

§ 4043.24 Termination or partial termination.

(a) *Reportable event.* A reportable event occurs when the Secretary of the Treasury determines that there has been a termination or partial termination of a plan within the meaning of section 411(d)(3) of the Code.

(b) *Waiver.* Notice is waived for this event.

§ 4043.25 Failure to make required minimum funding payment.

(a) *Reportable event.* A reportable event occurs when—

(1) A contribution required under sections 302 and 303 of ERISA or sections 412 and 430 of the Code is not made by the due date for the payment under ERISA section 303(j) or Code section 430(j), or

(2) Any other contribution required as a condition of a funding waiver is not made when due.

(b) *Alternative method of compliance—Form 200 filed.* If, with respect to the same failure, a filing is made in accordance with §4043.81, that filing (while not considered to be submitted to PBGC pursuant to section 4043 of ERISA for purposes of section 4043(f) of ERISA) satisfies the requirements of this section.

(c) *Waivers*—(1) *Small plan.* Notice under this section is waived with respect to a failure to make a required quarterly contribution under section 303(j)(3) of ERISA or section 430(j)(3) of the Code if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *30-day grace period.* Notice under this section is waived if the missed contribution is made by the 30th day after its due date.

(3) *Late funding balance election.* Notice under this section is waived if the failure to make a timely required contribution is solely because of the plan sponsor's failure to timely make a funding balance election.

§ 4043.26 Inability to pay benefits when due.

(a) *Reportable event.* A reportable event occurs when a plan is currently unable or projected to be unable to pay benefits.

(1) *Current inability.* A plan is currently unable to pay benefits if it fails to provide any participant or beneficiary the full benefits to which the person is entitled under the terms of the plan, at the time the benefit is due and in the form in which it is due. A plan is not treated as being currently unable to pay benefits if its failure to pay is caused solely by—

(i) A limitation under section 436 of the Code and section 206(g) of ERISA (dealing with funding-based limits on benefits and benefit accruals under single-employer plans),

(ii) The need to verify a person's eligibility for benefits,

(iii) The inability to locate a person, or

(iv) Any other administrative delay, to the extent that the delay is for less than the shorter of two months or two full benefit payment periods.

(2) *Projected inability.* A plan is projected to be unable to pay benefits when, as of the last day of any quarter of a plan year, the plan's ''liquid assets'' are less than two times the amount of the ''disbursements from the plan'' for such quarter. ''Liquid assets'' and ''disbursements from the plan'' have the same meaning as under section 303(j)(4)(E) of ERISA and section 430(j)(4)(E) of the Code.

(b) *Waiver—plans subject to liquidity shortfall rules.* Notice under this section is waived unless the reportable event occurs during a plan year for which the plan is exempt from the liquidity shortfall rules in section 303(j)(4) of ERISA and section 430(j)(4) of the Code because it is described in section 303(g)(2)(B) of ERISA and section 430(g)(2)(B) of the Code.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 4043.27 Distribution to a substantial owner.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) There is a distribution to a substantial owner of a contributing sponsor of the plan;

(2) The total of all distributions made to the substantial owner within the one-year period ending with the date of such distribution exceeds $10,000;

(3) The distribution is not made by reason of the substantial owner's death;

(4) Immediately after the distribution, the plan has nonforfeitable benefits (as provided in § 4022.5 of this chapter) that are not funded; and

(5) Either—

(i) The sum of the values of all distributions to any one substantial owner within the one-year period ending with the date of the distribution is more than one percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year, or

(ii) The sum of the values of all distributions to all substantial owners within the one-year period ending with the date of the distribution is more than five percent of the end-of-year total amount of the plan's assets (as required to be reported on Schedule H or Schedule I to Form 5500) for each of the two plan years immediately preceding the event year.

(b) *Determination rules*—(1) *Valuation of distribution*. The value of a distribution under this section is the sum of—

(i) The cash amounts actually received by the substantial owner;

(ii) The purchase price of any irrevocable commitment; and

(iii) The fair market value of any other assets distributed, determined as of the date of distribution to the substantial owner.

(2) *Date of substantial owner distribution*. The date of distribution to a substantial owner of a cash distribution is the date it is received by the substantial owner. The date of distribution to a substantial owner of an irrevocable commitment is the date on which the obligation to provide benefits passes from the plan to the insurer. The date of any other distribution to a substantial owner is the date when the plan relinquishes control over the assets transferred directly or indirectly to the substantial owner.

(3) *Determination date*. The determination of whether a participant is (or has been in the preceding 60 months) a substantial owner is made on the date when there has been a distribution that would be reportable under this section if made to a substantial owner.

(c) *Alternative method of compliance—annuity*. In the case of an annuity for a substantial owner, a filing that satisfies the requirements of this section with respect to any payment under the annuity and that discloses the period, the amount of the payment, and the duration of the annuity satisfies the requirements of this section with respect to all subsequent payments under the annuity.

(d) *Waivers*—(1) *Low-default-risk*. Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(2) *Well-funded plan*. Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(3) *Public company*. Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 4043.28 Plan merger, consolidation or transfer.

(a) *Reportable event*. A reportable event occurs when a plan merges, consolidates, or transfers its assets or liabilities under section 208 of ERISA or section 414(*l*) of the Code.

(b) *Waiver*. Notice under this section is waived for this event. However, notice may be required under § 4043.29 (for a controlled group change) or § 4043.32 (for a transfer of benefit liabilities).

§ 4043.29 Change in controlled group.

(a) *Reportable event*. (1) A reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons' (including any person who is or was a contributing sponsor) ceasing to be a member of the

plan's controlled group (other than by merger involving members of the same controlled group).

(2) For purposes of this section, the term ''transaction'' includes, but is not limited to, a legally binding agreement, whether or not written, to transfer ownership, an actual transfer of ownership, and an actual change in ownership that occurs as a matter of law or through the exercise or lapse of pre-existing rights. Whether an agreement is legally binding is to be determined without regard to any conditions in the agreement. A transaction is not reportable if it will result solely in a reorganization involving a mere change in identity, form, or place of organization, however effected.

(b) *Waivers.* (1) De minimis *10-percent segment.* Notice under this section is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 10-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that will cease to be a member of the plan's controlled group is a foreign entity other than a foreign parent.

(3) *Small plan.* Notice under this section is waived if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(4) *Low-default-risk.* Notice under this section is waived if each post-event contributing sponsor of the plan and the highest level U.S. parent of each post-event contributing sponsor are low-default-risk on the date of the event.

(5) *Well-funded plan.* Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

(c) *Examples.* The following examples assume that no waiver applies.

(1) *Controlled group breakup.* Company A (the contributing sponsor of Plan A), and Company B (the contributing sponsor of Plan B) are in the same controlled group with Parent Company AB. On March 31, Parent Company AB and Company C enter into an agreement to sell the stock of Company B to Company C, a company outside of the controlled group. The transaction will close on August 31 and Company B will continue to maintain Plan B. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report that Company B will leave Plan A's controlled group. Company B (Plan B's contributing sponsor) and the plan administrator of Plan B are required to report that Company A and Parent Company AB are no longer part of Plan B's controlled group. Both reports are due on April 30, 30 days after they entered into the agreement to sell Company B.

(2) *Change in contributing sponsor.* Plan Q is maintained by Company Q. Company Q enters into a binding contract to sell a portion of its assets and to transfer employees participating in Plan Q, along with Plan Q, to Company R, which is not a member of Company Q's controlled group. There will be no change in the structure of Company Q's controlled group. On the effective date of the sale, Company R will become the contributing sponsor of Plan Q. A reportable event occurs on the date of the transaction (*i.e.*, the date the binding contract was executed), because as a result of the transaction, Company Q (and any other member of its controlled group) will cease to be a member of Plan Q's controlled group. If on the notice due date the change in the contributing sponsor has not yet become effective, Company Q has the reporting obligation. If the change in the contributing sponsor has become effective by the notice due date, Company R has the reporting obligation.

(3) *Dissolution of controlled group member.* Company A (which maintains Plan

A) and Company B are in the same controlled group with Parent Company AB. Pursuant to an asset sale agreement, Company B sells its assets to a company outside of the controlled group. After the sale, Company B will be dissolved and no longer operating. Since Company B will no longer be a member of Plan A's controlled group, a reportable event occurs on the date Company B enters into the asset sale agreement. Note that this event may also be required to be reported as a liquidation event under 29 CFR 4043.30.

(4) *Merger of controlled group members.* Company A (which maintains Plan A) and Company B are in the same controlled group with Parent Company AB. Parent Company AB decides to merge the operations of Company B into Company A. Although Company B will no longer be a member of Plan A's controlled group, no report is due given Company B is merging with Company A.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6062, Feb. 4, 2020]

§ 4043.30 Liquidation.

(a) *Reportable event.* A reportable event occurs for a plan when a member of the plan's controlled group—

(1) Resolves to cease all revenue-generating business operations, sell substantially all its assets, or otherwise effect or implement its complete liquidation (including liquidation into another controlled group member) by decision of the member's board of directors (or equivalent body such as the managing partners or owners) or other actor with the power to authorize such cessation of operations, sale, or a liquidation, unless the event would be reported under paragraph (a)(2) or (3) of this section;

(2) Institutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or

(3) Liquidates in a case under the Bankruptcy Code, or under any similar law.

(b) *Waivers*—(1) *De minimis 10-percent segment.* Notice under this section is waived if the person or persons that liquidate under paragraph (a) of this section do not include any contributing sponsor of the plan and represent a de minimis 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if each person that liquidates under paragraph (a) of this section is a foreign entity other than a foreign parent.

(3) *Reporting under insolvency event.* Notice under this section is waived if reporting is also required under § 4043.35(a)(3) or (4) and notice has been provided timely to PBGC for the same event under that section.

(c) *Public company extension.* If any contributing sponsor of the plan, or the parent company within a parent-subsidiary controlled group of such contributing sponsor, is a public company, the due date for notice under this section is extended until the earlier of—

(1) The date the contributing sponsor or parent company timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits); or

(2) The date when a press release with respect to the liquidation described under paragraph (a) of this section is issued in the U.S. in the English language.

(d) *Examples*—(1) *Liquidation within a controlled group.* Plan A's controlled group consists of Company A (its contributing sponsor), Company B, Company Q (the parent of Company A and Company B). Company B represents the most significant portion of cash flow for the controlled group. Company B experiences an unforeseen event that negatively impacts operations and results in an increase in debt. The controlled group liquidates Company B by ceasing all operations, settling its debts, and merging any remaining assets into Company Q. (For purposes of this example, it does not matter under which of paragraphs (a)(1) through (3) of this section reporting is triggered). The transaction is to be treated as a tax-free liquidation for tax purposes. Both Company A (Plan A's contributing sponsor) and the plan administrator of Plan A are required to report

that Company B will liquidate within the controlled group.

(2) *Cessation of operations.* Plan A is sponsored by Company A. The owners of Company A decide to cease all revenue-generating operations. Certain administrative employees will wind down the business and continue to be employed until the wind down is complete, which could take several months. Company A is required to report a liquidation reportable event 30 days after the decision is made to cease all revenue-generating operations.

(3) *Sale of assets.* Plan A is sponsored by Company A. In a meeting of the Board of Directors of Company A, the Board resolves to sell all the assets of Company A to Company B. Under the asset sale agreement with Company B, Company B will not assume Plan A; Company A expects to undertake a standard termination of Plan A. Company A is required to report a liquidation event 30 days after the Board resolved to sell the assets of Company A.

[85 FR 6063, Feb. 4, 2020]

§ 4043.31 Extraordinary dividend or stock redemption.

(a) *Reportable event.* A reportable event occurs for a plan when any member of the plan's controlled group declares a dividend or redeems its own stock and the amount or net value of the distribution, when combined with other such distributions during the same fiscal year of the person, exceeds the person's net income before after-tax gain or loss on any sale of assets, as determined in accordance with generally accepted accounting principles, for the prior fiscal year. A distribution by a person to a member of its controlled group is disregarded.

(b) *Determination rules.* For purposes of paragraph (a) of this section, the net value of a non-cash distribution is the fair market value of assets transferred by the person making the distribution, reduced by the fair market value of any liabilities assumed or consideration given by the recipient in connection with the distribution. Net value determinations should be based on readily available fair market value(s) or independent appraisal(s) performed within one year before the distribution is made. To the extent that fair market values are not readily available and no such appraisals exist, the fair market value of an asset transferred in connection with a distribution or a liability assumed by a recipient of a distribution is deemed to be equal to 200 percent of the book value of the asset or liability on the books of the person making the distribution. Stock redeemed is deemed to have no value.

(c) *Waivers*—(1) *De minimis 10-percent segment.* Notice under this section is waived if the person making the distribution is a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if the person making the distribution is a foreign entity other than a foreign parent.

(3) *Small plan.* Notice under this section is waived if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(4) *Low-default-risk.* Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(5) *Well-funded plan.* Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(6) *Public company.* Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

§ 4043.32 Transfer of benefit liabilities.

(a) *Reportable event.* A reportable event occurs for a plan when—

(1) The plan makes a transfer of benefit liabilities to a person, or to a plan

or plans maintained by a person or persons, that are not members of the transferor plan's controlled group; and

(2) The amount of benefit liabilities transferred, in conjunction with other benefit liabilities transferred during the 12-month period ending on the date of the transfer, is 3 percent or more of the plan's total benefit liabilities. Both the benefit liabilities transferred and the plan's total benefit liabilities are to be valued as of any one date in the plan year in which the transfer occurs, using actuarial assumptions that comply with section 414(*l*) of the Code.

(b) *Determination rules*—(1) *Date of transfer*. The date of transfer is to be determined on the basis of the facts and circumstances of the particular situation. For transfers subject to the requirements of section 414(*l*) of the Code, the date determined in accordance with 26 CFR 1.414(*l*)–1(b)(11) will be considered the date of transfer.

(2) *Distributions of lump sums and annuities*. For purposes of paragraph (a) of this section, the payment of a lump sum, or purchase of an irrevocable commitment to provide an annuity, in satisfaction of benefit liabilities is not a transfer of benefit liabilities.

(c) *Waivers*—(1) *Small plan*. Notice under this section is waived if the plan had 100 or fewer participants for whom flat-rate premiums were payable for the plan year preceding the event year.

(2) *Low-default-risk*. Notice under this section is waived if each contributing sponsor of the plan and the highest level U.S. parent of each contributing sponsor are low-default-risk on the date of the event.

(3) *Well-funded plan*. Notice under this section is waived if the plan is in the well-funded plan safe harbor for the event year.

(4) *Public company*. Notice under this section is waived if any contributing sponsor of the plan before the transaction, or the parent company within a parent-subsidiary controlled group of any such contributing sponsor, is a public company and timely files a SEC Form 8–K disclosing the event under an item of the Form 8–K other than under Item 2.02 (Results of Operations and Financial Condition) or in financial statements under Item 9.01 (Financial Statements and Exhibits).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

§ 4043.33 Application for minimum funding waiver.

A reportable event for a plan occurs when an application for a minimum funding waiver for the plan is submitted under section 302(c) of ERISA or section 412(c) of the Code.

§ 4043.34 Loan default.

(a) *Reportable event*. A reportable event occurs for a plan when, with respect to a loan with an outstanding balance of $10 million or more to a member of the plan's controlled group—

(1) There is an acceleration of payment or a default under the loan agreement, or

(2) The lender waives or agrees to an amendment of any covenant in the loan agreement the effect of which is to cure or avoid a breach that would trigger a default.

(b) *Waivers*—(1) *De minimis 10-percent segment*. Notice under this section is waived if the debtor is not a contributing sponsor of the plan and represents a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity*. Notice under this section is waived if the debtor is a foreign entity other than a foreign parent.

§ 4043.35 Insolvency or similar settlement.

(a) *Reportable event*. A reportable event occurs for a plan when any member of the plan's controlled group—

(1) Commences or has commenced against it any insolvency proceeding (including, but not limited to, the appointment of a receiver) other than a bankruptcy case under the Bankruptcy Code;

(2) Commences, or has commenced against it, a proceeding to effect a composition, extension, or settlement with creditors;

(3) Executes a general assignment for the benefit of creditors; or

(4) Undertakes to effect any other nonjudicial composition, extension, or settlement with substantially all its creditors.

(b) *Waivers*—(1) *De minimis 10-percent segment.* Notice under this section is waived if the person described in paragraph (a) of this section is not a contributing sponsor of the plan and represents a *de minimis* 10-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the date the reportable event occurs.

(2) *Foreign entity.* Notice under this section is waived if the person described in paragraph (a) of this section is a foreign entity other than a foreign parent.

(3) *Liquidation event.* Notice under paragraph (a)(3) or (4) of this section is waived if reporting is also required under § 4043.30 and notice has been provided timely to PBGC for the same event under that section.

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

Subpart C—Advance Notice of Reportable Events

§ 4043.61 Advance reporting filing obligation.

(a) *In general.* Unless a waiver or extension applies with respect to the plan, each contributing sponsor of a plan is required to notify PBGC no later than 30 days before the effective date of a reportable event described in this subpart C if the contributing sponsor is subject to advance reporting for the reportable event. If there is a change in contributing sponsor, the responsibility for any failure to file or defective filing lies with the person who is the contributing sponsor of the plan on the notice date.

(b) *Persons subject to advance reporting.* A contributing sponsor of a plan is subject to the advance reporting requirement under paragraph (a) of this section for a reportable event if —

(1) On the notice date, neither the contributing sponsor nor any member of the plan's controlled group to which the event relates is a public company; and

(2) The aggregate unfunded vested benefits, determined in accordance with paragraph (c) of this section, are more than $50 million; and

(3) The aggregate value of plan assets, determined in accordance with paragraph (c) of this section, is less than 90 percent of the aggregate premium funding target, determined in accordance with paragraph (c) of this section.

(c) *Funding determinations.* For purposes of paragraph (b) of this section, the aggregate unfunded vested benefits, aggregate value of plan assets, and aggregate premium funding target are determined by aggregating the unfunded vested benefits, values of plan assets, and premium funding targets (respectively), as determined in accordance with part 4006 of this chapter for purposes of the variable-rate premium for the plan year preceding the effective date of the event, of plans maintained (on the notice date) by the contributing sponsor and any members of the contributing sponsor's controlled group, disregarding plans with no unfunded vested benefits (as so determined).

(d) *Shortening of 30-day period.* Pursuant to § 4043.3(d), PBGC may, upon review of an advance notice, shorten the notice period to allow for an earlier effective date.

§ 4043.62 Change in contributing sponsor or controlled group.

(a) *Reportable event.* Advance notice is required for a change in a plan's contributing sponsor or controlled group, as described in § 4043.29(a).

(b) *Waivers*—(1) *Small and mid-size plans.* Notice under this section is waived with respect to a change of contributing sponsor if the transferred plan has fewer than 500 participants.

(2) *De minimis 5-percent segment.* Notice under this section is waived if the person or persons that will cease to be members of the plan's controlled group represent a *de minimis* 5-percent segment of the plan's old controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.63 Liquidation.

(a) *Reportable event.* Advance notice is required for a liquidation of a member

of a plan's controlled group, as described in § 4043.30.

(b) *Waiver—de minimis 5-percent segment and ongoing plans.* Notice under this section is waived if the person that liquidates is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event, and each plan that was maintained by the liquidating member is maintained by another member of the plan's controlled group.

§ 4043.64 Extraordinary dividend or stock redemption.

(a) *Reportable event.* Advance notice is required for a distribution by a member of a plan's controlled group, as described in § 4043.31(a).

(b) *Waiver—de minimis 5-percent segment.* Notice under this section is waived if the person making the distribution is a *de minimis* 5-percent segment of the plan's controlled group for the most recent fiscal year(s) ending on or before the effective date of the reportable event.

§ 4043.65 Transfer of benefit liabilities.

(a) *Reportable event.* Advance notice is required for a transfer of benefit liabilities, as described in § 4043.32(a).

(b) *Waivers*—(1) *Complete plan transfer.* Notice under this section is waived if the transfer is a transfer of all of the transferor plan's benefit liabilities and assets to one other plan.

(2) *Transfer of less than 3 percent of assets.* Notice under this section is waived if the value of the assets being transferred—

(i) Equals the present value of the accrued benefits (whether or not vested) being transferred, using actuarial assumptions that comply with section 414(*l*) of the Code; and

(ii) In conjunction with other assets transferred during the same plan year, is less than 3 percent of the assets of the transferor plan as of at least one day in that year.

(3) *Section 414(l) safe harbor.* Notice under this section is waived if the benefit liabilities of 500 or fewer participants are transferred and the transfer complies with section 414(*l*) of the Code using the actuarial assumptions prescribed for valuing benefits in trusteed plans under §§ 4044.51 through 4044.57 of this chapter.

(4) *Fully funded plans.* Notice under this section is waived if the transfer complies with section 414(*l*) of the Code using reasonable actuarial assumptions and, after the transfer, the transferor and transferee plans are fully funded as determined in accordance with §§ 4044.51 through 4044.57 of this chapter and § 4010.8(d)(1)(ii) of this chapter.

§ 4043.66 Application for minimum funding waiver.

(a) *Reportable event.* Advance notice is required for an application for a minimum funding waiver, as described in § 4043.33.

(b) *Extension.* The notice date is extended until 10 days after the reportable event has occurred.

§ 4043.67 Loan default.

Advance notice is required for an acceleration of payment, a default, a waiver, or an agreement to an amendment with respect to a loan agreement described in § 4043.34(a).

§ 4043.68 Insolvency or similar settlement.

(a) *Reportable event.* Advance notice is required for an insolvency or similar settlement, as described in § 4043.35.

(b) *Extension.* For a case or proceeding under § 4043.35(a)(1) or (2) that is not commenced by a member of the plan's controlled group, the notice date is extended to 10 days after the commencement of the case or proceeding.

Subpart D—Notice of Failure To Make Required Contributions

§ 4043.81 PBGC Form 200, notice of failure to make required contributions; supplementary information.

(a) *General rules.* To comply with the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code, a contributing sponsor of a single-employer plan that is covered under section 4021 of ERISA and (if that contributing sponsor is a member of a parent-subsidiary controlled group) the ultimate parent must complete and submit in accordance with this section a properly certified Form

200 that includes all required documentation and other information, as described in the related filing instructions. Notice is required whenever the unpaid balance of a contribution payment required under sections 302 and 303 of ERISA and sections 412 and 430 of the Code (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made when due (including interest), exceeds $1 million.

(1) Form 200 must be filed with PBGC no later than 10 days after the due date for any required payment for which payment was not made when due.

(2) If a contributing sponsor or the ultimate parent completes and submits Form 200 in accordance with this section, PBGC will consider the notification requirement in section 303(k)(4) of ERISA and section 430(k)(4) of the Code to be satisfied by all members of a controlled group of which the person who has filed Form 200 is a member.

(b) *Supplementary information.* If, upon review of a Form 200, PBGC concludes that it needs additional information in order to make decisions regarding enforcement of a lien imposed by section 303(k) of ERISA and section 430(k) of the Code, PBGC may require any member of the contributing sponsor's controlled group to supplement the Form 200 in accordance with §4043.3(d).

[80 FR 55002, Sept. 11, 2015, as amended at 85 FR 6064, Feb. 4, 2020]

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

Subpart A—Allocation of Assets

GENERAL PROVISIONS

ALLOCATION OF ASSETS TO BENEFIT CATEGORIES

ALLOCATION OF RESIDUAL ASSETS

Subpart B—Valuation of Benefits and Assets

GENERAL PROVISIONS

TRUSTEED PLANS

EXPECTED RETIREMENT AGE

NON-TRUSTEED PLANS

AUTHORITY: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

SOURCE: 61 FR 34059, July 1, 1996, unless otherwise noted.

NOTE: Certain provisions of part 4044 have been superseded by legislative changes. For example, there are references to provisions formerly codified in 29 CFR part 2617, subpart C (and to the Notice of Sufficiency provided for thereunder) that no longer exist because of changes in the PBGC's plan termination regulations in response to the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987. The PBGC intends to amend part 4044 at a later date to conform it to current statutory provisions.

Subpart A—Allocation of Assets

GENERAL PROVISIONS

§ 4044.1 Purpose and scope.

This part implements section 4044 of ERISA, which contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of ERISA. This part applies to any single-employer plan covered by title IV of ERISA that submits a notice of intent to terminate, or for which PBGC commences an action to terminate the plan under section 4042 of ERISA.

(a) *Subpart A.* Sections 4044.1 through 4044.4 set forth general rules for applying §§ 4044.10 through 4044.17. Sections 4044.10 through 4044.17 interpret the rules and describe procedures for allocating plan assets to priority categories 1 through 6.

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trusteed under title IV and plans which are not trusteed. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies to all terminating single-employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trusteed plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date.

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has not been placed into trusteeship by PBGC.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34605, June 14, 2011]

§ 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, bankruptcy filing date, basic-type benefit, Code, distribution date, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value, guaranteed benefit, insurer, IRS, irrevocable commitment, majority owner, mandatory employee contributions, nonbasic-type benefit, nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, termination date, unreduced retirement age (URA), and voluntary employee contributions.

(b) For purposes of this part:

Deferred annuity means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

Early retirement benefit means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

Non-trusteed plan means a single-employer plan which is able to close out by purchasing annuities in the private sector

Priority category means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

Trusteed plan means a single-employer plan which has been placed into trusteeship by PBGC.

Valuation date means (1) for nontrusteed plans, the date of distribution and (2) for trusteed plans, the termination date.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

Age means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the ''insurance age.''

(d) For purposes of §§ 4044.55 through 4044.57:

Monthly benefit means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

Lump sum payable in lieu of an annuity means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

Other lump sum benefit means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit, a death benefit or other single installment benefit.

[61 FR 34059, July 1, 1996, as amended at 67 FR 16959, Apr. 8, 2002; 74 FR 11035, Mar. 16, 2009; 76 FR 34605, June 14, 2011; 83 FR 49806, Oct. 3, 2018]

§ 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the subtraction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out under § 4041.28 or § 4041.50, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34605, June 14, 2011]

§ 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon termination, and is covered by paragraph (a) of this section. In determining whether a distribution, transfer, or allocation of assets has been made in anticipation of plan termination PBGC will consider all of the facts and circumstances including—

(1) Any change in funding or operation procedures;

(2) Past practice with regard to employee requests for forms of distribution;

(3) Whether the distribution is consistent with plan provisions; and

(4) Whether an annuity contract that provides for a cutback based on the guarantee limits in subpart B of part 4022 of this chapter could have been purchased from an insurance company.

Allocation of Assets To Benefit Categories

§ 4044.10 Manner of allocation.

(a) *General.* The plan administrator shall allocate plan assets available to pay for benefits under the plan using

the rules and procedures set forth in paragraphs (b) through (f) of this section, or any other procedure that results in each participant (or beneficiary) receiving the same benefits he or she would receive if the procedures in paragraphs (b) through (f) were followed.

(b) *Assigning benefits.* The basic-type and nonbasic-type benefits payable with respect to each participant in a terminated plan shall be assigned to one or more priority categories in accordance with §§ 4044.11 through 4044.16. Benefits derived from voluntary employee contributions, which are assigned only to priority category 1, are treated, under section 204(c)(4) of ERISA and section 411(d)(5) of the Code, as benefits under a separate plan. The amount of a benefit payable with respect to each participant shall be determined as of the termination date, but, in a PPA 2006 bankruptcy termination, subject to the limitations in sections 4022(g) and 4044(e) of ERISA (and corresponding provisions of these regulations).

(c) *Valuing benefits.* The value of a participant's benefit or benefits assigned to each priority category shall be determined, as of the allocation date, in accordance with the provisions of subpart B of this part. The value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category. Except as provided in the next two sentences, the same procedure shall be followed for nonbasic-type benefits. The value of a participant's nonbasic-type benefits in priority categories 3, 5, and 6 shall not be reduced by the value of the participant's nonbasic-type benefit assigned to priority category 2. Benefits in priority category 1 shall neither be included in nor subtracted from lower priority categories. In no event shall a benefit assigned to a priority category be valued at less than zero.

(d) *Allocating assets to priority categories.* Plan assets available to pay for benefits under the plan shall be allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets shall then be allocated to the next lower priority category. This process shall be repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated.

(e) *Allocating assets within priority categories.* Except for priority categories 4 and 5, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 4 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of all participants' nonforfeitable benefits that would be assigned to priority category 4 other than those impacted by the majority-owner limitation under § 4022.26 of this chapter. If assets available for allocation to priority category 4 are sufficient to fully satisfy the value of those other benefits, the remaining assets shall then be allocated to the value of the benefits that would be guaranteed but for the majority-owner limitation. These remaining assets shall be distributed among the majority owners according to the ratio that the value of each majority owner's benefit that would be guaranteed but for the majority-owner limitation bears to the total value of all benefits that would be guaranteed but for the majority-owner limitation. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 4044.15 after reduction for the value of benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the five-year period immediately preceding the termination date. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall

then be allocated to the value of the benefit increase under the oldest amendment during the five-year period immediately preceding the termination date, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the five-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

(f) *Applying assets to basic-type or nonbasic-type benefits within priority categories.* The assets allocated to a participant's benefit or benefits within each priority category shall first be applied to pay for the participant's basic-type benefit or benefits assigned to that priority category. Any assets allocated on behalf of that participant remaining after satisfying the participant's basic-type benefit or benefits in that priority category shall then be applied to pay for the participant's nonbasic-type benefit or benefits assigned to that priority category. If the assets allocable to a participant's basic-type benefit or benefits in all priority categories are insufficient to pay for all of the participant's guaranteed benefits, the assets allocated to that participant's benefit in priority category 4 shall be applied, first, to the guaranteed portion of the participant's benefit in priority category 4. The remaining assets allocated to that participant's benefit in priority category 4, if any, shall be applied to the nonguaranteed portion of the participant's benefit.

(g) *Allocation to established subclasses.* Notwithstanding paragraphs (e) and (f) of this section, the assets of a plan that has established subclasses within any priority category may be allocated to the plan's subclasses in accordance with the rules set forth in § 4044.17.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34605, June 14, 2011; 83 FR 49806, Oct. 3, 2018]

§ 4044.11 Priority category 1 benefits.

(a) *Definition.* The benefits in priority category 1 are participants' accrued benefits derived from voluntary employee contributions.

(b) *Assigning benefits.* Absent an election described in the next sentence, the benefit assigned to priority category 1 with respect to each participant is the balance of the separate account maintained for the participant's voluntary contributions. If a participant has elected to receive an annuity in lieu of his or her account balance, the benefit assigned to priority category 1 with respect to that participant is the present value of that annuity.

§ 4044.12 Priority category 2 benefits.

(a) *Definition.* The benefits in priority category 2 are participants' accrued benefits derived from mandatory employee contributions, whether to be paid as an annuity benefit with a pre-retirement death benefit that returns mandatory employee contributions or, if a participant so elects under the terms of the plan and subpart A of part 4022 of this chapter, as a lump sum benefit. Benefits are primarily basic-type benefits although nonbasic-type benefits may also be included as follows:

(1) *Basic-type benefits.* The basic-type benefit in priority category 2 with respect to each participant is the sum of the values of the annuity benefit and the pre-retirement death benefit determined under the provisions of paragraph (c)(1) of this section.

(2) *Nonbasic-type benefits.* If a participant elects to receive a lump sum benefit and if the value of the lump sum benefit exceeds the value of the basic-type benefit in priority category 2 determined with respect to the participant, the excess is a nonbasic-type benefit. There is no nonbasic-type benefit in priority category 2 for a participant who does not elect to receive a lump sum benefit.

(b) *Conversion of mandatory employee contributions to an annuity benefit.* Subject to the limitation set forth in paragraph (b)(3) of this section, a participant's accumulated mandatory employee contributions shall be converted to an annuity form of benefit payable at the normal retirement age or, if the plan provides for early retirement, at the expected retirement age. The conversion shall be made using the interest rates and factors specified in paragraph (b)(2) of this section. The form of the annuity benefit (e.g., straight life annuity, joint and survivor annuity, cash refund annuity, etc.) is the form that the participant or beneficiary is entitled to on the termination date. If the participant does not have a nonforfeitable right to a benefit, other than the return of his or her mandatory contributions in a lump sum, the annuity form of benefit is the form the participant would be entitled to if the participant had a nonforfeitable right to an annuity benefit under the plan on the termination date.

(1) *Accumulated mandatory employee contributions.* Subject to any addition for the cost of ancillary benefits plus interest, as provided in the following sentence, the amount of the accumulated mandatory employee contributions for each participant is the participant's total nonforfeitable mandatory employee contributions remaining in the plan on the termination date plus interest, if any, under the plan provisions. Mandatory employee contributions, if any, used after the effective date of the minimum vesting standards in section 203 of ERISA and section 411 of the Code for costs or to provide ancillary benefits such as life insurance or health insurance, plus interest under the plan provisions, shall be added to the contributions that remain in the plan to determine the accumulated mandatory employee contributions.

(2) *Interest rates and conversion factors.* The interest rates and conversion factors used in the administration of the plan shall be used to convert a participant's accumulated mandatory contributions to the annuity form of benefit. In the absence of plan rules and factors, the interest rates and conversion factors established by the IRS for allocation of accrued benefits between employer and employee contributions under the provisions of section 204(c) of ERISA and section 411(c) of the Code shall be used.

(3) *Minimum accrued benefit.* The annuity benefit derived from mandatory employee contributions may not be less than the minimum accrued benefit under the provisions of section 204(c) of ERISA and section 411(c) of the Code.

(4) *Rollover amounts.* In the case of a benefit resulting from rollover amounts, notwithstanding the provisions of paragraph (b)(2) of this section, the interest rates and conversion factors in paragraph (c)(4) of this section are used to determine the portion of the accrued benefit derived from the employee's contributions and, if any, the portion of the accrued benefit derived from employer contributions.

(c) *Assigning benefits.* If a participant or beneficiary elects to receive a lump sum benefit, his or her benefit shall be determined under paragraph (c)(2) of this section. Otherwise, the benefits with respect to a participant shall be determined under paragraph (c)(1) of this section.

(1) *Annuity benefit and pre-retirement death benefit.* The annuity benefit and the pre-retirement death benefit assigned to priority category 2 with respect to a participant are determined as follows:

(i) The annuity benefit is the benefit computed under paragraph (b) of this section.

(ii) Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, the pre-retirement death benefit is the benefit under the plan that returns all or a portion of the participant's mandatory employee contributions upon the death of the participant before retirement. A benefit that became payable in a single installment (or substantially so) because the participant died before the termination date is a liability of the plan within the meaning of § 4044.3(a) and should not be assigned to priority category 2. A benefit payable upon a participant's death that is included in the annuity form of the benefit derived from mandatory employee contributions (e.g., the survivor's portion of a joint and survivor

annuity or the cash refund portion of a cash refund annuity) is assigned to priority category 2 as part of the annuity benefit under paragraph (c)(1)(i) of this section and is not assigned as a death benefit. The pre-retirement death benefit may not be less than the minimum lump sum required upon withdrawal of mandatory employee contributions by the IRS under section 204(c) of ERISA and section 411(c) of the Code.

(2) *Lump sum benefit.* Except for adjustments necessary to meet the minimum lump sum requirements as hereafter provided, if a participant elects to receive a lump sum benefit under the provisions of the plan, the amount of the benefit that is assigned to priority category 2 with respect to the participant is—

(i) The combined value of the annuity benefit and the pre-retirement death benefit determined according to paragraph (c)(1) (which constitutes the basic-type benefit) plus

(ii) The amount, if any, of the participant's accumulated mandatory employee contributions that exceeds the combined value of the annuity benefit and the pre-retirement death benefit (which constitutes the nonbasic-type benefit), but not more than

(iii) The amount of the participant's accumulated mandatory contributions.

(3) For purposes of paragraph (c)(2) of this section, accumulated mandatory contributions means the contributions with interest, if any, payable under plan provisions to the participant or beneficiary on termination of the plan or, in the absence of such provisions, the amount that is payable if the participant withdrew his or her contributions on the termination date. The lump sum benefit may not be less than the minimum lump required by the IRS under section 204(c) of ERISA and section 411(c) of the Code upon withdrawal of mandatory employee contributions.

(4) *Special rules for benefit resulting from rollover amounts*—(i) *Mandatory employee contributions.* Notwithstanding paragraphs (c)(1) through (3) of this section, in the case of a benefit resulting from rollover amounts, the accrued benefit derived from mandatory employee contributions is determined using the interest rates and conversion factors under section 411(c)(2)(B) and (C) of the Code for purposes of computing an employee's accrued benefit derived from the employee's contributions. The annuity benefit and the pre-retirement death benefit, as determined on this basis, is the benefit resulting from rollover amounts in priority category 2.

(ii) *Employer contributions.* Any portion of a participant's accrued benefit resulting from rollover amounts that is in excess of the accrued benefit derived from mandatory employee contributions determined in accordance with paragraph (c)(4)(i) of this section (*i.e.*, the accrued benefit derived from employer contributions) is a guaranteeable benefit in priority category 3, priority category 4, or priority category 5, as applicable under this part.

[61 FR 34059, July 1, 1996, as amended at 79 FR 70095, Nov. 25, 2014]

§ 4044.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status (then or as of the next payment date under the plan's rules for starting benefit payments) for participants who, before the beginning of the 3-year period ending on the termination date, had reached their Earliest PBGC Retirement Date (as determined under § 4022.10 of this chapter) based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date. For example, in a plan with a termination date of September 1, 2012, the benefits in priority category 3 are those annuity benefits that were in pay status on or before September 1, 2009, and those annuity benefits that could have been in pay status for participants who, on or before September 1, 2009, had reached their Earliest PBGC Retirement Date based on plan provisions in effect on September 1, 2009. Benefit increases, as defined in § 4022.2, that were in effect throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (b)(5) of this section, shall be

included in determining the priority category 3 benefit. For example, in a plan with a termination date of September 1, 2012, a benefit increase that was in effect throughout the 5-year period from September 2, 2007, to September 1, 2012, is included in priority category 3. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 and § 4022.21 of this chapter.

(b) *Assigning benefits.* The annuity benefit that is assigned to priority category 3 with respect to each participant is the lowest annuity that was paid or payable under the rules in paragraphs (b)(2) through (b)(6) of this section.

(1) *Eligibility of participants and beneficiaries.* A participant or beneficiary is eligible for a priority category 3 benefit if either of the following applies:

(i) The participant's (or beneficiary's) benefit was in pay status before the beginning of the 3-year period ending on the termination date.

(ii) Before the beginning of the 3-year period ending on the termination date, the participant was eligible for an annuity benefit that could have been in pay status and had reached his or her Earliest PBGC Retirement Date (as determined in § 4022.10 of this chapter, based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date). Whether a participant was eligible to receive an annuity before the beginning of the 3-year period shall be determined using the plan provisions in effect on the day before the beginning of the 3-year period.

(iii) If a participant described in either of the preceding two paragraphs died during the 3-year period ending on the date of the plan termination and his or her beneficiary is entitled to an annuity, the beneficiary is eligible for a priority category 3 benefit.

(2) *Plan provisions governing determination of benefit.* In determining the amount of the priority category 3 annuity with respect to a participant, the plan administrator shall use the participant's age, service, actual or expected retirement age, and other relevant facts as of the following dates:

(i) Except as provided in paragraph (b)(3), for a participant or beneficiary whose benefit was in pay status before the beginning of the 3-year period ending on the termination date, the priority category 3 benefit shall be determined according to plan provisions in effect on the date the benefit commenced. The form of annuity elected by a retiree is considered the normal form of annuity for that participant.

(ii) Except as provided in paragraph (b)(3), for a participant who was eligible to receive an annuity before the beginning of the 3-year period ending on the termination date but whose benefit was not in pay status, the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time.

(3) *General benefit limitations.* The general benefit limitation is determined as follows:

(i) If a participant's benefit was in pay status before the beginning of the 3-year period, the benefit assigned to priority category 3 with respect to that participant is limited to the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.

(ii) Unless a benefit was in pay status before the beginning of the 3-year period ending on the termination date, the benefit assigned to priority category 3 with respect to a participant is limited to the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date. If the annuity form of benefit under a formula that appears to produce the lowest benefit differs from the normal annuity form for the participant under paragraph (b)(2)(ii) of this section, the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors.

In the absence of plan factors, the factors in subpart B of part 4022 of this chapter shall be used.

(iii) For purposes of this paragraph, if a terminating plan has been in effect less than five years on the termination date, computed in accordance with paragraph (b)(6) of this section, the lowest annuity benefit under the plan during the 5-year period ending on the termination date is zero. If the plan is a successor to a previously established defined benefit plan within the meaning of section 4021(a) of ERISA, the time it has been in effect will include the time the predecessor plan was in effect.

(4) *Determination of beneficiary's benefit.* If a beneficiary is eligible for a priority category 3 benefit because of the death of a participant during the 3-year period ending on the termination date, the benefit assigned to priority category 3 for the beneficiary shall be determined as if the participant had died the day before the 3-year period began.

(5) *Automatic benefit increases.* If plan provisions adopted and effective on or before the first day of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (b)(3) of this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

(6) *Computation of time periods.* For purposes of this section, a plan or amendment is ''in effect'' on the later of the date on which it is adopted or the date it becomes effective.

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination:

(1) For purposes of this paragraph (c), ''applicable pre-termination period'' means the period—

(i) Beginning on the first day of the 5-year period ending on the bankruptcy filing date; and

(ii) Ending on the termination date. For example, if the bankruptcy filing date is January 15, 2008, and the termination date is March 22, 2009, the applicable pre-termination period is the period beginning on January 16, 2003, and ending on March 22, 2009.

(2) ''Applicable pre-termination period'' is substituted for ''5-year period ending on the termination date'' each place that ''5-year period ending on the termination date'' appears in paragraphs (a) and (b) of this section.

(3) Except as provided in paragraph (a)(2) of this section, ''bankruptcy filing date'' is substituted for ''termination date'' and ''date of the plan termination'' each place that ''termination date'' and ''date of the plan termination'' appear in paragraphs (a) and (b) of this section. In paragraph (b)(5) of this section, ''the bankruptcy filing date'' is substituted for ''termination'' in the phrase ''during the fourth and fifth years preceding termination.''

(4) Example: A plan provides for normal retirement at age 65 and has only one early retirement benefit: a subsidized early retirement benefit for participants who terminate employment on or after age 60 with 20 years of service. These plan provisions have been unchanged since 1990. The contributing sponsor of the plan files a bankruptcy petition in June 2008, and the plan terminates during the bankruptcy with a termination date in September 2010. A participant retired in July 2007, at which time he was age 60 and had 20 years of service, and began receiving the subsidized early retirement benefit. The participant has no benefit in priority category 3, because he was not eligible to retire three or more years before the June 2008 bankruptcy filing date.

[61 FR 34059, July 1, 1996, as amended at 62 FR 67729, Dec. 30, 1997; 67 FR 16959, Apr. 8, 2002; 67 FR 38003, May 31, 2002; 76 FR 34605, June 14, 2011]

§ 4044.14 Priority category 4 benefits.

The benefits assigned to priority category 4 with respect to each participant are the participant's guaranteed benefits, except as provided in the next sentence. The benefit assigned to priority category 4 with respect to a participant is not limited by the aggregate

benefits limitations set forth in § 4022B.1 of this chapter for individuals who are participants in more than one plan or by the guarantee limitation applicable to majority owners set forth in § 4022.26.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011; 83 FR 49806, Oct. 3, 2018]

§ 4044.15 Priority category 5 benefits.

The benefits assigned to priority category 5 with respect to each participant are all of the participant's nonforfeitable benefits under the plan.

§ 4044.16 Priority category 6 benefits.

The benefits assigned to priority category 6 with respect to each participant are all of the participant's benefits under the plan, whether forfeitable or nonforfeitable.

§ 4044.17 Subclasses.

(a) *General rule.* A plan may establish one or more subclasses within any priority category, other than priority categories 1 and 2, which subclasses will govern the allocation of assets within that priority category. The subclasses may be based only on a participant's longer service, older age, or disability, or any combination thereof.

(b) *Limitation.* Except as provided in paragraph (c) of this section, whenever the allocation within a priority category on the basis of the subclasses established by the plan increases or decreases the cumulative amount of assets that otherwise would be allocated to guaranteed benefits, the assets so shifted shall be reallocated to other participants' benefits within the priority category in accordance with the subclasses.

(c) *Exception for subclasses in effect on September 2, 1974.* A plan administrator may allocate assets to subclasses within any priority category, other than priority categories 1 and 2, without regard to the limitation in paragraph (b) of this section if, on September 2, 1974, the plan provided for allocation of plan assets upon termination of the plan based on a participant's longer service, older age, or disability, or any combination thereof, and—

(1) Such provisions are still in effect; or

(2) The plan, if subsequently amended to modify or remove those subclasses, is re-amended to re-establish the same subclasses on or before July 28, 1981.

(d) *Discrimination under Code.* Notwithstanding the provisions of paragraphs (a) through (c) of this section, allocation of assets to subclasses established under this section is permitted only to the extent that the allocation does not result in discrimination prohibited under the Code and regulations thereunder.

ALLOCATION OF RESIDUAL ASSETS

§ 4044.30 [Reserved]

Subpart B—Valuation of Benefits and Assets

GENERAL PROVISIONS

§ 4044.41 General valuation rules.

(a) *Valuation of benefits*—(1) *Trusteed plans.* The plan administrator of a plan that has been or will be placed into trusteeship by the PBGC shall value plan benefits in accordance with §§ 4044.51 through 4044.57.

(2) *Non-trusteed plans.* The plan administrator of a non-trusteed plan shall value plan benefits in accordance with §§ 4044.71 through 4044.75. If a plan is unable to satisfy all benefits assigned to priority categories 1 through 4 on the distribution date, the PBGC will place it into trusteeship and the plan administrator shall re-value the benefits in accordance with §§ 4044.51 through 4044.57.

(b) *Valuation of assets.* Plan assets shall be valued at their fair market value, based on the method of valuation that most accurately reflects such fair market value.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011]

TRUSTEED PLANS

§ 4044.51 Benefits to be valued.

(a) *Form of benefit.* The plan administrator shall determine the form of each benefit to be valued in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan administrator shall value the form of the benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit that, under the terms of the plan, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan administrator shall value benefits whose starting date is subject to election using the assumption specified in paragraph (b)(1) or (b)(2) of this section.

(1) *Where election made.* If a valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the starting date so elected.

(2) *Where no election made.* If no valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the later of—

(i) The expected retirement age, as determined under §§ 4044.55 through 4044.57, of the participant with respect to whom the benefit is payable, or

(ii) The valuation date.

§ 4044.52 Valuation of benefits.

The plan administrator shall value all benefits as of the valuation date by—

(a) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed in appendix B to this part;

(b) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(c) Using valuation formulas that accord with generally accepted actuarial principles and practices; and

(d) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

[65 FR 14753, Mar. 17, 2000, as amended at 70 FR 72207, Dec. 2, 2005]

§ 4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), (e), (f), and (g) of this section to value benefits under § 4044.52.

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) The mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) The mortality rates under paragraph (c) of this section to represent the mortality of the death beneficiary.

(c) *Healthy lives.* If the individual is not disabled under paragraph (f) of this section, the plan administrator will value the benefit using—

(1) For male participants, the rates in Table 1 of appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of appendix A to this part; and

(2) For female participants, the rates in Table 3 of appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of appendix A to this part.

(d) *Social Security disabled lives.* If the individual is Social Security disabled under paragraph (f)(1) of this section, the plan administrator will value the benefit using—

(1) For male participants, the rates in Table 5 of appendix A to this part; and

(2) For female participants, the rates in Table 6 of appendix A to this part.

(e) *Non-Social Security disabled lives.* If the individual is non-Social Security disabled under paragraph (f)(2) of this section, the plan administrator will value the benefit at each age using—

(1) For male participants, the lesser of—

(i) The rate determined from Table 1 of appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of appendix A to this part and setting the resulting table forward three years, or

(ii) The rate in Table 5 of appendix A to this part.

(2) For female participants, the lesser of—

(i) The rate determined from Table 3 of appendix A to this part projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of appendix A to this part and setting the resulting table forward three years, or

(ii) The rate in Table 6 of appendix A to this part.

(f) *Definitions of disability*—(1) *Social Security disabled.* A participant is Social Security disabled if, on the valuation date, the participant is less than age 65 and has a benefit in pay status that—

(i) Is being received as a disability benefit under a plan provision requiring either receipt of or eligibility for Social Security disability benefits, or

(ii) Was converted under the plan's terms from a disability benefit under a plan provision requiring either receipt of or eligibility for Social Security disability benefits to an early or normal retirement benefit for any reason other than a change in the participant's health status.

(2) *Non-Social Security disabled.* A participant is non-Social Security disabled if, on the valuation date, the participant is less than age 65, is not Social Security disabled, and has a benefit in pay status that—

(i) Is being received as a disability benefit under the plan, or

(ii) Was converted under the plan's terms from a disability benefit to an early or normal retirement benefit for any reason other than a change in the participant's health status.

(g) *Contingent annuitant mortality during deferral period.* If a participant's joint and survivor benefit is valued as a deferred annuity, the mortality of the contingent annuitant during the deferral period will be disregarded.

[70 FR 72207, Dec. 2, 2005]

§ 4044.54 [Reserved]

EXPECTED RETIREMENT AGE

§ 4044.55 XRA when a participant must retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice require a participant to retire from his or her job to begin receiving an early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant who is entitled to an early retirement benefit—

(1) The amount of the participant's monthly benefit payable at unreduced retirement age in the normal form payable under the terms of the plan or in the form validly elected by the participant before the termination date;

(2) The calendar year in which the participant reaches unreduced retirement age (''URA'');

(3) The participant's URA; and

(4) The participant's earliest retirement age at the valuation date.

(c) *Procedure.* (1) The plan administrator shall determine whether a participant is in the high, medium or low retirement rate category using the applicable Selection of Retirement Rate Category Table in appendix D, based on the participant's benefit determined under paragraph (b)(1) of this section and the year in which the participant reaches URA.

(2) Based on the retirement rate category determined under paragraph (c)(1), the plan administrator shall determine the XRA from Table II-A, II-B or II-C, as appropriate, by using the participant's URA and earliest retirement age at valuation date.

§ 4044.56 XRA when a participant need not retire to receive a benefit.

(a) *Applicability.* Except as provided in § 4044.57, the plan administrator shall determine the XRA under this section when plan provisions or established plan practice do not require a participant to retire from his or her job to begin receiving his or her early retirement benefit.

(b) *Data needed.* The plan administrator shall determine for each participant—

(1) The participant's URA; and

(2) The participant's earliest retirement age at valuation date.

(c) *Procedure.* Participants in this case are always assigned to the high retirement rate category and therefore the plan administrator shall use Table II-C of appendix D to determine the XRA. The plan administrator shall determine the XRA from Table II-C by using the participant's URA and earliest retirement age at termination date.

§ 4044.57 Special rule for facility closing.

(a) *Applicability.* The plan administrator shall determine the XRA under this section, rather than § 4044.55 or § 4044.56, when both the conditions set forth in paragraphs (a)(1) and (a)(2) of this section exist.

(1) The facility at which the participant is or was employed permanently closed within one year before the valuation date, or is in the process of being permanently closed on the valuation date.

(2) The participant left employment at the facility less than one year before the valuation date or was still employed at the facility on the valuation date.

(b) *XRA.* The XRA is equal to the earliest retirement age at valuation date.

NON-TRUSTEED PLANS

§ 4044.71 Valuation of annuity benefits.

The value of a benefit which is to be paid as an annuity is the cost of purchasing the annuity on the date of distribution from an insurer.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011]

§ 4044.72 Form of annuity to be valued.

(a) When both the participant and beneficiary are alive on the date of distribution, the form of annuity to be valued is—

(1) For a participant or beneficiary already receiving a monthly benefit, that form which is being received, or

(2) For a participant or beneficiary not receiving a monthly benefit, the normal annuity form payable under the plan or the optional form for which the participant has made a valid election.

(b) When the participant dies after the date of plan termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (b)(1) or (b)(2) of this section:

(1) For a participant who was entitled to a deferred annuity—

(i) If the form was a single or joint life annuity, no benefit shall be valued; or

(ii) If the participant had made a valid election of a lump sum benefit before he or she died, the form to be valued is the lump sum.

(2) For a participant who was eligible for immediate retirement, and for a participant who was in pay status at the date of termination—

(i) If the form was a single life annuity, no benefit shall be valued;

(ii) If the form was an annuity for a period certain and life thereafter, the form to be valued is an annuity for the certain period;

(iii) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the beneficiary, unless the beneficiary has also died, in which case no benefit shall be valued;

(iv) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an annuity for the certain period and the life of the beneficiary thereafter, unless the beneficiary has also died, in which case the form to be valued is an annuity for the certain period;

(v) If the form was a cash refund annuity, the form to be valued is the remaining lump sum death benefit; or

(vi) If the participant had elected a lump sum benefit before he or she died, the form to be valued is the lump sum.

(c) When the participant is still living and the named beneficiary or spouse dies after the date of termination but before the date of distribution, the form of annuity to be valued is determined under paragraph (c)(1) or (c)(2) of this section:

(1) For a participant entitled to a deferred annuity—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint and survivor thereafter, the form to be valued is an annuity for the certain period and the life of the participant thereafter.

(2) For a participant eligible for immediate retirement and for a participant in pay status at the date of termination—

(i) If the form was a joint and survivor annuity, the form to be valued is a single life annuity payable to the participant; or

(ii) If the form was an annuity for a period certain and joint survivor thereafter annuity, the form to be valued is an annuity for the certain period and for the life of the participant thereafter.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011]

§ 4044.73 Lump sums and other alternative forms of distribution in lieu of annuities.

(a) *Valuation.* (1) The value of the lump sum or other alternative form of distribution is the present value of the normal form of benefit provided by the plan payable at normal retirement age, determined as of the date of distribution using reasonable actuarial assumptions as to interest and mortality.

(2) If the participant dies before the date of distribution, but had elected a lump sum benefit, the present value shall be determined as if the participant were alive on the date of distribution.

(b) *Actuarial assumptions.* The plan administrator shall specify the actuarial assumptions used to determine the value calculated under paragraph (a) of this section when the plan administrator submits the benefit valuation data to the PBGC. The same actuarial assumptions shall be used for all such calculations. The PBGC reserves the right to review the actuarial assumptions used and to re-value the benefits determined by the plan administrator if the actuarial assumptions are found to be unreasonable.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011]

§ 4044.74 Withdrawal of employee contributions.

(a) If a participant has not started to receive monthly benefit payments on the date of distribution, the value of the lump sum which returns mandatory employee contributions is equal to the total amount of contributions made by the participant, plus interest that is payable to the participant under the terms of the plan, plus interest on that total amount from the date of termination to the date of distribution. The rate of interest credited on employee contributions up to the date of termination shall be the greater of the interest rate provided under the terms of the plan or the interest rate required under section 204(c) of ERISA or section 411(c) of the IRC.

(b) If a participant has started to receive monthly benefit payments on the date of distribution, part of which are attributable to his or her contributions, the value of the lump sum which returns employee contributions is equal to the excess of the amount described in paragraph (b)(1) of this section over the amount computed in paragraph (b)(2) of this section.

(1) The amount of accumulated mandatory employee contributions remaining in the plan as of the date of termination plus interest from the date of termination to the date of distribution.

(2) The excess of benefit payments made from the plan between date of plan termination and the date of distribution, over the amount of payments that would have been made if the employee contributions had been paid as a lump sum on the date of plan termination, with interest accumulated on the excess from the date of payment to the date of distribution.

(c) *Interest assumptions.* The interest rate used under this section to credit interest between the date of termination to the date of distribution shall

be a reasonable rate and shall be the same for both paragraphs (a) and (b).

§ 4044.75 Other lump sum benefits.

The value of a lump sum benefit which is not covered under § 4044.73 or § 4044.74 is equal to—

(a) The value under the irrevocable commitment, if an insurer provides the benefit; or

(b) The present value of the benefit as of the date of distribution, determined using reasonable actuarial assumptions, if the benefit is to be distributed other than by the purchase of the benefit from an insurer. The PBGC reserves the right to review the actuarial assumptions as to reasonableness and re-value the benefit if the actuarial assumptions are unreasonable.

[61 FR 34059, July 1, 1996, as amended at 76 FR 34606, June 14, 2011]

APPENDIX A TO PART 4044—MORTALITY RATE TABLES

The mortality tables in this appendix set forth for each age x the probability q_x that an individual aged x (in 1994, when using Table 1 or Table 3) will not survive to attain age x + 1. The projection scales in this appendix set forth for each age x the annual reduction AA_x in the mortality rate at age x.

TABLE 1—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

[94 GAM basic]

Age x	q_x
15	0.000371
16	0.000421
17	0.000463
18	0.000495
19	0.000521
20	0.000545
21	0.000570
22	0.000598
23	0.000633
24	0.000671
25	0.000711
26	0.000749
27	0.000782
28	0.000811
29	0.000838
30	0.000862
31	0.000883
32	0.000902
33	0.000912
34	0.000913
35	0.000915
36	0.000927
37	0.000958
38	0.001010
39	0.001075
40	0.001153
41	0.001243
42	0.001346
43	0.001454
44	0.001568
45	0.001697
46	0.001852
47	0.002042
48	0.002260
49	0.002501
50	0.002773
51	0.003088
52	0.003455
53	0.003854
54	0.004278
55	0.004758
56	0.005322
57	0.006001
58	0.006774
59	0.007623
60	0.008576
61	0.009663
62	0.010911
63	0.012335
64	0.013914
65	0.015629
66	0.017462
67	0.019391
68	0.021354
69	0.023364
70	0.025516
71	0.027905
72	0.030625
73	0.033549
74	0.036614
75	0.040012
76	0.043933
77	0.048570
78	0.053991
79	0.060066
80	0.066696
81	0.073780
82	0.081217
83	0.088721
84	0.096358
85	0.104559
86	0.113755
87	0.124377
88	0.136537
89	0.149949
90	0.164442
91	0.179849
92	0.196001
93	0.213325
94	0.231936
95	0.251189
96	0.270441
97	0.289048
98	0.306750
99	0.323976
100	0.341116
101	0.358560
102	0.376699
103	0.396884
104	0.418855
105	0.440585
106	0.460043
107	0.475200
108	0.485670
109	0.492807
110	0.497189
111	0.499394

TABLE 1—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS—Continued

[94 GAM basic]

Age x	q_x
112	0.500000
113	0.500000
114	0.500000
115	0.500000
116	0.500000
117	0.500000
118	0.500000
119	0.500000
120	1.000000

TABLE 2—PROJECTION SCALE AA FOR HEALTHY MALE PARTICIPANTS

Age x	AA_x
15	0.019
16	0.019
17	0.019
18	0.019
19	0.019
20	0.019
21	0.018
22	0.017
23	0.015
24	0.013
25	0.010
26	0.006
27	0.005
28	0.005
29	0.005
30	0.005
31	0.005
32	0.005
33	0.005
34	0.005
35	0.005
36	0.005
37	0.005
38	0.006
39	0.007
40	0.008
41	0.009
42	0.010
43	0.011
44	0.012
45	0.013
46	0.014
47	0.015
48	0.016
49	0.017
50	0.018
51	0.019
52	0.020
53	0.020
54	0.020
55	0.019
56	0.018
57	0.017
58	0.016
59	0.016
60	0.016
61	0.015
62	0.015
63	0.014
64	0.014
65	0.014
66	0.013
67	0.013

TABLE 2—PROJECTION SCALE AA FOR HEALTHY MALE PARTICIPANTS—Continued

Age x	AA_x
68	0.014
69	0.014
70	0.015
71	0.015
72	0.015
73	0.015
74	0.015
75	0.014
76	0.014
77	0.013
78	0.012
79	0.011
80	0.010
81	0.009
82	0.008
83	0.008
84	0.007
85	0.007
86	0.007
87	0.006
88	0.005
89	0.005
90	0.004
91	0.004
92	0.003
93	0.003
94	0.003
95	0.002
96	0.002
97	0.002
98	0.001
99	0.001
100	0.001
101	0.000
102	0.000
103	0.000
104	0.000
105	0.000
106	0.000
107	0.000
108	0.000
109	0.000
110	0.000
111	0.000
112	0.000
113	0.000
114	0.000
115	0.000
116	0.000
117	0.000
118	0.000
119	0.000
120	0.000

TABLE 3—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS

[94 GAM Basic]

Age x	q_x
15	0.000233
16	0.000261
17	0.000281
18	0.000293
19	0.000301
20	0.000305
21	0.000308
22	0.000311
23	0.000313

TABLE 3—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS—Continued

[94 GAM Basic]

Age x	q_x
24	0.000313
25	0.000313
26	0.000316
27	0.000324
28	0.000338
29	0.000356
30	0.000377
31	0.000401
32	0.000427
33	0.000454
34	0.000482
35	0.000514
36	0.000550
37	0.000593
38	0.000643
39	0.000701
40	0.000763
41	0.000826
42	0.000888
43	0.000943
44	0.000992
45	0.001046
46	0.001111
47	0.001196
48	0.001297
49	0.001408
50	0.001536
51	0.001686
52	0.001864
53	0.002051
54	0.002241
55	0.002466
56	0.002755
57	0.003139
58	0.003612
59	0.004154
60	0.004773
61	0.005476
62	0.006271
63	0.007179
64	0.008194
65	0.009286
66	0.010423
67	0.011574
68	0.012648
69	0.013665
70	0.014763
71	0.016079
72	0.017748
73	0.019724
74	0.021915
75	0.024393
76	0.027231
77	0.030501
78	0.034115
79	0.038024
80	0.042361
81	0.047260
82	0.052853
83	0.058986
84	0.065569
85	0.072836
86	0.081018
87	0.090348
88	0.100882
89	0.112467
90	0.125016
91	0.138442
92	0.152660
93	0.167668

TABLE 3—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS—Continued

[94 GAM Basic]

Age x	q_x
94	0.183524
95	0.200229
96	0.217783
97	0.236188
98	0.255605
99	0.276035
100	0.297233
101	0.318956
102	0.340960
103	0.364586
104	0.389996
105	0.415180
106	0.438126
107	0.456824
108	0.471493
109	0.483473
110	0.492436
111	0.498054
112	0.500000
113	0.500000
114	0.500000
115	0.500000
116	0.500000
117	0.500000
118	0.500000
119	0.500000
120	1.000000

TABLE 4—PROJECTION SCALE AA FOR HEALTHY FEMALE PARTICIPANTS

Age x	AA_x
15	0.016
16	0.015
17	0.014
18	0.014
19	0.015
20	0.016
21	0.017
22	0.017
23	0.016
24	0.015
25	0.014
26	0.012
27	0.012
28	0.012
29	0.012
30	0.010
31	0.008
32	0.008
33	0.009
34	0.010
35	0.011
36	0.012
37	0.013
38	0.014
39	0.015
40	0.015
41	0.015
42	0.015
43	0.015
44	0.015
45	0.016
46	0.017
47	0.018
48	0.018
49	0.018

TABLE 4—PROJECTION SCALE AA FOR HEALTHY FEMALE PARTICIPANTS—Continued

Age x	AA_x
50	0.017
51	0.016
52	0.014
53	0.012
54	0.010
55	0.008
56	0.006
57	0.005
58	0.005
59	0.005
60	0.005
61	0.005
62	0.005
63	0.005
64	0.005
65	0.005
66	0.005
67	0.005
68	0.005
69	0.005
70	0.005
71	0.006
72	0.006
73	0.007
74	0.007
75	0.008
76	0.008
77	0.007
78	0.007
79	0.007
80	0.007
81	0.007
82	0.007
83	0.007
84	0.007
85	0.006
86	0.005
87	0.004
88	0.004
89	0.003
90	0.003
91	0.003
92	0.003
93	0.002
94	0.002
95	0.002
96	0.002
97	0.001
98	0.001
99	0.001
100	0.001
101	0.000
102	0.000
103	0.000
104	0.000
105	0.000
106	0.000
107	0.000
108	0.000
109	0.000
110	0.000
111	0.000
112	0.000
113	0.000
114	0.000
115	0.000
116	0.000
117	0.000
118	0.000
119	0.000
120	0.000

TABLE 5—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED MALE PARTICIPANTS

Age x	q_x
15	0.022010
16	0.022502
17	0.023001
18	0.023519
19	0.024045
20	0.024583
21	0.025133
22	0.025697
23	0.026269
24	0.026857
25	0.027457
26	0.028071
27	0.028704
28	0.029345
29	0.029999
30	0.030661
31	0.031331
32	0.032006
33	0.032689
34	0.033405
35	0.034184
36	0.034981
37	0.035796
38	0.036634
39	0.037493
40	0.038373
41	0.039272
42	0.040189
43	0.041122
44	0.042071
45	0.043033
46	0.044007
47	0.044993
48	0.045989
49	0.046993
50	0.048004
51	0.049021
52	0.050042
53	0.051067
54	0.052093
55	0.053120
56	0.054144
57	0.055089
58	0.056068
59	0.057080
60	0.058118
61	0.059172
62	0.060232
63	0.061303
64	0.062429
65	0.063669
66	0.065082
67	0.066724
68	0.068642
69	0.070834
70	0.073284
71	0.075979
72	0.078903
73	0.082070
74	0.085606
75	0.088918
76	0.092208
77	0.095625
78	0.099216
79	0.103030
80	0.107113
81	0.111515
82	0.116283
83	0.121464
84	0.127108
85	0.133262

TABLE 5—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED MALE PARTICIPANTS—Continued

Age x	q_x
86	0.139974
87	0.147292
88	0.155265
89	0.163939
90	0.173363
91	0.183585
92	0.194653
93	0.206615
94	0.219519
95	0.234086
96	0.248436
97	0.263954
98	0.280803
99	0.299154
100	0.319185
101	0.341086
102	0.365052
103	0.393102
104	0.427255
105	0.469531
106	0.521945
107	0.586518
108	0.665268
109	0.760215
110	1.000000

TABLE 6—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED FEMALE PARTICIPANTS

Age x	q_x
15	0.007777
16	0.008120
17	0.008476
18	0.008852
19	0.009243
20	0.009650
21	0.010076
22	0.010521
23	0.010984
24	0.011468
25	0.011974
26	0.012502
27	0.013057
28	0.013632
29	0.014229
30	0.014843
31	0.015473
32	0.016103
33	0.016604
34	0.017121
35	0.017654
36	0.018204
37	0.018770
38	0.019355
39	0.019957
40	0.020579
41	0.021219
42	0.021880
43	0.022561
44	0.023263
45	0.023988
46	0.024734
47	0.025504
48	0.026298
49	0.027117
50	0.027961
51	0.028832

TABLE 6—MORTALITY TABLE FOR SOCIAL SECURITY DISABLED FEMALE PARTICIPANTS—Continued

Age x	q_x
52	0.029730
53	0.030655
54	0.031609
55	0.032594
56	0.033608
57	0.034655
58	0.035733
59	0.036846
60	0.037993
61	0.039176
62	0.040395
63	0.041653
64	0.042950
65	0.044287
66	0.045666
67	0.046828
68	0.048070
69	0.049584
70	0.051331
71	0.053268
72	0.055356
73	0.057573
74	0.059979
75	0.062574
76	0.065480
77	0.068690
78	0.072237
79	0.076156
80	0.080480
81	0.085243
82	0.090480
83	0.096224
84	0.102508
85	0.109368
86	0.116837
87	0.124948
88	0.133736
89	0.143234
90	0.153477
91	0.164498
92	0.176332
93	0.189011
94	0.202571
95	0.217045
96	0.232467
97	0.248870
98	0.266289
99	0.284758
100	0.303433
101	0.327385
102	0.359020
103	0.395842
104	0.438360
105	0.487816
106	0.545886
107	0.614309
108	0.694884
109	0.789474
110	1.000000

[70 FR 72208, Dec. 2, 2005; 70 FR 73330, Dec. 9, 2005]

APPENDIX B TO PART 4044—INTEREST RATES USED TO VALUE BENEFITS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
November 1993	.0560	1–25	.0525	>	N/A	N/A
December 1993	.0560	1–25	.0525	>25	N/A	N/A
January 1994	.0590	1–25	.0525	>25	N/A	N/A
February 1994	.0590	1–25	.0525	>25	N/A	N/A
March 1994	.0580	1–25	.0525	>25	N/A	N/A
April 1994	.0620	1–25	.0525	>25	N/A	N/A
May 1994	.0650	1–25	.0525	>25	N/A	N/A
June 1994	.0670	1–25	.0525	>25	N/A	N/A
July 1994	.0690	1–25	.0525	>25	N/A	N/A
August 1994	.0700	1–25	.0525	>25	N/A	N/A
September 1994	.0690	1–25	.0525	>25	N/A	N/A
October 1994	.0700	1–25	.0525	>25	N/A	N/A
November 1994	.0730	1–25	.0525	>25	N/A	N/A
December 1994	.0750	1–25	.0525	>25	N/A	N/A
January 1995	.0750	1–20	.0575	>20	N/A	N/A
February 1995	.0730	1–20	.0575	>20	N/A	N/A
March 1995	.0730	1–20	.0575	>20	N/A	N/A
April 1995	.0710	1–20	.0575	>20	N/A	N/A
May 1995	.0690	1–20	.0575	>20	N/A	N/A
June 1995	.0680	1–20	.0575	>20	N/A	N/A
July 1995	.0630	1–20	.0575	>20	N/A	N/A
August 1995	.0620	1–20	.0575	>20	N/A	N/A
September 1995	.0640	1–20	.0575	>20	N/A	N/A
October 1995	.0630	1–20	.0575	>20	N/A	N/A
November 1995	.0620	1–20	.0575	>20	N/A	N/A
December 1995	.0600	1–20	.0575	>20	N/A	N/A
January 1996	.0560	1–20	.0475	>20	N/A	N/A
February 1996	.0540	1–20	.0475	>20	N/A	N/A
March 1996	.0550	1–20	.0475	>20	N/A	N/A
April 1996	.0580	1–20	.0475	>20	N/A	N/A
May 1996	.0600	1–20	.0475	>20	N/A	N/A
June 1996	.0620	1–20	.0475	>20	N/A	N/A
July 2006	.0630	1–20	.0475	>20	N/A	N/A
August 1996	.0630	1–20	.0475	>20	N/A	N/A
September 1996	.0630	1–20	.0475	>20	N/A	N/A
October 1996	.0630	1–20	.0475	>20	N/A	N/A
November 1996	.0620	1–20	.0475	>20	N/A	N/A
December 1996	.0600	1–20	.0475	>20	N/A	N/A
January 1997	.0580	1–25	.0500	>25	N/A	N/A
February 1997	.0590	1–25	.0500	>25	N/A	N/A
March 1997	.0620	1–25	.0500	>25	N/A	N/A
April 1997	.0610	1–25	.0500	>25	N/A	N/A
May 1997	.0630	1–25	.0500	>25	N/A	N/A
June 1997	.0640	1–25	.0500	>25	N/A	N/A
July 1997	.0630	1–25	.0500	>25	N/A	N/A
August 1997	.0610	1–25	.0500	>25	N/A	N/A
September 1997	.0570	1–25	.0500	>25	N/A	N/A
October 1997	.0590	1–25	.0500	>25	N/A	N/A
November 1997	.0570	1–25	.0500	>25	N/A	N/A
December 1997	.0560	1–25	.0500	>25	N/A	N/A
January 1998	.0560	1–25	.0525	>25	N/A	N/A
February 1998	.0550	1–25	.0525	>25	N/A	N/A
March 1998	.0550	1–25	.0525	>25	N/A	N/A
April 1998	.0550	1–25	.0525	>25	N/A	N/A
May 1998	.0560	1–25	.0525	>25	N/A	N/A
June 1998	.0560	1–25	.0525	>25	N/A	N/A
July 1998	.0550	1–25	.0525	>25	N/A	N/A
August 1998	.0540	1–25	.0525	>25	N/A	N/A
September 1998	.0540	1–25	.0525	>25	N/A	N/A
October 1998	.0540	1–25	.0525	>25	N/A	N/A
November 1998	.0530	1–25	.0525	>25	N/A	N/A
December 1998	.0540	1–25	.0525	>25	N/A	N/A
January 1999	.0530	1–20	.0525	>20	N/A	N/A
February 1999	.0540	1–20	.0525	>20	N/A	N/A

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
March 1999	.0530	1–20	.0525	>20	N/A	N/A
April 1999	.0560	1–20	.0525	>20	N/A	N/A
May 1999	.0570	1–20	.0525	>20	N/A	N/A
June 1999	.0570	1–20	.0525	>20	N/A	N/A
July 1999	.0600	1–20	.0525	>20	N/A	N/A
August 1999	.0630	1–20	.0525	>20	N/A	N/A
September 1999	.0630	1–20	.0525	>20	N/A	N/A
October 1999	.0630	1–20	.0525	>20	N/A	N/A
November 1999	.0630	1–20	.0525	>20	N/A	N/A
December 1999	.0650	1–20	.0525	>20	N/A	N/A
January 2000	.0690	1–25	.0625	>25	N/A	N/A
February 2000	.0710	1–25	.0625	>25	N/A	N/A
March 2000	.0710	1–25	.0625	>25	N/A	N/A.
April 2000	.0710	1–25	.0625	>25	N/A	N/A
May 2000	.0700	1–25	.0625	>25	N/A	N/A
June 2000	.0710	1–25	.0625	>25	N/A	N/A
July 2000	.0740	1–25	0625	>25	N/A	N/A
August 2000	.0710	1–25	.0625	>25	N/A	N/A
September 2000	.070	1–25	.0625	25	N/A	N/A
October 2000	.0700	1–25	.0625	>25	N/A	N/A
November 2000	.0710	1–25	.0625	>25	N/A	N/A
December 2000	.0700	1–25	.0625	>25	N/A	N/A
January 2001	.0670	1–20	.0625	>20	N/A	N/A
February 2001	.0650	1–20	.0625	>20	N/A	N/A
March 2001	.0640	1–20	.0625	>20	N/A	N/A
April 2001	.0640	1–20	.0625	>20	N/A	N/A
May 2001	.0640	1–20	.0625	>20	N/A	N/A
June 2001	.0660	1–20	.0625	>20	N/A	N/A
July 2001	.0660	1–20	.0625	>20	N/A	N/A
August 2001	.0640	1–20	.0625	>20	N/A	N/A
September 2001	.0630	1–20	.0625	>20	N/A	N/A
October 2001	.0610	1–20	.0625	>20	N/A	N/A
November 2001	.0650	1–20	.0625	>20	N/A	N/A
December 2001	.0610	1–20	.0625	>20	N/A	N/A
January 2002	.0580	1–25	.0425	>25	N/A	N/A
February 2002	.0580	1–25	.0425	>25	N/A	N/A
March 2002	.0560	1–25	.0425	>25	N/A	N/A
April 2002	.0550	1–25	.0425	>25	N/A	N/A
May 2002	.0590	1–25	.0425	>25	N/A	N/A
June 2002	.0570	1–25	.0425	>25	N/A	N/A
July 2002	.0570	1–25	.0425	>25	N/A	N/A
August 2002	.0550	1–25	.0425	>25	N/A	N/A
September 2002	.0540	1–25	.0425	25	N/A	N/A
October 2002	.0530	1–25	.0425	>25	N/A	N/A
November 2002	.0500	1–25	.0425	>25	N/A	N/A
December 2002	.0530	1–25	.0425	>25	N/A	N/A
January 2003	.0530	1–20	.0525	>20	N/A	N/A
February 2003	.0510	1–20	.0525	>20	N/A	N/A
March 2003	.0510	1–20	.0525	>20	N/A	N/A
April 2003	.0490	1–20	.0525	>20	N/A	N/A
May 2003	.0490	1–20	.0525	>20	N/A	N/A
June 2003	.0470	1–20	.0525	>20	N/A	N/A
July 2003	.0430	1–20	.0525	>20	N/A	N/A
August 2003	.0440	1–20	.0525	>20	N/A	N/A
September 2003	.0490	1–20	.0525	>20	N/A	N/A
October 2003	.0490	1–20	.0525	>20	N/A	N/A
November 2003	.0460	1–20	.0525	20	N/A	N/A
December 2003	.0470	1–20	.0525	>20	N/A	N/A
January 2004	.0420	1–20	.0500	>20	N/A	N/A
February 2004	.0410	1–20	.0500	>20	N/A	N/A
March 2004	.0410	1–20	.0500	>20	N/A	N/A
April 2004	.0400	1–20	.0500	>20	N/A	N/A
May 2004	.0390	1–20	.0500	>20	N/A	N/A
June 2004	.0430	1–20	.0500	>20	N/A	N/A
July 2004	.0450	1–20	.0500	>20	N/A	N/A
August 2004	.0430	1–20	.0500	>20	N/A	N/A
September 2004	.0420	1–20	.0500	>20	N/A	N/A
October 2004	.0400	1–20	.0500	>20	N/A	N/A
November 2004	.0380	1–20	.0500	>20	N/A	N/A
December 2004	.0380	1–20	.0500	>20	N/A	N/A
January 2005	.0410	1–20	.0475	>20	N/A	N/A
February 2005	.0400	1–20	.0475	>20	N/A	N/A

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
March 2005	.0380	1–20	.0475	>20	N/A	N/A
April 2005	.0380	1–20	.0475	>20	N/A	N/A
May 2005	.0390	1–20	.0475	>20	N/A	N/A
June 2005	.0370	1–20	.0475	>20	N/A	N/A
July 2005	.0360	1–20	.0475	>20	N/A	N/A
August 2005	.0340	1–20	.0475	>20	N/A	N/A
September 2005	.0360	1–20	.0475	>20	N/A	N/A
October 2005	.0350	1–20	.0475	>20	N/A	N/A
November 2005	.0370	1–20	.0475	>20	N/A	N/A
December 2005	.0400	1–20	.0475	>20	N/A	N/A
January 2006	.0570	1–20	.0475	>20	N/A	N/A
February 2006	.0560	1–20	.0475	>20	N/A	N/A
March 2006	.0570	1–20	.0475	>20	N/A	N/A
April 2006	.0560	1–20	.0475	>20	N/A	N/A
May 2006	.0590	1–20	.0475	>20	N/A	N/A
June 2006	.0620	1–20	.0475	>20	N/A	N/A
July 2006	.0630	1–20	.0475	>20	N/A	N/A
August 2006	.0640	1–20	.0475	>20	N/A	N/A
September 2006	.0620	1–20	.0475	>20	N/A	N/A
October 2006	.0600	1–20	.0475	>20	N/A	N/A
November 2006	.0570	1–20	.0475	>20	N/A	N/A
December 2006	.0580	1–20	.0475	>20	N/A	N/A
January 2007	.0488	1–20	.0455	>20	N/A	N/A
February 2007	.0513	1–20	.0480	>20	N/A	N/A
March 2007	.0522	1–20	.0489	>20	N/A	N/A
April 2007	.0499	1–20	.0466	>20	N/A	N/A
May 2007	.0520	1–20	.0487	>20	N/A	N/A
June 2007	.0514	1–20	.0481	>20	N/A	N/A
July 2007	.0533	1–20	.0500	>20	N/A	N/A
August 2007	.0549	1–20	.0516	>20	N/A	N/A
September 2007	.0553	1–20	.0520	>20	N/A	N/A
October 2007	.0551	1–20	.0518	>20	N/A	N/A
November 2007	.0546	1–20	.0513	>20	N/A	N/A
December 2007	.0537	1–20	.0504	>20	N/A	N/A
January 2008	.0542	1–20	.0449	>20	N/A	N/A
February 2008	.0550	1–20	.0457	>20	N/A	N/A
March 2008	.0554	1–20	.0461	>20	N/A	N/A
April 2008	.0564	1–20	.0471	>20	N/A	N/A
May 2008	.0581	1–20	.0488	>20	N/A	N/A
June 2008	.0568	1–20	.0475	>20	N/A	N/A
July 2008	.0595	1–20	.0502	20	N/A	N/A
August 2008	.0605	1–20	.0512	>20	N/A	N/A
September 2008	.0624	1–20	.0531	>20	N/A	N/A
October 2008	.0618	1–20	.0525	>20	N/A	N/A
November 2008	.0709	1–20	.0616	>20	N/A	N/A
December 2008	.0792	1–20	.0699	>20	N/A	N/A
January 2009	0.0602	1–20	0.0548	>20	N/A	N/A
February 2009	0.0602	1–20	0.0548	>20	N/A	N/A
March 2009	0.0602	1–20	0.0548	>20	N/A	N/A
April–June 2009	0.0550	1–20	0.0502	>20	N/A	N/A
July–September 2009	0.0531	1–20	0.0504	>20	N/A	N/A
October–December 2009	0.0530	1–20	0.0501	>20	N/A	N/A
January—March 2010	0.0489	1–20	0.0463	>20	N/A	N/A
April–June 2010	0.0463	1–20	0.0451	>20	N/A	N/A
July–September 2010	0.0493	1–20	0.0466	>20	N/A	N/A
October–December 2010	0.0448	1–25	0.0451	>25	N/A	N/A
January–March 2011	0.0407	1–25	0.0393	>25	N/A	N/A
April–June 2011	0.0396	1–20	0.0432	>20	N/A	N/A
July–September 2011	0.0422	1–20	0.0434	>20	N/A	N/A
October–December 2011	0.0409	1–20	0.0430	>20	N/A	N/A
January–March 2012	0.0374	1–20	0.0370	>20	N/A	N/A
April–June 2012	0.0311	1–20	0.0336	>20	N/A	N/A
July–September 2012	0.0295	1–20	0.0366	>20	N/A	N/A
October—December 2012	0.0307	1–20	0.0300	>20	N/A	N/A
January–March 2013	0.0267	1–20	0.0301	>20	N/A	N/A
April–June 2013	0.0250	1–20	0.0320	>20	N/A	N/A
July–September 2013	0.0260	1–20	0.0343	>20	N/A	N/A
October–December 2013	0.0300	1–20	0.0331	>20	N/A	N/A
January–March 2014	0.0335	1–20	0.0350	>20	N/A	N/A
April—June 2014	0.0347	1–20	0.0364	>20	N/A	N/A
July–September 2014	0.0343	1–20	0.0366	>20	N/A	N/A
October–December 2014	0.0310	1–20	0.0329	>20	N/A	N/A

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
January–March 2015	0.0289	1–20	0.0312	>20	N/A	N/A
April–June 2015	0.0271	1–20	0.0278	>20	N/A	N/A
July–September 2015	0.0232	1–20	0.0237	>20	N/A	N/A
October–December 2015	0.0246	1–20	0.0298	>20	N/A	N/A
January–March 2016	0.0282	1–20	0.0295	>20	N/A	N/A
January–March 2017	0.0187	1–20	0.0237	>20	N/A	N/A
April–June 2016	0.0277	1–20	0.0286	>20	N/A	N/A
July–September 2016	0.0250	1–20	0.0285	>20	N/A	N/A
October–December 2016	0.0198	1–20	0.0267	>20	N/A	N/A
January–March 2017	0.0187	1–20	0.0237	>20	N/A	N/A
April–June 2017	0.0215	1–20	0.0260	>20	N/A	N/A
July–September 2017	0.0244	1–20	0.0274	>20	N/A	N/A
October–December 2017	0.0234	1–20	0.0263	>20	N/A	N/A
January–March 2018	0.0239	1–20	0.0260	>20	N/A	N/A
April–June 2018	0.0227	1–20	0.0259	>20	N/A	N/A
July–September 2018	0.0253	1–25	0.0264	>25	N/A	N/A
October–December 2018	0.0284	1–20	0.0276	>20	N/A	N/A
January–March 2019	0.0309	1–20	0.0284	>20	N/A	N/A
April–June 2019	0.0307	1–20	0.0305	>20	N/A	N/A
July–September 2019	0.0292	1–25	0.0307	>25	N/A	N/A
October–December 2019	0.0253	1–25	0.0253	>25	N/A	N/A
January–March 2020	0.0212	1–25	0.0226	>25	N/A	N/A
April–June 2020	0.0211	1–20	0.0192	>20	N/A	N/A
July–September 2020	0.0198	1–20	0.0157	>20	N/A	N/A
October–December 2020	0.0162	1–20	0.0140	>20	N/A	N/A
January–March 2021	0.0169	1–20	0.0166	>20	N/A	N/A
April–June 2021	0.0182	1–20	0.0168	>20	N/A	N/A
July–September 2021	0.0213	1–25	0.0223	>25	N/A	N/A
October–December 2021	0.0240	1–20	0.0211	>20	N/A	N/A
January–March 2022	0.0237	1–20	0.0203	>20	N/A	N/A
April–June 2022	0.0240	1–20	0.0212	>20	N/A	N/A
July–September 2022	0.0281	1–20	0.0294	>20	N/A	N/A
October–December 2022	0.0390	1–20	0.0365	>20	N/A	N/A
January–March 2023	0.0486	1–20	0.0470	>20	N/A	N/A
April–June 2023	0.0538	1–20	0.0509	>20	N/A	N/A
July–September 2023	0.0524	1–20	0.0458	>20	N/A	N/A

[61 FR 34059, July 1, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting part 4044, appendix B, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

APPENDIX C TO PART 4044—LOADING ASSUMPTIONS

If the total value of the plan's benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16)), exclusive of the loading charge, is—		The loading charge equals—
greater than	but less than or equal to	
$0	$200,000	5% of the total value of the plan's benefits, plus $200 for each plan participant.
$200,000		$10,000, plus a percentage of the excess of the total value over $200,000, plus $200 for each plan participant; the percentage is equal to 1% + [(P% − 7.50%)/10], where P% is the initial rate, expressed as a percentage, set forth in appendix B of this part for the valuation of benefits.

[61 FR 34059, July 1, 1996, as amended at 65 FR 14753, Mar. 17, 2000]

APPENDIX D TO PART 4044—TABLES USED TO DETERMINE EXPECTED RETIREMENT AGE

TABLE I–23—SELECTION OF RETIREMENT RATE CATEGORY

[For valuation dates in 2023 [1]]

If participant reaches URA in year—	Participant's Retirement Rate Category is—			
	Low [2] if monthly benefit at URA is less than—	Medium [3] if monthly benefit at URA is—		High [4] if monthly benefit at URA is greater than—
		From—	To—	
2024	745	745	3,146	3,146
2025	762	762	3,218	3,218
2026	779	779	3,292	3,292
2027	797	797	3,368	3,368
2028	816	816	3,445	3,445
2029	834	834	3,524	3,524
2030	854	854	3,605	3,605
2031	873	873	3,688	3,688
2032	893	893	3,773	3,773
2033 or later	914	914	3,860	3,860

[1] Applicable tables for valuation dates before 2023 are available on PBGC's website (*www.pbgc.gov*).
[2] Table II–A.
[3] Table II–B.
[4] Table II–C.

TABLE II-A—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE LOW CATEGORY

Participant's earliest retirement age at valuation date.	Unreduced retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	53	53	53	54	54	54	54	54	54	54	54
43	53	54	54	54	55	55	55	55	55	55	55
44	54	54	55	55	55	55	55	56	56	56	56
45	54	55	55	56	56	56	56	56	56	56	56
46	55	55	56	56	56	57	57	57	57	57	57
47	56	56	56	57	57	57	57	57	57	57	57
48	56	57	57	57	58	58	58	58	58	58	58
49	56	57	58	58	58	58	59	59	59	59	59
50	57	57	58	58	59	59	59	59	59	59	59
51	57	58	58	59	59	60	60	60	60	60	60
52	58	58	59	59	60	60	60	60	60	60	60
53	58	59	59	60	60	61	61	61	61	61	61
54	58	59	60	60	61	61	61	61	61	61	61
55	59	59	60	61	61	61	62	62	62	62	62
56	59	60	60	61	61	62	62	62	62	62	62
57	59	60	61	61	62	62	62	62	62	62	62
58	59	60	61	61	62	62	63	63	63	63	63
59	59	60	61	62	62	63	63	63	63	63	63
60	60	60	61	62	62	63	63	63	63	63	63
61	.....	61	61	62	63	63	63	63	64	64	64
62	.....	.....	62	62	63	63	63	64	64	64	64
63	.....	.....	.....	63	63	64	64	65	65	65	65
64	.....	.....	.....	.....	64	64	65	65	65	65	65
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

TABLE II-B—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY

Participant's earliest retirement age at valuation date	Unreduced retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	49	49	49	49	49	49	49	49	49	49	49
43	50	50	50	50	50	50	50	50	50	50	50
44	50	51	51	51	51	51	51	51	51	51	51
45	51	51	52	52	52	52	52	52	52	52	52
46	52	52	52	53	53	53	53	53	53	53	53

TABLE II-B—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE MEDIUM CATEGORY—Continued

Participant's earliest retirement age at valuation date	Unreduced retirement age										
	60	61	62	63	64	65	66	67	68	69	70
47	53	53	53	53	53	54	54	54	54	54	54
48	54	54	54	54	54	54	54	54	54	54	54
49	54	55	55	55	55	55	55	55	55	55	55
50	55	55	56	56	56	56	56	56	56	56	56
51	56	56	56	57	57	57	57	57	57	57	57
52	56	57	57	57	57	58	58	58	58	58	58
53	57	57	58	58	58	58	58	58	58	58	58
54	57	58	58	59	59	59	59	59	59	59	59
55	58	58	59	59	59	60	60	60	60	60	60
56	58	59	59	60	60	60	60	60	60	60	60
57	59	59	60	60	61	61	61	61	61	61	61
58	59	60	60	61	61	61	61	61	61	61	61
59	59	60	61	61	62	62	62	62	62	62	62
60	60	60	61	62	62	62	62	62	62	62	62
61	.....	61	61	62	62	63	63	63	63	63	63
62	.....	.....	62	62	62	63	63	63	63	63	63
63	.....	.....	.....	63	63	64	64	64	64	64	64
64	.....	.....	.....	.....	64	64	64	64	64	64	64
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

TABLE II-C—EXPECTED RETIREMENT AGES FOR INDIVIDUALS IN THE HIGH CATEGORY

Participant's earliest retirement age at valuation date.	Unreduced retirement age										
	60	61	62	63	64	65	66	67	68	69	70
42	46	46	46	46	46	47	47	47	47	47	47
43	47	47	47	47	47	47	47	47	47	47	47
44	48	48	48	48	48	48	48	48	48	48	48
45	49	49	49	49	49	49	49	49	49	49	49
46	50	50	50	50	50	50	50	50	50	50	50
47	51	51	51	51	51	51	51	51	51	51	51
48	52	52	52	52	52	52	52	52	52	52	52
49	53	53	53	53	53	53	53	53	53	53	53
50	54	54	54	54	54	54	54	54	54	54	54
51	54	55	55	55	55	55	55	55	55	55	55
52	55	55	56	56	56	56	56	56	56	56	56
53	56	56	56	57	57	57	57	57	57	57	57
54	57	57	57	57	57	58	58	58	58	58	58
55	57	58	58	58	58	58	58	58	58	58	58
56	58	58	59	59	59	59	59	59	59	59	59
57	58	59	59	60	60	60	60	60	60	60	60
58	59	59	60	60	60	60	61	61	61	61	61
59	59	60	60	61	61	61	61	61	61	61	61
60	60	60	61	61	61	62	62	62	62	62	62
61	.....	61	61	62	62	62	62	62	62	62	62
62	.....	.....	62	62	62	62	62	62	62	62	62
63	.....	.....	.....	63	63	63	64	64	64	64	64
64	.....	.....	.....	.....	64	64	64	64	64	64	64
65	.....	.....	.....	.....	.....	65	65	65	65	65	65
66	.....	.....	.....	.....	.....	.....	66	66	66	66	66
67	.....	.....	.....	.....	.....	.....	.....	67	67	67	67
68	.....	.....	.....	.....	.....	.....	.....	.....	68	68	68
69	.....	.....	.....	.....	.....	.....	.....	.....	.....	69	69
70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70

[61 FR 34059, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 61 FR 65476, Dec. 13, 1996; 62 FR 65611, Dec. 15, 1997; 63 FR 63180, Nov. 12, 1998; 64 FR 67165, Dec. 1, 1999; 65 FR 75166, Dec. 1, 2000; 66 FR 59695, Nov. 30, 2001; 67 FR 71472, Dec. 2, 2002; 68 FR 67034, Dec. 1, 2003; 69 FR 69822, Dec. 1, 2004; 70 FR 72076, Dec. 1, 2005; 71 FR 69482, Dec. 1, 2006; 72 FR 67645, Nov. 30, 2007; 73 FR 72717, Dec. 1, 2008; 74 FR 62698, Dec. 1, 2009; 75 FR 74622, Dec. 1, 2010; 80 FR 74987, Dec. 1, 2015; 81 FR 83138, Nov. 21, 2016; 82 FR 60308, Dec. 20, 2017; 83 FR 63803, Dec. 12, 2018; 84 FR 67186, Dec. 9, 2019; 85 FR 78742, Dec. 7, 2020; 86 FR 68561, Dec. 3, 2021; 87 FR 74968, Dec. 7, 2022]

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1347.

SOURCE: 61 FR 34073, July 1, 1996, unless otherwise noted.

§ 4047.1 Purpose and scope.

Section 4047 of ERISA gives the PBGC broad authority to take any necessary actions in furtherance of a plan restoration order issued pursuant to section 4047. This part (along with Treasury regulation 26 CFR 1.412(c)(1)–3) describes certain legal obligations that arise incidental to a plan restoration under section 4047. This part also establishes procedures with respect to these obligations that are intended to facilitate the orderly transition of a restored plan from terminated (or terminating) status to ongoing status, and to help ensure that the restored plan will continue to be ongoing consistent with the best interests of the plan's participants and beneficiaries and the single-employer insurance program. This part applies to terminated and terminating single-employer plans (except for plans terminated and terminating under ERISA section 4041(b)) with respect to which the PBGC has issued or is issuing a plan restoration order pursuant to ERISA section 4047.

§ 4047.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: controlled group, ERISA, IRS, PBGC, plan, plan administrator, plan year, and single-employer plan.

§ 4047.3 Funding of restored plan.

(a) *General.* Whenever the PBGC issues or has issued a plan restoration order under ERISA section 4047, it shall issue to the plan sponsor a restoration payment schedule order in accordance with the rules of this section. PBGC, through its Executive Director, shall also issue a certification to its Board of Directors and the IRS, as described in paragraph (c) of this section. If more than one plan is or has been restored, the PBGC shall issue a separate restoration payment schedule order and separate certification with respect to each restored plan.

(b) *Restoration payment schedule order.* A restoration payment schedule order shall set forth a schedule of payments sufficient to amortize the initial restoration amortization base described in paragraph (b) of 26 CFR 1.412(c)(1)–3 over a period extending no more than 30 years after the initial post-restoration valuation date, as defined in paragraph (a)(1) of 26 CFR 1.412(c)(1)–3. The restoration payment schedule shall be consistent with the requirements of 26 CFR 1.412(c)(1)–3 and may require payments at intervals of less than one year, as determined by the PBGC. The PBGC may, in its discretion, amend the restoration payment schedule at any time, consistent with the requirements of 26 CFR 1.412(c)(1)–3.

(c) *Certification.* The Executive Director's certification to the Board of Directors and the IRS pursuant to paragraph (a) of this section shall state that the PBGC has reviewed the funding of the plan, the financial condition of the plan sponsor and its controlled group members, the payments required under the restoration payment schedule (taking into account the availability of deferrals as permitted under paragraph (c)(4) of 26 CFR 1.412(c)(1)–3) and any other factor that the PBGC deems relevant, and, based on that review, determines that it is in the best interests of the plan's participants and beneficiaries and the single-employer insurance program that the restored plan not be reterminated.

(d) *Periodic PBGC review.* As long as a restoration payment schedule order issued under this section is in effect, the PBGC shall review annually the funding status of the plan with respect to which the order applies. As part of this review, the PBGC, through its Executive Director, shall issue a certification in the form described in paragraph (c) of this section. As a result of its funding review, PBGC may amend the restoration payment schedule, consistent with the requirements of paragraph (c)(2) of 26 CFR 1.412(c)(1)–3.

§ 4047.4 Payment of premiums.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, the obligation to pay PBGC premiums pursuant to ERISA section 4007 is reinstated as of the date on which the plan was trusteed under section 4042 of ERISA. Except as otherwise specifically provided in paragraphs (b) and (c) of this section, the amount of the outstanding premiums owed shall be computed and paid by the plan administrator in accordance with part 4006 of this chapter (Premium Rates) and the forms and instructions issued pursuant thereto, as in effect for the plan years for which premiums are owed.

(b) *Notification of premiums owed.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the plan year(s) for which premiums are owed. PBGC will include with the notice the necessary premium payment forms and instructions. The notice shall prescribe the payment due dates for the outstanding premiums.

(c) *Methods for determining variable rate portion of the premium.* In general, the variable rate portion of the outstanding premiums shall be determined in accordance with the premium regulation and forms, as provided in paragraph (a) of this section, except that for any plan year following a plan year for which Form 5500, Schedule B was not filed because the plan was terminated, the alternative calculation method may not be used.

[61 FR 34073, July 1, 1996, as amended at 79 FR 13562, Mar. 11, 2014]

§ 4047.5 Repayment of PBGC payments of guaranteed benefits.

(a) *General.* Upon restoration of a plan pursuant to ERISA section 4047, amounts paid by the PBGC from its single-employer insurance fund (the fund established pursuant to ERISA section 4005(a)) to pay guaranteed benefits and related expenses under the plan while it was terminated are a debt of the restored plan. The terms and conditions for payment of this debt shall be determined by the PBGC.

(b) *Repayment terms.* The PBGC shall prescribe reasonable terms and conditions for payment of the debt described in paragraph (a) of this section, including the number, amount and commencement date of the payments. In establishing the terms, PBGC will consider the cash needs of the plan, the timing and amount of contributions owed to the plan, the liquidity of plan assets, the interests of the single-employer insurance program, and any other factors PBGC deems relevant. PBGC may, in its discretion, revise any of the payment terms and conditions, upon written notice to the plan administrator in accordance with paragraph (c) of this section.

(c) *Notification to plan administrator.* Whenever the PBGC issues or has issued a plan restoration order, it shall send a written notice to the plan administrator of the restored plan advising the plan administrator of the amount owed the PBGC pursuant to paragraph (a) of this section. The notice shall also include the terms and conditions for payment of this debt, as established under paragraph (b) of this section.

PART 4050—MISSING PARTICIPANTS

Subpart A—Single-Employer Plans Covered by Title IV

Sec.

Subpart B—Defined Contribution Plans

Subpart C—Certain Defined Benefit Plans Not Covered by Title IV

Subpart D—Multiemployer Plans Covered by Title IV

AUTHORITY: 29 U.S.C. 1302(b)(3), 1350.

SOURCE: 82 FR 60818, Dec. 22, 2017, unless otherwise noted.

Subpart A—Single-Employer Plans Covered by Title IV

§ 4050.101 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for single-employer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a single-employer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA and

(2) Terminates in a standard termination or in a distress termination described in section 4041(c)(3)(B)(i) or (ii) of ERISA (''sufficient distress termination'').

(b) *Plans that terminate but do not close out.* This subpart does not apply to a plan that terminates but does not close out, such as a plan that terminates in a distress termination described in section 4041(c)(3)(B)(iii) of ERISA (''insufficient distress termination'').

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.102 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, insurer, irrevocable commitment, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

Accrual cessation date for a participant under a subpart A plan means the date the participant stopped accruing benefits under the terms of the plan.

Accumulated single sum means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit determination date with respect to a subpart A plan means the single date selected by the plan administrator for valuing benefits under § 4050.103(d); this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

Benefit transfer amount for a missing distributee of a subpart A plan means the amount determined by the plan administrator under § 4050.103(d) in the close-out of the plan.

Close-out or *close out* with respect to a subpart A plan means the process of the final distribution or transfer of assets pursuant to the termination of the plan.

De minimis means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

Distributee means, with respect to a subpart A plan, a participant or beneficiary entitled to a distribution under the plan pursuant to the close-out of the plan.

Missing, with respect to a distributee under a subpart A plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan administrator does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A ''cash-by'' date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such ''cash-by'' date is so prescribed, the check's stale date.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Normal retirement date for a participant under a subpart A plan means the normal retirement date of the participant under the terms of the plan.

Pay-status or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

PBGC missing participants assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II–C of appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

Plan lump sum assumptions means, with respect to a subpart A plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a participant or beneficiary under a subpart A plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

Subpart A plan or *plan* means a plan to which this subpart A applies, as described in § 4050.101.

§ 4050.103 Duties of plan administrator.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must provide for the distributee's plan benefits either—

(1) By purchasing an irrevocable commitment from an insurer, or

(2) By—

(i) Determining the distributee's benefit transfer amount under paragraph (d) of this section, and

(ii) Transferring to PBGC as described in this subpart A an amount equal to the distributee's benefit transfer amount.

(b) *Diligent search.* For each distributee whose location the plan administrator does not know with reasonable certainty upon close-out of a subpart A plan, the plan administrator must have conducted a diligent search as described in § 4050.104.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart A plan, the plan administrator must file with PBGC as described in § 4050.105.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan administrator as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would

have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan administrator; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

§ 4050.104 Diligent search.

(a) *Search requirement.* The plan administrator of a subpart A plan must, within the time frame described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan administrator does not know with reasonable certainty upon close-out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than $50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method*—(1) *In general.* Using the commercial locator service method means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of ''commercial locator service.''* For purposes of this section, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method*—(1) *In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the plan's contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the plan's contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a ''social media'' website.

(2) *Limits on method.* For purposes of this section—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.105 identifying the distributee as a missing distributee.

§ 4050.105 Filing with PBGC.

(a) *What to file.* The plan administrator of a subpart A plan must file with PBGC the information specified in

the missing participants forms and instructions and, for a missing distributee referred to in § 4050.103(a)(2), payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan administrator must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions. Payment of a benefit transfer amount will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041 of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart A plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan administrators in connection with the program. This reliance does not affect PBGC's authority as administrator of the title IV insurance program to audit or make inquiries of subpart A plans, including about the amount to which a missing distributee may be entitled.

§ 4050.106 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a subpart A plan files with PBGC information about an irrevocable commitment provided by the subpart A plan for a missing distributee, PBGC will provide information about the irrevocable commitment to the distributee or another claimant that may be entitled to payment pursuant to the irrevocable commitment.

(2) *Benefit transfer amount paid.* If a subpart A plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart A plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart A plan would have paid the participant, starting at the date that PBGC

payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart A plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under §4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart A plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under §4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and (k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart A plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section

is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis,—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart A plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal

to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in §4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart A plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant at least the amount of accumulated contributions as reported by the subpart A plan, accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

(1) The date the participant receives or begins to receive a benefit, or

(2) The date the participant dies.

§ 4050.107 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart B—Defined Contribution Plans

§ 4050.201 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for single-employer and multiemployer defined contribution retirement plans. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it elects to use the missing participants program for missing participants and beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a plan—

(1) That—

(i) Is a defined contribution (individual account) plan described in section 3(34) of ERISA; or

(ii) Is treated as a defined contribution (individual account) plan under

section (3)(35) of ERISA (to the extent so treated);

(2) That is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (1), (5), (12), or (13), including a plan described in section 403(b) of the Code under which benefits are provided through custodial accounts described in section 403(b)(7) of the Code;

(3) That, if it is a transferring plan, pays all benefit transfer amounts to PBGC in money, consistent with plan provisions and applicable law; and

(4) That terminates and closes out.

(b) *Defined contribution plans that are part of defined benefit plans.* This subpart does not fail to apply to a plan merely because the plan is described in the same plan document as a defined benefit plan (to which this subpart does not apply). For example, this subpart may apply to employee contributions (or interest or earnings thereon) held as an individual account under a defined benefit plan.

(c) *Defined contribution plans that are abandoned plans.* This subpart does not fail to apply to a plan merely because the plan is an abandoned plan, as defined in 29 CFR 2578.1.

§ 4050.202 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, PBGC, and person. In addition, for purposes of this subpart:

Accumulated single sum means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the date when the subpart B plan pays PBGC the benefit transfer amount for the missing distributee to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit conversion assumptions means, with respect to an annuity, the applicable mortality table and applicable interest rate under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year in which PBGC begins paying the annuity.

Benefit transfer amount for a missing distributee in a transferring plan means the amount available for distribution to the distributee in connection with the close-out of the subpart B plan.

Close-out or *close out* with respect to a subpart B plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart B plan.

De minimis means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

Distributee means, with respect to a subpart B plan, a participant or beneficiary entitled to a distribution under the plan pursuant to the close-out of the plan, except that a person is not a distributee if the subpart B plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

Missing, with respect to a distributee under a subpart B plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan does not know with reasonable certainty the location of the distributee.

(2) The distributee has not elected a form of distribution in response to a notice about the distribution.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A ''cash-by'' date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such ''cash-by'' date is so prescribed, the check's stale date.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the

Code) for that month, compounded monthly.

Notifying plan means a subpart B plan that elects notifying plan status in accordance with § 4050.203.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a participant or beneficiary under a subpart B plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

Subpart B plan or *plan* means a plan to which this subpart B applies, as described in § 4050.201.

Transferring plan means a subpart B plan that elects transferring plan status in accordance with § 4050.203.

§ 4050.203 Options and duties of plan.

(a) *Options.* A subpart B plan that is closing out upon plan termination may (but need not) elect, by filing under § 4050.205, that the subpart B plan—

(1) Will be a ''transferring plan,'' that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the plan and will be bound by the provisions of this subpart B to the extent that they apply to transferring plans, or

(2) Will be a ''notifying plan,'' that is, will notify PBGC of the disposition of the benefits of each distributee identified in the filing who is missing upon close-out of the plan and will, with respect to those distributees, be bound by the provisions of this subpart B to the extent that they apply to notifying plans.

(b) *Diligent search*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for each distributee whose location the plan does not know with reasonable certainty upon close-out of a subpart B plan, the plan must have conducted a diligent search as described in § 4050.204.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (b)(1) of this section applies only to distributees identified in the filing with PBGC.

(c) *Filing with PBGC*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, for each distributee who is missing upon close-out of a subpart B plan, the plan must file with PBGC as described in § 4050.205.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (c)(1) of this section applies only to distributees identified in the filing with PBGC.

§ 4050.204 Diligent search.

(a) *Search requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a subpart B plan must, within the time frame described in paragraph (b) of this section, have diligently searched for each distributee of the plan whose location the plan does not know with reasonable certainty upon close-out in accordance with regulations and other applicable guidance issued by the Secretary of Labor under section 404 of ERISA.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (a)(1) of this section applies only to distributees identified in the filing with PBGC.

(b) *Time frame.* A search for a missing distributee must be made within nine months before a filing is made under § 4050.205 identifying the distributee as a missing distributee.

§ 4050.205 Filing with PBGC.

(a) *What to file.* A subpart B plan must file with PBGC the information specified in the missing participants forms and instructions, and if the plan is a transferring plan, payment of—

(1) The benefit transfer amount for the missing distributee; and

(2) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart B plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plans in connection with the program.

§ 4050.206 Missing participant benefits.

(a) *In general*—(1) *Notifying plan.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart B plan for a missing distributee, PBGC will provide information about the disposition of benefits to the distributee or another claimant that may be entitled to the benefits.

(2) *Transferring plan.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), and (e) of this section describe the benefits that PBGC will pay to a missing participant of a subpart B plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55; or, if the participant so elects, the lump sum described in paragraph (d)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is, at the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (d)(2) is the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55; or, if the participant so elects with the consent of the participant's spouse, the lump sum described in paragraph (e)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent,

under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (e)(2) is the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), and (i) of this section describe the benefits that PBGC will pay with respect to a missing participant of a subpart B plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, and the participant's qualified survivor claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; non-spousal qualified survivor.* If the benefit transfer amount of a married or unmarried participant described in paragraph (f) of this section is not de minimis, and the participant's qualified survivor is not the participant's surviving spouse and claims a benefit under the missing participants program, PBGC will pay the claimant a lump sum equal to the participant's accumulated single sum.

(i) *Non-de minimis benefit; surviving spouse is qualified survivor.* If the benefit transfer amount of a married participant described in paragraph (f) of this section is not de minimis, and the participant's qualified survivor is the participant's surviving spouse and claims a benefit under the missing participants program, PBGC will, at the spouse's election, either pay the spouse, beginning not before the participant would have reached age 55, the annuity described in paragraph (i)(1) of this section; or pay the spouse the lump sum described in paragraph (i)(2) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is a straight life annuity for the life of the spouse in an amount that is actuarially equivalent, under the benefit conversion assumptions, to the participant's accumulated single sum.

(2) *Lump sum.* The lump sum described in this paragraph (i)(2) is a lump sum equal to the participant's accumulated single sum.

(j) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

(1) The date the participant receives or begins to receive a benefit, or

(2) The date the participant dies.

§ 4050.207 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart C—Certain Defined Benefit Plans Not Covered by Title IV

§ 4050.301 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for small professional service defined benefit retirement plans not covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it elects to use the missing participants program for missing participants and beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a single-employer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA other than paragraph (13), and

(2) Terminates and closes out with sufficient assets to satisfy all liabilities with respect to employees and their beneficiaries.

(b) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which

this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.302 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, PBGC, person, and plan administrator. In addition, for purposes of this subpart:

Accrual cessation date for a participant under a subpart C plan means the date the participant stopped accruing benefits under the terms of the plan.

Accumulated single sum means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit determination date with respect to a subpart C plan means the single date selected by the plan administrator for valuing benefits under § 4050.303(d); this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

Benefit transfer amount for a missing distributee in a transferring plan means the amount determined by the plan administrator under § 4050.303(d) in the close-out of the subpart C plan.

Close-out or *close out* with respect to a subpart C plan means the process of the final distribution or transfer of assets pursuant to the termination of the subpart C plan.

De minimis means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

Distributee means, with respect to a subpart C plan, a participant or beneficiary entitled to a distribution under the subpart C plan pursuant to the close-out of the subpart C plan, except that a person is not a distributee if the subpart C plan transfers assets to another pension plan (within the meaning of section 3(2) of ERISA) to pay the person's benefits.

Missing, with respect to a distributee under a subpart C plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan administrator does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A ''cash-by'' date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such ''cash-by'' date is so prescribed, the check's stale date.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Normal retirement date for a participant under a subpart C plan means the normal retirement date of the participant under the terms of the plan.

Notifying plan means a subpart C plan for which the plan administrator elects notifying plan status in accordance with § 4050.303.

Pay-status or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually

started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

PBGC missing participants assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II–C of appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

Plan lump sum assumptions means, with respect to a subpart C plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a participant or beneficiary under a subpart C plan means, for any benefit with respect to the participant or beneficiary—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

Subpart C plan or *plan* means a plan to which this subpart C applies, as described in § 4050.301.

Transferring plan means a subpart C plan for which the plan administrator elects transferring plan status in accordance with § 4050.303.

§ 4050.303 Options and duties of plan administrator.

(a) *Options.* The plan administrator of a subpart C plan that is closing out upon plan termination may (but need

not), by filing under § 4050.305, elect that the subpart C plan—

(1) Will be a ''transferring plan,'' that is, will pay a benefit transfer amount to PBGC for each distributee who is missing upon close-out of the subpart C plan and will be bound by the provisions of this subpart C to the extent that they apply to transferring plans, or

(2) Will be a ''notifying plan,'' that is, will notify PBGC of the disposition of the benefits of each distributee identified in the filing who is missing upon close-out of the plan and will, with respect to those distributees, be bound by the provisions of this subpart C to the extent that they apply to notifying plans.

(b) *Diligent search*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for each distributee whose location the plan administrator does not know with reasonable certainty upon close-out of a subpart C plan, the plan administrator must have conducted a diligent search as described in § 4050.304.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (b)(1) of this section applies only to distributees identified in the filing with PBGC.

(c) *Filing with PBGC*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, for each distributee who is missing upon close-out of a subpart C plan, the plan administrator must file with PBGC as described in § 4050.305.

(2) *Notifying plans.* For a notifying plan, the requirement of paragraph (c)(1) of this section applies only to distributees identified in the filing with PBGC.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan administrator as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan administrator; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

§ 4050.304 Diligent search.

(a) *Search requirement.* For each distributee of a subpart C plan who is described in § 4050.303(b), the plan administrator must, within the time frame

described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan administrator does not know with reasonable certainty upon close out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than $50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method*—(1) *In general.* Using the commercial locator service method means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of ''commercial locator service.''* For purposes of this section, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method*—(1) *In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the plan's contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the plan's contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a ''social media'' website.

(2) *Limits on method.* For purposes of this section—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.305 identifying the distributee as a missing distributee.

§ 4050.305 Filing with PBGC.

(a) *What to file.* The plan administrator of a subpart C plan must file with PBGC the information specified in the missing participants forms and instructions, and if the plan is a transferring plan, payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan administrator must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed

with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan administrator of a subpart C plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan administrators in connection with the program.

§ 4050.306 Missing participant benefits.

(a) *In general*—(1) *Notifying plan.* If a notifying plan files with PBGC information about a disposition of benefits made by the subpart C plan for a missing distributee, PBGC will provide information about the disposition of benefits to the distributee or another claimant that may be entitled to the benefits.

(2) *Transferring plan.* If a transferring plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart C plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart C plan would have paid the participant, starting at the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart C plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under § 4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer

amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart C plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under §4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and (k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart C plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis,—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have

reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart C plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint

portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart C plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant, at least the amount of accumulated contributions as reported by the subpart C plan, accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

(1) The date the participant receives or begins to receive a benefit, or

(2) The date the participant dies.

§ 4050.307 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

Subpart D—Multiemployer Plans Covered by Title IV

§ 4050.401 Purpose and scope.

(a) *In general.* This subpart describes PBGC's missing participants program for multiemployer defined benefit retirement plans covered by title IV of ERISA. The missing participants program is a program to hold retirement benefits for missing participants and beneficiaries in retirement plans that are closing out and to help them find and receive the benefits being held for them. For a plan to which this subpart applies, this subpart describes what the plan must do upon plan termination if it has missing participants or beneficiaries who are entitled to distributions. This subpart applies to a plan only if it is a multiemployer defined benefit plan that—

(1) Is described in section 4021(a) of ERISA and not in any paragraph of section 4021(b) of ERISA, and

(2) Completes the process of closing out under subpart D of PBGC's regulation on Termination of Multiemployer Plans (29 CFR part 4041A).

(b) *Plans that terminate but do not close out.* This subpart does not apply to plans that terminate but do not close out.

(c) *Individual account plans.* This subpart does not apply to an individual account plan under section 3(34) of ERISA, even if it is described in the same plan document as a plan to which this subpart applies. This subpart also does not apply to a plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA. For example, this subpart does not apply to employee contributions (or interest or earnings thereon) held as an individual account. (Subpart B deals with individual account plans.)

§ 4050.402 Definitions.

The following terms are defined in § 4001.2 of this chapter: Annuity, Code, ERISA, insurer, PBGC, person, and plan sponsor. In addition, for purposes of this subpart:

Accrual cessation date for a participant under a subpart D plan means the date the participant stopped accruing benefits under the terms of the plan.

Accumulated single sum means, with respect to a missing distributee, the distributee's benefit transfer amount accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes or commences payment to or with respect to the distributee.

Benefit determination date with respect to a subpart D plan means the single date selected by the plan sponsor for valuing benefits under § 4050.103(d);

this date must be during the period beginning on the first day a distribution is made pursuant to close-out of the plan to a distributee who is not a missing distributee and ending on the last day such a distribution is made.

Benefit transfer amount for a missing distributee of a subpart D plan means the amount determined by the plan sponsor under § 4050.403(d) in the close-out of the plan.

Close-out or *close out* with respect to a subpart D plan means the process of the final distribution or transfer of assets in satisfaction of plan benefits.

De minimis means, with respect to the value of a benefit (or other amount), that the value does not exceed the amount specified under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Code (without regard to plan provisions).

Distributee means, with respect to a subpart D plan, a participant or beneficiary entitled to a distribution under the subpart D plan pursuant to the close-out of the subpart D plan.

Missing, with respect to a distributee under a subpart D plan, means that any one or more of the following three conditions exists upon close-out of the plan.

(1) The plan sponsor does not know with reasonable certainty the location of the distributee.

(2) Under the terms of the plan, the distributee's benefit is to be paid in a lump sum without the distributee's consent, and the distributee has not responded to a notice about the distribution of the lump sum.

(3) Under the terms of the plan and any election made by the distributee, the distributee's benefit is to be paid in a lump sum, but the distributee does not accept the lump sum. For this purpose, a lump sum paid by check is not accepted if the check remains uncashed after—

(i) A ''cash-by'' date prescribed (on the check or in an accompanying notice) that is at least 45 days after the issuance of the check, or

(ii) If no such ''cash-by'' date is so prescribed, the check's stale date.

Missing participants forms and instructions means the forms and instructions provided by PBGC for use in connection with the missing participants program.

Missing participants interest rate means, for each month, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month, compounded monthly.

Normal retirement date for a participant under a subpart D plan means the normal retirement date of the participant under the terms of the plan.

Pay-status or *pay status* means one of the following (according to context):

(1) With respect to a benefit, that payment of the benefit has actually started before the benefit determination date; or

(2) With respect to a distributee, that payment of the distributee's benefit has actually started before the benefit determination date.

PBGC missing participants assumptions means the actuarial assumptions prescribed in §§ 4044.51 through 4044.57 of this chapter with the following modifications:

(1) The present value is determined as of the benefit determination date instead of the plan termination date.

(2) The mortality assumption is a fixed blend of 50 percent of the healthy male mortality rates in § 4044.53(c)(1) of this chapter and 50 percent of the healthy female mortality rates in § 4044.53(c)(2) of this chapter.

(3) No adjustment is made for loading expenses under § 4044.52(d) of this chapter.

(4) The interest assumption used is the assumption applicable to valuations occurring in January of the calendar year in which the benefit determination date occurs.

(5) The assumed payment form of a benefit not in pay status is a straight life annuity.

(6) Pre-retirement death benefits are disregarded.

(7) Notwithstanding the expected retirement age (XRA) assumptions in §§ 4044.55 through 4044.57 of this chapter,—

(i) In the case of a participant who is not in pay status and whose normal retirement date is on or after the benefit

determination date, benefits are assumed to commence at the XRA, determined using the high retirement rate category under Table II–C of appendix D to part 4044 of this chapter;

(ii) In the case of a participant who is not in pay status and whose normal retirement date is before the benefit determination date, benefits are assumed to commence on the participant's normal retirement date (or accrual cessation date if later);

(iii) In the case of a participant who is in pay status, benefits are assumed to commence on the date on which benefits actually commenced; and

(iv) In the case of a beneficiary, benefits are assumed to commence on the benefit determination date or, if later, the earliest date the beneficiary can begin to receive benefits.

Plan lump sum assumptions means, with respect to a subpart D plan, the following:

(1) If the plan specifies actuarial assumptions and methods to be used to calculate a lump sum distribution, such actuarial assumptions and methods, or

(2) Otherwise, the actuarial assumptions specified under section 205(g)(3) of ERISA and section 417(e)(3) of the Code, determined as of the benefit determination date, including use of the missing participants interest rate to calculate the present value as of the benefit determination date of a payment or payments missed in the past.

QDRO means a qualified domestic relations order as defined in section 206(d)(3) of ERISA and section 414(p) of the Code.

Qualified survivor of a participant or beneficiary under a subpart D plan means, for any benefit with respect to the participant or beneficiary,—

(1) A person who survives the participant or beneficiary and is entitled under applicable provisions of a QDRO to receive the benefit;

(2) A person that is identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or

(3) If no such person is so entitled, a survivor of the participant or beneficiary who is the participant's or beneficiary's living—

(i) Spouse, or if none,

(ii) Child, or if none,

(iii) Parent, or if none,

(iv) Sibling.

Subpart D plan or *plan* means a plan to which this subpart D applies, as described in § 4050.401.

§ 4050.403 Duties of plan sponsor.

(a) *Providing for benefits.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must provide for the distributee's plan benefits either—

(1) By purchase of an annuity contract from an insurer; or

(2) By—

(i) Determining the distributee's benefit transfer amount under paragraph (e) of this section, and

(ii) Transferring to PBGC as described in this subpart D an amount equal to the distributee's benefit transfer amount.

(b) *Diligent search.* For each distributee whose location the plan sponsor does not know with reasonable certainty upon close-out of a subpart D plan, the plan sponsor must have conducted a diligent search as described in § 4050.404.

(c) *Filing with PBGC.* For each distributee who is missing upon close-out of a subpart D plan, the plan sponsor must file with PBGC as described in § 4050.405.

(d) *Benefit transfer amount.* The benefit transfer amount for a missing distributee is the amount determined by the plan sponsor as of the benefit determination date using whichever one of the following three methods applies:

(1) *De minimis.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is de minimis, then the missing distributee's benefit transfer amount is equal to that single sum.

(2) *Non-de minimis; single sum payment cannot be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment

cannot be elected, then the missing distributee's benefit transfer amount is the present value of the distributee's accrued benefit determined using PBGC missing participants assumptions, plus

(i) For a missing distributee not in pay status whose normal retirement date (or accrual cessation date if later) precedes the benefit determination date, the aggregate value of payments of the straight life annuity that would have been payable beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the benefit determination date, assuming that the distributee survived to the benefit determination date, as determined by the plan sponsor; or

(ii) For a missing distributee in pay status, the aggregate value of payments of the pay status annuity due but not made, accumulated at the missing participants interest rate from each payment due date to the benefit determination date, assuming that the distributee survived to the benefit determination date.

(3) *Non-de minimis; single sum payment can be elected.* If the single sum actuarial equivalent of the distributee's benefits (including any payments missed in the past) determined using plan lump sum assumptions is not de minimis, and a single sum payment can be elected, then the missing distributee's benefit transfer amount is the greater of the amounts determined using the methodology in paragraph (d)(1) or (d)(2) of this section.

§ 4050.404 Diligent search.

(a) *Search requirement.* The plan sponsor of a subpart D plan must, within the time frame described in paragraph (d) of this section, have diligently searched for each distributee of the plan whose location the plan sponsor does not know with reasonable certainty upon close-out, using one of the following two methods:

(1) For any distributee, regardless of the size of the distributee's benefit, the commercial locator service method described in paragraph (b) of this section; or

(2) For a distributee whose normal retirement benefit is not more than $50 per month, the records search method described in paragraph (c) of this section.

(b) *Commercial locator service method*—(1) *In general.* Using the commercial locator service method means paying a commercial locator service to search for information to locate a distributee.

(2) *Meaning of ''commercial locator service.''* For purposes of this section, a commercial locator service is a business that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. 1681a(f)).

(c) *Records search method*—(1) *In general.* Using the records search method means searching for information to locate a distributee by doing all of the following to the extent reasonably feasible and affordable:

(i) Searching the records of the plan for information to locate the distributee.

(ii) Searching the records of the contributing sponsor that is the most recent employer of the distributee for information to locate the distributee.

(iii) Searching the records of each retirement or welfare plan of the contributing sponsor in which the distributee was a participant for information to locate the distributee.

(iv) Contacting each beneficiary of the distributee identified from the records referred to in paragraphs (c)(1)(i), (ii), and (iii) of this section for information to locate the distributee.

(v) Using an internet search method for which no fee is charged, such as a search engine, a network database, a public record database (such as those for licenses, mortgages, and real estate taxes) or a ''social media'' website.

(2) *Limits on method.* For purposes of this section,—

(i) Searching is not feasible to the extent that, as a practical matter, it is thwarted by legal or practical lack of access to records, and

(ii) Searching is not affordable to the extent that the cost of searching (including the value of labor) is more than a reasonable fraction of the benefit of the distributee being searched for. In no event would searching need to be

pursued beyond the point where the cost equals the value of the benefit.

(d) *Time frame.* A search for a distributee under this section must have been made within nine months before a filing is made under § 4050.405 identifying the distributee as a missing distributee.

§ 4050.405 Filing with PBGC.

(a) *What to file.* The plan sponsor of a subpart D plan must file with PBGC the information specified in the missing participants forms and instructions and, for a missing distributee referred to in § 4050.403(a)(2), payment of—

(1) The benefit transfer amount for the missing distributee;

(2) If the benefit transfer amount is paid more than 90 days after the benefit determination date, interest on the benefit transfer amount computed at the missing participants interest rate for the period beginning on the 90th day after the benefit determination date and ending on the date the benefit transfer amount is paid to PBGC; and

(3) Any fee provided for in the missing participants forms and instructions.

(b) *When to file.* The plan sponsor must file the information and payments referred to in paragraph (a) of this section in accordance with the missing participants forms and instructions. Payment of a benefit transfer amount will, if considered timely made for purposes of this paragraph (b), be considered timely made for purposes of part 4041A of this chapter.

(c) *Place, method and date of filing; time periods.* (1) For rules about where to file, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this subpart, see subpart A of part 4000 of this chapter.

(3) For rules about the date that a submission under this subpart was filed with PBGC, see subpart C of part 4000 of this chapter.

(4) For rules about any time period for filing under this subpart, see subpart D of part 4000 of this chapter.

(d) *Supplemental information.* Within 30 days after a written request by PBGC (or such other time as may be specified in the request), the plan sponsor of a subpart D plan required to file under paragraph (a) of this section must file with PBGC supplemental information for any proper purpose under the missing participants program.

(e) *Reliance.* As administrator of the missing participants program, PBGC will rely on determinations made and information reported by plan sponsors in connection with the program. This reliance does not affect PBGC's authority as administrator of the title IV insurance program to audit or make inquiries of subpart D plans, including about the amount to which a missing distributee may be entitled.

§ 4050.406 Missing participant benefits.

(a) *In general*—(1) *Benefit transfer amount not paid.* If a subpart D plan files with PBGC information about an annuity contract purchased by the subpart D plan from an insurer for a missing distributee, PBGC will provide information about the annuity contract to the distributee or another claimant that may be entitled to payment pursuant to the contract.

(2) *Benefit transfer amount paid.* If a subpart D plan pays PBGC a benefit transfer amount for a missing distributee, PBGC will pay benefits with respect to the missing distributee in accordance with this section, subject to the provisions of a QDRO.

(b) *Benefits for missing distributees who are participants.* Paragraphs (c), (d), (e), and (k) of this section describe the benefits that PBGC will pay to a non-pay status missing participant of a subpart D plan who claims a benefit under the missing participants program.

(c) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (b) of this section is de minimis, PBGC will pay the participant a lump sum equal to the accumulated single sum.

(d) *Non-de minimis benefit of unmarried participant.* If the benefit transfer amount of an unmarried participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (d)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (d)(2) of this section; or, if the participant could have elected a lump sum under the subpart

D plan, and the participant so elects under the missing participants program, the lump sum described in paragraph (d)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (d)(1) is either—

(i) *Straight life annuity.* A straight life annuity in the amount that the subpart D plan would have paid the participant, starting at the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), as reported to PBGC by the subpart D plan (including any early retirement subsidies), or through linear interpolation for participants who start payments between integral ages; or

(ii) *Other form of annuity.* At the participant's election, any form of annuity available to the participant under §4022.8 of this chapter, in an amount that is actuarially equivalent to the straight life annuity in paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (d)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (d)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant (in the elected form) beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (d)(3) is equal to the participant's accumulated single sum.

(e) *Non-de minimis benefit of married participant.* If the benefit transfer amount of a married participant described in paragraph (b) of this section is not de minimis, PBGC will pay the participant either the annuity described in paragraph (e)(1) of this section, beginning not before age 55, and (if applicable) the make-up amount described in paragraph (e)(2) of this section; or, if the participant could have elected a lump sum under the subpart D plan, and the participant so elects under the missing participants program with the consent of the participant's spouse, the lump sum described in paragraph (e)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (e)(1) is either—

(i) *Joint and survivor annuity.* A joint and 50 percent survivor annuity in an amount that is actuarially equivalent to the straight life annuity under paragraph (d)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter; or

(ii) *Other form of annuity.* At the participant's election, with the consent of the participant's spouse, any form of annuity available to the participant under §4022.8 of this chapter, in an amount that is actuarially equivalent to the joint and 50 percent survivor annuity under paragraph (e)(1)(i) of this section as of the date that PBGC payments start (or, if earlier, the later of the participant's normal retirement date or accrual cessation date), determined using the actuarial assumptions in §4022.8(c)(7) of this chapter.

(2) *Make-up amount.* If PBGC begins to pay the annuity under paragraph (e)(1) of this section after the normal retirement date (or accrual cessation date if later), the make-up amount described in this paragraph (e)(2) is a lump sum equal to the aggregate value of payments of the annuity that would have been payable to the participant beginning on the normal retirement date (or accrual cessation date if later), accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC begins to pay the annuity.

(3) *Lump sum.* The lump sum described in this paragraph (e)(3) is equal to the participant's accumulated single sum.

(f) *Benefits with respect to deceased missing distributees who were participants.* Paragraphs (g), (h), (i), (j), and

(k) of this section describe the benefits that PBGC will pay with respect to a non-pay status missing participant of a subpart D plan who dies without receiving a benefit under the missing participants program.

(g) *De minimis benefit.* If the benefit transfer amount of a participant described in paragraph (f) of this section is de minimis, PBGC will pay to the qualified survivor(s) of the participant a lump sum equal to the participant's accumulated single sum.

(h) *Non-de minimis benefit; unmarried participant.* In the case of an unmarried participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis—

(1) *Death before normal retirement date.* If the participant dies before the normal retirement date (or accrual cessation date if later), PBGC will pay no benefits with respect to the participant; and

(2) *Death after normal retirement date.* If the participant dies on or after the normal retirement date (or accrual cessation date if later), PBGC will pay to the participant's qualified survivor(s) an amount equal to the aggregate value of payments of the straight life annuity described in paragraph (d)(1)(i) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the qualified survivor(s).

(i) *Non-de minimis benefit; married participant with living spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant and claims a benefit under the missing participants program, PBGC will pay the spouse, beginning not before the participant would have reached age 55, the annuity (if any) described in paragraph (i)(1) of this section and the make-up amounts (if applicable) described in paragraph (i)(2) of this section, except that PBGC will pay the spouse, as a lump sum, the small benefit described in paragraph (i)(3) of this section.

(1) *Annuity.* The annuity described in this paragraph (i)(1) is the survivor portion of a joint and 50 percent survivor annuity that is actuarially equivalent as of the assumed starting date (determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter) to the straight life annuity in the amount that the subpart D plan would have paid the participant with an assumed starting date of—

(i) The date when the participant would have reached age 55, if the participant died before that date, or

(ii) The participant's date of death, if the participant died between age 55 and the normal retirement date (or accrual cessation date if later), or

(iii) The normal retirement date (or accrual cessation date if later), if the participant died after that date.

(2) *Make-up amounts.* The make-up amounts described in this paragraph (i)(2) are the amounts described in paragraphs (i)(2)(i) and (ii) of this section.

(i) *Payments from participant's death or 55th birthday to commencement of survivor annuity.* The make-up amount described in this paragraph (i)(2)(i) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse beginning on the later of the participant's date of death or the date when the participant would have reached age 55, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(ii) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (i)(2)(ii) is a lump sum equal to the aggregate value of payments (if any) of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse.

(3) *Small benefit.* If the sum of the actuarial present value of the annuity described in paragraph (i)(1) of this section plus the make-up amounts described in paragraph (i)(2) of this section is de minimis, then the lump sum that PBGC will pay the spouse under this paragraph (i)(3) is an amount equal to that sum. For this purpose, the actuarial present value of the annuity is determined using the actuarial assumptions in § 4022.8(c)(7) of this chapter as of the date when PBGC pays the spouse.

(j) *Non-de minimis benefit; married participant with deceased spouse.* In the case of a married participant described in paragraph (f) of this section whose benefit transfer amount is not de minimis and whose spouse survives the participant but dies without receiving a benefit under the missing participants program, PBGC will pay to the qualified survivor(s) of the participant's spouse the make-up amount described in paragraph (j)(1) of this section and to the qualified survivor(s) of the participant the make-up amount described in paragraph (j)(2) of this section.

(1) *Payments from participant's death or 55th birthday to spouse's death.* The make-up amount described in this paragraph (j)(1) is a lump sum equal to the aggregate value of payments of the survivor portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the spouse from the later of the participant's date of death or the date when the participant would have reached age 55 to the spouse's date of death, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the spouse's qualified survivor(s).

(2) *Payments from normal retirement date to participant's death.* The make-up amount described in this paragraph (j)(2) is a lump sum equal to the aggregate value of payments of the joint portion of the joint and 50 percent survivor annuity described in paragraph (i)(1) of this section that would have been payable to the participant from the normal retirement date (or accrual cessation date if later) to the participant's date of death thereafter, accumulated at the missing participants interest rate from the date each payment would have been made to the date when PBGC pays the participant's qualified survivor(s).

(k) *Benefits under contributory plans.* If a subpart D plan reports to PBGC that a portion of a missing participant's benefit transfer amount represents accumulated contributions as described in section 204(c)(2)(C) of ERISA and section 411(c)(2)(C) of the Code, PBGC will pay with respect to the missing participant, at least the amount of accumulated contributions as reported by the subpart D plan, accumulated at the missing participants interest rate from the benefit determination date to the date when PBGC makes payment.

(l) *Date for determining marital status.* For purposes of this section, whether a participant is married, and if so the identity of the spouse, is determined as of the earlier of—

(1) The date the participant receives or begins to receive a benefit, or

(2) The date the participant dies.

§ 4050.407 PBGC discretion.

PBGC may in appropriate circumstances extend deadlines, excuse noncompliance, and grant waivers with regard to any provision of this subpart to promote the purposes of the missing participants program and title IV of ERISA. Like circumstances will be treated in like manner under this section.

SUBCHAPTER F—LIABILITY

PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

§ 4061.1 Cross-references.

See part 4022 of this chapter regarding benefits payable under terminated single-employer plans and §4281.47 of this chapter regarding financial assistance to pay benefits under insolvent multiemployer plans.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

§ 4062.1 Purpose and scope.

The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. This part also sets forth rules for determining the amount of liability incurred under section 4063 of ERISA pursuant to the occurrence of a cessation of operations as described by section 4062(e) of ERISA. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of ERISA is issued or proceedings to terminate under section 4042 of ERISA are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

§ 4062.2 Definitions.

The following terms are defined in §4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, guaranteed benefit, multiple employer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and termination date.

In addition, for purposes of this part, the term *collective net worth of persons subject to liability in connection with a plan termination* means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of ERISA and §4062.4 of this part.

§ 4062.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of ERISA) to all participants and beneficiaries under the plan, together with

interest calculated from the termination date in accordance with § 4062.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of ERISA and part 4041 of this chapter in which (as described in section 4041(c)(3)(C)(ii) of ERISA), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits, the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 4062.9(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The PBGC may make alternative arrangements, as provided in § 4062.9(b).

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

§ 4062.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 4062.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 4062.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Partnerships and sole proprietorships.* In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, ''personal assets'' are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* A person's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly traded, the price of such stock on or about the net worth record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances,

and with the effect of avoiding liability under this part. Assets ''improperly transferred'' include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word *transfer* includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 4062.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to paragraph (b) of this section, the net worth record date, for all purposes under this part, is the plan's termination date.

(b) *Establishment of an earlier net worth record date.* At any time during a termination proceeding, the PBGC, in order to prevent undue loss to or abuse of the plan termination insurance system, may establish as the net worth record date an earlier date during the 120-day period ending with the termination date.

(c) *Notification.* Whenever the PBGC establishes an earlier net worth record date, it shall immediately give liable person(s) written notification of that fact. The written notice may also include a request for additional information, as provided in § 4062.6(a)(3).

§ 4062.6 Net worth notification and information.

(a) *General.* (1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of its controlled group complies with the requirements of paragraph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 4062.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must be accompanied by the annual reports, if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of the person's

assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.9, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

§ 4062.8 Liability pursuant to section 4062(e).

(a) *Liability amount.* If, pursuant to section 4062(e) of ERISA, an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20% of the total number of the employer's employees who are participants under a plan established and maintained by the employer are separated from employment, the PBGC will determine the amount of liability under section 4063(b) of ERISA to be the amount described in section 4062 of ERISA for the entire plan, as if the plan had been terminated by the PBGC immediately after the date of the cessation of operations, multiplied by a fraction—

(1) The numerator of which is the number of the employer's employees who are participants under the plan and are separated from employment as a result of the cessation of operations; and

(2) The denominator of which is the total number of the employer's current employees, as determined immediately before the cessation of operations, who are participants under the plan.

(b) *Example.* Company X sponsors a pension plan with 50,000 participants of which 20,000 are current employees and

30,000 are retirees or deferred vested participants. On a PBGC termination basis, the plan is underfunded by $80 million. Company X ceases operations at a facility resulting in the separation from employment of 5,000 employees, all of whom are participants in the pension plan. A section 4062(e) event has occurred, and the PBGC will determine the amount of employer liability under section 4063(b) of ERISA. The numerator described in paragraph (a)(1) of this section is 5,000 and the denominator described in paragraph (a)(2) of this section is 20,000. Therefore, the amount of liability under section 4063(b) of ERISA pursuant to section 4062(e) is $20 million (5,000/20,000 × $80 million).

[71 FR 34822, June 16, 2006]

§ 4062.9 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to ''the net worth record date'' in § 4062.6(b) shall be replaced by ''the most recent annual anniversary of the net worth record date''; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the

PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of ERISA) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 4062.7(a).

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may, in its discretion, require that the liable person(s) provide PBGC with such security for its obligations as the PBGC deems adequate.

[61 FR 34079, July 1, 1996. Redesignated at 71 FR 34822, June 16, 2006]

§ 4062.10 Method and date of filing; where to file.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Payment of liability must be clearly designated as such and include the name of the plan.

(b) *Filing date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

[68 FR 61354, Oct. 28, 2003. Redesignated at 71 FR 34822, June 16, 2006]

§ 4062.11 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of an interest charge under § 4062.7, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[68 FR 61354, Oct. 28, 2003. Redesignated at 71 FR 34822, June 16, 2006]

PART 4063—WITHDRAWAL LIABILITY; PLANS UNDER MULTIPLE CONTROLLED GROUPS

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4063.1 Cross-references.

(a) Part 4062 of this chapter sets forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. Part 4062 also sets forth rules for determining the amount of liability incurred under section 4063 of ERISA pursuant to the occurrence of a cessation of operations as described by section 4062(e) of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

[61 FR 34082, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

PART 4064—LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4064.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

SUBCHAPTER G—ANNUAL REPORTING REQUIREMENTS

PART 4065—ANNUAL REPORT

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1365.

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4065.1 Purpose and scope.

The purpose of this part is to specify the form and content of the Annual Report required by section 4065 of ERISA. This part applies to all plans covered by title IV of ERISA.

§ 4065.2 Definitions.

The following terms are defined in §4001.2 of this chapter: ERISA, IRS, PBGC, and plan.

§ 4065.3 Filing requirement.

(a) The requirement to report the occurrence of a reportable event under section 4043 of ERISA in the Annual Report is waived.

(b) Plan administrators shall file the Annual Report on IRS/DOL/PBGC Form 5500, 5500–C, 5500–K or 5500–R, as appropriate, in accordance with the instructions therein.

(Approved by the Office of Management and Budget under control number 1212–0026)

[61 FR 34082, July 1, 1996, as amended at 61 FR 63998, Dec. 2, 1996]

SUBCHAPTER H—ENFORCEMENT PROVISIONS

PART 4067—RECOVERY OF LIABILITY FOR PLAN TERMINATIONS

AUTHORITY: 29 U.S.C. 1302, 1367.

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4067.1 Cross-reference.

Section 4062.8 of this chapter contains rules on deferred payment and other arrangements for satisfaction of liability to the PBGC after termination of single-employer plans.

PART 4068—LIEN FOR LIABILITY

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368.

SOURCE: 61 FR 34083, July 1, 1996, unless otherwise noted.

§ 4068.1 Purpose; cross-references.

This part contains rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064 of ERISA.

§ 4068.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, PBGC, person, plan, and termination date.

Collective net worth of persons subject to liability in connection with a plan termination has the meaning in § 4062.2.

§ 4068.3 Notification of and demand for liability.

(a) *Notification of liability.* Except as provided in paragraph (c) of this section, when the PBGC has determined the amount of the liability under part 4062 and whether or not the liability has already been paid, the PBGC shall notify liable person(s) in writing of the amount of the liability. If the full liability has not yet been paid, the notification will include a request for payment of the full liability and will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. In all cases, the notification will include a statement of the right to appeal the assessment of liability pursuant to part 4003.

(b) *Demand for liability.* Except as provided in paragraph (c) of this section, if person(s) liable to the PBGC fail to pay the full liability and no appeal is filed or an appeal is filed and the decision on appeal finds liability, the PBGC will issue a demand letter for the liability—

(1) If no appeal is filed, upon the expiration of time to file an appeal under part 4003; or

(2) If an appeal is filed, upon issuance of a decision on the appeal finding that there is liability under this part.

The demand letter will indicate that, as provided in § 4062.8, the PBGC will prescribe commercially reasonable terms for payment of so much of the liability as it determines exceeds 30 percent of the collective net worth of such persons.

(c) *Special rule.* Notwithstanding paragraphs (a) and (b) of this section, the PBGC may, in any case in which it believes that its ability to assert or obtain payment of liability is in jeopardy, issue a demand letter for the liability under this part immediately upon determining the liability, without first issuing a notification of liability pursuant to paragraph (a) of this section. When the PBGC issues a demand letter under this paragraph, there is no right to an appeal pursuant to part 4003 of this chapter.

§ 4068.4 Lien.

If any person liable to the PBGC under section 4062, 4063, or 4064 of ERISA fails or refuses to pay the full amount of such liability within the time specified in the demand letter issued under § 4068.3, the PBGC shall have a lien in the amount of the liability, including interest, arising as of the

plan's termination date, upon all property and rights to property, whether real or personal, belonging to that person, except that such lien may not be in an amount in excess of 30 percent of the collective net worth of all persons described in section 4062(a) of ERISA and part 4062 of this chapter.

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

Sec.

AUTHORITY: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1371.

SOURCE: 62 FR 36994, July 10, 1997, unless otherwise noted.

§ 4071.1 Purpose and scope.

This part specifies the maximum daily amount of penalties that may be assessed by the PBGC under ERISA section 4071 for certain failures to provide notices or other material information, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

§ 4071.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA and PBGC.

§ 4071.3 Penalty amount.

The maximum daily amount of the penalty under section 4071 of ERISA shall be $2,586.

[62 FR 36994, July 10, 1997, as amended at 81 FR 29766, May 13, 2016; 82 FR 8814, Jan. 31, 2017; 83 FR 1556, Jan. 12, 2018; 83 FR 67074, Dec. 28, 2018; 85 FR 2305, Jan. 15, 2020; 86 FR 2542, Jan. 13, 2021; 87 FR 2341, Jan. 14, 2022; 88 FR 1992, Jan. 12, 2023]

SUBCHAPTER I—WITHDRAWAL LIABILITY FOR MULTIEMPLOYER PLANS

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34083, July 1, 1996, unless otherwise noted.

§ 4203.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request the PBGC to approve a plan amendment which establishes special complete or partial withdrawal liability rules.

(b) *Scope.* This part applies to a multiemployer pension plan covered by title IV of ERISA.

§ 4203.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: complete withdrawal, employer, ERISA, multiemployer plan, PBGC, person, plan, plan sponsor, and plan year.

§ 4203.3 Plan adoption of special withdrawal rules.

(a) *General rule.* A plan may, subject to the approval of the PBGC, establish by plan amendment special complete or partial withdrawal liability rules. A complete withdrawal liability rule adopted pursuant to this part shall be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to this part shall be consistent with the complete withdrawal rule adopted by the plan. A plan amendment adopted under this part may not be put into effect until it is approved by the PBGC.

(b) *Discretionary provisions of the plan amendment.* A plan amendment adopted pursuant to this part may—

(1) Cover an entire industry or industries, or be limited to a segment of an industry; and

(2) Apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

§ 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request*—(1) *In general.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted, and the telephone number of the plan sponsor or its authorized representative.

(2) A copy of the executed amendment, including the proposed effective date.

(3) A statement certifying that notice of the adoption of the amendment and the request for approval filed under

this part has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(4) A statement indicating how the withdrawal rules in the plan amendment would operate in the event of a sale of assets by a contributing employer or the cessation of the obligation to contribute or the cessation of covered operations by all employers.

(5) A copy of the plan's most recent actuarial valuation.

(6) For each of the previous five plan years, information on the number of plan participants by category (active, retired and separate vested) and a complete financial statement. This requirement may be satisfied by the submission for each of those years of Form 5500, including schedule B, or similar reports required under prior law.

(7) A detailed description of the industry to which the plan amendment will apply, including information sufficient to demonstrate the effect of withdrawals on the plan's contribution base, and information establishing industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. Such industry characteristics include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review a request under this part.

[61 FR 34083, July 1, 1996, as amended at 68 FR 61354, Oct. 28, 2003]

§ 4203.5 PBGC action on requests.

(a) *General.* The PBGC shall approve a plan amendment providing for the application of special complete or partial withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

(b) *Notice of pendency of request.* As soon as practicable after receiving a request for approval of a plan amendment containing all the information required under § 4203.4, the PBGC shall publish a notice of the pendency of the request in the FEDERAL REGISTER. The notice shall contain a summary of the request and invite interested persons to submit written comments to the PBGC concerning the request. The notice will normally provide for a comment period of 45 days.

(c) *PBGC decision on request.* After the close of the comment period, PBGC shall issue its decision in writing on the request for approval of a plan amendment. Notice of the decision shall be published in the FEDERAL REGISTER.

§ 4203.6 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0050.

PART 4204—VARIANCES FOR SALE OF ASSETS

Subpart A—General

Subpart B—Variance of the Statutory Requirements

Subpart C—Procedures for Individual and Class Variances or Exemptions

AUTHORITY: 29 U.S.C. 1302(b)(3), 1384(c).

SOURCE: 61 FR 34084, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4204.1 Purpose and scope.

(a) *Purpose.* Under section 4204 of ERISA, an employer that ceases covered operations under a multiemployer plan, or ceases to have an obligation to contribute for such operations, because of a bona fide, arm's-length sale of assets to an unrelated purchaser does not incur withdrawal liability if certain conditions are met. One condition is that the sale contract provide that the seller will be secondarily liable if the purchaser withdraws from the plan within five years and does not pay its withdrawal liability. Another condition is that the purchaser furnish a bond or place funds in escrow, for a period of five plan years, in a prescribed amount. Section 4204 also authorizes the PBGC to provide for variances or exemptions from these requirements. Subpart B of this part provides variances and exemptions from the requirements for certain sales of assets. Subpart C of this part establishes procedures under which a purchaser or seller may, when the conditions set forth in subpart B are not satisfied or when the parties decline to provide certain financial information to the plan, request the PBGC to grant individual or class variances or exemptions from the requirements.

(b) *Scope.* In general, this part applies to any sale of assets described in section 4204(a)(1) of ERISA. However, this part does not apply to a sale of assets involving operations for which the seller is obligated to contribute to a plan described in section 404(c) of the Code, or a continuation of such a plan, unless the plan is amended to provide that section 4204 applies.

§ 4204.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, ERISA, IRS, multiemployer plan, PBGC, person, plan, plan administrator, plan sponsor, and plan year.

In addition, for purposes of this part:

Date of determination means the date on which a seller ceases covered operations or ceases to have an obligation to contribute for such operations as a result of a sale of assets within the meaning of section 4204(a) of ERISA.

Net income after taxes means revenue minus expenses after taxes (excluding extraordinary and non-recurring income or expenses), as presented in an audited financial statement or, in the absence of such statement, in an unaudited financial statement, each prepared in conformance with generally accepted accounting principles.

Net tangible assets means tangible assets (assets other than licenses, patents copyrights, trade names, trademarks, goodwill, experimental or organizational expenses, unamortized debt discounts and expenses and all other assets which, under generally accepted accounting principles, are deemed intangible) less liabilities (other than pension liabilities). Encumbered assets shall be excluded from net tangible assets only to the extent of the amount of the encumbrance.

Purchaser means a purchaser described in section 4204(a)(1) of ERISA.

Seller means a seller described in section 4204(a)(1) of ERISA.

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

[61 FR 34084, July 1, 1996, as amended at 86 FR 1270, Jan. 8, 2021]

Subpart B—Variance of the Statutory Requirements

§ 4204.11 Variance of the bond/escrow and sale-contract requirements.

(a) *General rule.* A purchaser's bond or escrow under section 4204(a)(1)(B) of ERISA and the sale-contract provision under section 4204(a)(1)(C) are not required if the parties to the sale inform the plan in writing of their intention that the sale be covered by section 4204 of ERISA and demonstrate to the satisfaction of the plan that at least one of the criteria contained in § 4204.12 or § 4204.13(a) is satisfied.

(b) *Requests after posting of bond or establishment of escrow.* A request for a variance may be submitted at any time. If, after a purchaser has posted a

bond or placed money in escrow pursuant to section 4204(a)(1)(B) of ERISA, the purchaser demonstrates to the satisfaction of the plan that the criterion in either § 4204.13 (a)(1) or (a)(2) is satisfied, then the bond shall be cancelled or the amount in escrow shall be refunded. For purposes of considering a request after the bond or escrow is in place, the words ''the year preceding the date of the variance request'' shall be substituted for ''the date of determination'' for the first mention of that term in both § 4204.13 (a)(1) and (a)(2). In addition, in determining the purchaser's average net income after taxes under § 4204.13(a)(1), for any year included in the average for which the net income figure does not reflect the interest expense incurred with respect to the sale, the purchaser's net income shall be reduced by the amount of interest paid with respect to the sale in the fiscal year following the date of determination.

(c) *Information required.* A request for a variance shall contain financial or other information that is sufficient to establish that one of the criteria in § 4204.12 or § 4204.13(a) is satisfied. A request on the basis of either § 4204.13 (a)(1) or (a)(2) shall also include a copy of the purchaser's audited (if available) or (if not) unaudited financial statements for the specified time period.

(d) *Limited exemption during pendency of request.* Provided that all of the information required to be submitted is submitted before the first day of the first plan year beginning after the sale, a plan may not, pending its decision on the variance, require a purchaser to post a bond or place an amount in escrow pursuant to section 4204(a)(1)(B). In the event a bond or escrow is not in place pursuant to the preceding sentence, and the plan determines that the request does not qualify for a variance, the purchaser shall comply with section 4204(a)(1)(B) within 30 days after the date on which it receives notice of the plan's decision.

(e) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided.

(Approved by the Office of Management and Budget under control number 1212–0021)

[61 FR 34084, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4204.12 *De minimis* transactions.

The criterion under this section is that the amount of the bond or escrow does not exceed the lesser of $250,000 or two percent of the average total annual contributions made by all employers to the plan, for the purposes of section 304(b)(3)(A) of ERISA and section 431(b)(3)(A) of the Code, for the three most recent plan years ending before the date of determination.

[61 FR 34084, July 1, 1996, as amended at 80 FR 55009, Sept. 11, 2015; 86 FR 1270, Jan. 8, 2021]

§ 4204.13 Net income and net tangible assets tests.

(a) *General.* The criteria under this section are that either—

(1) *Net income test.* The purchaser's average net income after taxes for its three most recent fiscal years ending before the date of determination (as defined in § 4204.12), reduced by any interest expense incurred with respect to the sale which is payable in the fiscal year following the date of determination, equals or exceeds 150 percent of the amount of the bond or escrow required under ERISA section 4204(a)(1)(B); or

(2) *Net tangible assets test.* The purchaser's net tangible assets at the end of the fiscal year preceding the date of determination (as defined in § 4204.12), equal or exceed—

(i) If the purchaser was not obligated to contribute to the plan before the sale, the amount of unfunded vested benefits allocable to the seller under section 4211 (with respect to the purchased operations), as of the date of determination, or

(ii) If the purchaser was obligated to contribute to the plan before the sale, the sum of the amount of unfunded vested benefits allocable to the purchaser and to the seller under ERISA section 4211 (with respect to the purchased operations), each as of the date of determination.

(b) *Special rule when more than one plan is covered by request.* For the purposes of paragraphs (a)(1) and (a)(2), if the transaction involves the assumption by the purchaser of the seller's obligation to contribute to more than one multiemployer plan, then the total amount of the bond or escrow or of the unfunded vested benefits, as applicable, for all of the plans with respect to which the purchaser has not posted a bond or escrow shall be used to determine whether the applicable test is met.

(c) *Non-applicability of tests in event of purchaser's insolvency.* A purchaser will not qualify for a variance under this subpart pursuant to paragraph (a)(1) or (a)(2) of this section if, as of the earlier of the date of the plan's decision on the variance request or the first day of the first plan year beginning after the date of determination, the purchaser is the subject of a petition under title 11, United States Code, or of a proceeding under similar provisions of state insolvency laws.

Subpart C—Procedures for Individual and Class Variances or Exemptions

§ 4204.21 Requests to PBGC for variances and exemptions.

(a) *Filing of request*—(1) *In general.* If a transaction covered by this part does not satisfy the conditions set forth in subpart B of this part, or if the parties decline to provide to the plan privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act (5 U.S.C. 552), the purchaser or seller may request from the PBGC an exemption or variance from the requirements of section 4204(a)(1)(B) and (C) of ERISA.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(b) *Who may request.* A purchaser or a seller may file a request for a variance or exemption. The request may be submitted by one or more duly authorized representatives acting on behalf of the party or parties. When a contributing employer withdraws from a plan as a result of related sales of assets involving several purchasers, or withdraws from more than one plan as a result of a single sale, the application may request a class variance or exemption for all the transactions.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan or plans for which the variance or exemption is being requested, and the telephone number of the plan administrator of each plan.

(2) For each plan described in paragraph (d)(1) of this section, the nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PN) assigned by the plan sponsor to the plan, and, if different, also the EIN and PN last filed with the PBGC. If an EIN or PN has not been assigned, that should be indicated.

(3) The name, address and telephone number of the seller and of its duly authorized representative, if any.

(4) The name, address and telephone number of the purchaser and of its duly authorized representative, if any.

(5) A full description of each transaction for which the request is being made, including effective date.

(6) A statement explaining why the requested variance or exemption would not significantly increase the risk of financial loss to the plan, including evidence, financial or otherwise, that supports that conclusion.

(7) When the request for a variance or exemption is filed by the seller alone, a statement signed by the purchaser indicating its intention that section 4204 of ERISA apply to the sale of assets.

(8) A statement indicating the amount of the purchaser's bond or escrow required under section 4204(a)(1)(B) of ERISA.

(9) The estimated amount of withdrawal liability that the seller would otherwise incur as a result of the sale if section 4204 did not apply to the sale.

(10) A certification that a complete copy of the request has been sent to each plan described in paragraph (d)(1)

of this section and each collective bargaining representative of the seller's employees by certified mail, return receipt requested.

(e) *Additional information.* In addition to the information described in paragraph (d) of this section, the PBGC may require the purchaser, the seller, or the plan to submit any other information the PBGC determines it needs to review the request.

(f) *Disclosure of information.* Any party submitting information pursuant to this section may include a statement of whether any of the information is of a nature that its disclosure may not be required under the Freedom of Information Act, 5 U.S.C. 552. The statement should specify the information that may not be subject to disclosure and the grounds therefor.

(Approved by the Office of Management and Budget under control number 1212–0021)

[61 FR 34084, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4204.22 PBGC action on requests.

(a) *General.* The PBGC shall approve a request for a variance or exemption if PBGC determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of title IV of ERISA; and

(2) Would not significantly increase the risk of financial loss to the plan.

(b) *Notice of pendency of request.* As soon as practicable after receiving a variance or exemption request containing all the information specified in § 4204.21, the PBGC shall publish a notice of the pendency of the request in the FEDERAL REGISTER. The notice shall provide that any interested person may, within the period of time specified therein, submit written comments to the PBGC concerning the request. The notice will usually provide for a comment period of 45 days.

(c) *PBGC decision on request.* The PBGC shall issue a decision on a variance or exemption request as soon as practicable after the close of the comment period described in paragraph (b) of this section. PBGC's decision shall be in writing, and if the PBGC disapproves the request, the decision shall state the reasons therefor. Notice of the decision shall be published in the FEDERAL REGISTER.

PART 4206—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3) and 1386(b).

SOURCE: 61 FR 34086, July 1, 1996, unless otherwise noted.

§ 4206.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of ERISA, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects

the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for, generally, a one-step calculation of the adjusted credit under section 4206(b)(2) against the subsequent liability, rather than for separate calculations first of the credit under section 4206(b)(1) and then of the reduction in the credit under paragraph (b)(2) of that section. In cases where the withdrawal liability for the prior partial withdrawal was reduced by an abatement or other reduction of that liability, the adjusted credit is further reduced in accordance with § 4206.8 of this part.

(b) *Scope.* This part applies to multiemployer plans covered under title IV of ERISA, and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan.

§ 4206.2 Definitions.

The following are defined in § 4001.2 of this chapter: Code, employer, ERISA, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

[61 FR 34086, July 1, 1996, as amended at 86 FR 1270, Jan. 8, 2021]

§ 4206.3 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount greater than or equal to zero, determined in accordance with this part. If the credit determined under §§ 4206.4 through 4206.9 is less than zero, the amount of the credit shall equal zero.

§ 4206.4 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4) of ERISA, for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the

date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.5 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of ERISA, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) of ERISA as if the employer had completely withdrawn in the year of the prior partial withdrawal, reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) of ERISA for the prior partial withdrawal.

§ 4206.6 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

§ 4206.7 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of ERISA, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 431(b)(5) of the Code. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with § 4206.8.

[61 FR 34086, July 1, 1996, as amended at 80 FR 55009, Sept. 11, 2015]

§ 4206.8 Reduction of credit for abatement or other reduction of prior partial withdrawal liability.

(a) *General.* If an employer's withdrawal liability for a prior partial withdrawal has been reduced or waived, the credit determined pursuant to §§ 4206.4 through 4206.7 shall be adjusted in accordance with this section.

(b) *Computation.* The adjusted credit is calculated by multiplying the credit determined under the preceding sections of this part by a fraction—

(1) The numerator of which is the excess of the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero) over the present value of each abatement or other reduction of that prior withdrawal liability calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which is the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit is zero).

§ 4206.9 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt, by plan amendment, a method of calculating the credit provided by § 4206.3 that is consistent with the rules in §§ 4206.4 through 4206.8 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 4206.10 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 4206.4 through 4206.9 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1387.

SOURCE: 61 FR 34088, July 1, 1996, unless otherwise noted.

§ 4207.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4207(a) of ERISA, for reducing or waiving the withdrawal liability of certain employers that have completely withdrawn from a multiemployer plan and subsequently resume covered operations under the plan. This part prescribes rules pursuant to which the plan must waive the employer's obligation to make future liability payments with respect to its complete withdrawal and must calculate the amount of the employer's liability for a partial or complete withdrawal from the plan after its reentry into the plan. This part also provides procedures, pursuant to section 4207(b) of ERISA, for plan sponsors of multiemployer plans to apply to PBGC for approval of plan amendments that provide for the reduction or waiver of complete withdrawal liability under conditions other than those specified in section 4207(a) of ERISA and this part.

(b) *Scope.* This part applies to multiemployer plans covered under title IV of ERISA, and to employers that have completely withdrawn from such plans after September 25, 1980, and that have not, as of the date of their reentry into the plan, fully satisfied their obligation to pay withdrawal liability arising from the complete withdrawal.

§ 4207.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Period of withdrawal means the plan year in which the employer completely withdrew from the plan, the plan year in which the employer reentered the plan and all intervening plan years.

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

[61 FR 34088, July 1, 1996, as amended at 86 FR 1270, Jan. 8, 2021]

§ 4207.3 Abatement.

(a) *General.* Whenever an eligible employer that has completely withdrawn from a multiemployer plan reenters the plan, it may apply to the plan for abatement of its complete withdrawal liability. Applications shall be filed by the date of the first scheduled withdrawal liability payment falling due after the employer resumes covered operations or, if later, the fifteenth calendar day after the employer resumes covered operations. Applications shall identify the eligible employer, the withdrawn employer, if different, the date of withdrawal, and the date of resumption of covered operations. Upon receiving an application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its complete withdrawal liability under § 4207.5, § 4207.9, or a plan amendment which has been approved by PBGC pursuant to § 4207.10. If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* As soon as practicable after an eligible employer that completely withdrew from a multiemployer plan applies for abatement, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The employer shall have no obligation to make future withdrawal liability payments to the plan with respect to its complete withdrawal;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4207.7 or § 4207.8, as applicable;

(3) Any bonds furnished under § 4207.4 shall be cancelled and any amounts held in escrow under § 4207.4 shall be refunded to the employer; and

(4) Any withdrawal liability payments due after the reentry and made by the employer to the plan shall be refunded by the plan without interest.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, then—

(1) The bond or escrow furnished under § 4207.4 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section;

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow;

(3) The employer shall resume making its withdrawal liability payments as they are due to the plan; and

(4) The employer shall be treated as a new employer for purposes of any future application of the withdrawal liability rules in sections 4201–4225 of title IV of ERISA with respect to its participation in the plan after its reentry into the plan, except that in plans using the ''direct attribution'' method (section 4211(c)(4) of ERISA), the nonforfeitable benefits attributable to service with the employer shall include nonforfeitable benefits attributable to service prior to reentry that were not nonforfeitable at that time.

(e) *Collection of payments due and review of non-abatement determination.* The rules in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3) of this section. For this purpose, a payment required to be made under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) *Review of non-abatement determination.* A plan sponsor's determination that the employer does not satisfy the requirements for abatement under this part shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, within the times prescribed by those sections. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA.

(2) *Determination of abatement.* If the plan sponsor or an arbitrator determines that the employer satisfies the requirements for abatement of its complete withdrawal liability under this part, the plan sponsor shall immediately refund the following payments (plus interest, except as indicated below, determined in accordance with § 4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to the employer in a lump sum:

(i) The amount of the employer's withdrawal liability payment or payments, without interest, due after its reentry and made by the employer.

(ii) The bond or escrow paid to the plan under paragraph (d)(1) of this section.

(iii) The amount of the employer's withdrawal liability payment or payments in excess of the bond or escrow, paid to the plan under paragraph (d)(2) of this section.

(iv) Any withdrawal liability payment made by the employer to the plan pursuant to paragraph (d)(3) of this section after the plan sponsor's notice under paragraph (b) of this section.

§ 4207.4 Withdrawal liability payments during pendency of abatement determination.

(a) *General rule.* An eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan may, in lieu of making withdrawal liability payments due after its reentry, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor under § 4207.3(b) of whether the employer satisfies the requirements for abatement of its complete withdrawal liability.

An employer that applies for abatement and neither provides a bond/escrow nor pays its withdrawal liability payments remains eligible for abatement.

(b) *Bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 70 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its complete withdrawal liability under this part, the bond or escrow shall be paid to the plan upon notice from the plan sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under paragraph (b) of this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount specified in paragraph (b) of a bond or escrow allowed under this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA.

§ 4207.5 Requirements for abatement.

(a) *General rule.* Except as provided in § 4207.9 (d) and (e) (pertaining to acquisitions, mergers and other combinations), an eligible employer that completely withdraws from a multiemployer plan and subsequently reenters the plan shall have its liability for that withdrawal abated in accordance with § 4207.3(c) if the employer resumes covered operations under the plan, and the number of contribution base units with respect to which the employer has an obligation to contribute under the plan for the measurement period (as defined in paragraph (b) of this section) after it resumes covered operations exceeds 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the base year (as defined in paragraph (c) of this section).

(b) *Measurement period.* If the employer resumes covered operations under the plan at least six full months prior to the end of a plan year and would satisfy the test in paragraph (a) based on its contribution base units for that plan year, then the measurement period shall be the period from the date it resumes covered operations until the end of that plan year. If the employer would not satisfy this test, or if the employer resumes covered operations under the plan less than six full months prior to the end of the plan year, the measurement period shall be the first twelve months after it resumes covered operations.

(c) *Base year.* For purposes of paragraph (a) of this section, the employer's number of contribution base units for the base year is the average number of contribution base units for the two plan years in which its contribution base units were the highest, within the five plan years immediately preceding the year of its complete withdrawal.

§ 4207.6 Partial withdrawals after reentry.

(a) *General rule.* For purposes of determining whether there is a partial withdrawal of an eligible employer whose liability is abated under this part upon the employer's reentry into the plan or at any time thereafter, the plan sponsor shall apply the rules in section 4205 of ERISA, as modified by the rules in this section, and section 108 of the Multiemployer Act. A partial withdrawal of an employer whose liability is abated under this part may occur under these rules upon the employer's reentry into the plan. However, a plan sponsor may not demand payment of withdrawal liability for a partial withdrawal occurring upon the

employer's reentry before the plan sponsor has determined that the employer's liability for its complete withdrawal is abated under this part and has so notified the employer in accordance with § 4207.3(b).

(b) *Partial withdrawal—70-percent contribution decline.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-percent contribution decline) in accordance with the rules in section 4205 of ERISA and section 108 of the Multiemployer Act, as modified by the rules in this paragraph, and shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(b).

(1) *Definition of ''3-year testing period.''* For purposes of section 4205(b)(1) of ERISA, the term ''3-year testing period'' means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Contribution base units for high base year.* For purposes of section 4205(b)(1) of ERISA and except as provided in section 108(d)(3) of the Multiemployer Act, in determining the number of contribution base units for the high base year, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, the number of contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(c) *Partial withdrawal—partial cessation of contribution obligation.* The plan sponsor shall determine whether there is a partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the employer's contribution obligation) in accordance with the rules in section 4205 of ERISA, as modified by the rules in this paragraph, and section 108 of the Multiemployer Act. In making this determination, the sponsor shall exclude all plan years during the period of withdrawal. A partial withdrawal under this paragraph can occur no earlier than the plan year of reentry. If the sponsor determines that there was a partial withdrawal, it shall determine the amount of an employer's liability for that partial withdrawal in accordance with the rules in § 4207.8(c).

§ 4207.7 Liability for subsequent complete withdrawals and related adjustments for allocating unfunded vested benefits.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part completely withdraws from the plan, the employer's liability for that subsequent withdrawal shall be determined in accordance with the rules in sections 4201–4225 of title IV, as modified by the rules in this section, and section 108 of the Multiemployer Act. In the case of a combination described in § 4207.9(d), the modifications described in this section shall be applied only with respect to that portion of the eligible employer that had previously withdrawn from the plan. In the case of a combination described in § 4207.9(e), the modifications shall be applied separately with respect to each previously withdrawn employer that comprises the eligible employer. In addition, when a plan has abated the liability of a reentered employer, if the plan uses either the ''presumptive'' or the ''direct attribution'' method (section 4211(b) or (c)(4), respectively) for allocating unfunded vested benefits, the plan shall modify those allocation methods as described in this section in allocating unfunded vested benefits to any employer that withdraws from the plan after the reentry.

(b) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using ''presumptive'' method.* In a plan using the ''presumptive'' allocation method under section 4211(b) of ERISA, the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1),

for the plan years preceding the initial withdrawal, determined as if the employer had not previously withdrawn;

(2) The sum of the unamortized annual credits attributable to the year of the initial withdrawal and each succeeding year ending prior to reentry; and

(3) The unamortized amount of the employer's allocable shares of the amounts described in section 4211(b)(1)(A) and (C) for plan years ending after its reentry. For purposes of paragraph (b)(2), the annual credit for a plan year is the amount by which the employer's withdrawal liability payments for the year exceed the greater of the employer's imputed contributions or actual contributions for the year. The employer's imputed contributions for a year shall equal the average annual required contributions of the employer for the three plan years preceding the initial withdrawal. The amount of the credit for a plan year is reduced by 5 percent of the original amount for each succeeding plan year ending prior to the year of the subsequent withdrawal.

(c) *Allocation of unfunded vested benefits for subsequent withdrawal in plans using ''modified presumptive'' or ''rolling-5'' method.* In a plan using either the ''modified presumptive'' allocation method under section 4211(c)(2) of ERISA or the ''rolling-5'' method under section 4211(c)(3), the amount of unfunded vested benefits allocable to a reentered employer for a subsequent withdrawal shall equal the sum of—

(1) The amount determined under section 4211 (c)(2) or (c)(3) of ERISA, as appropriate, as if the date of reentry were the employer's initial date of participation in the plan; and

(2) The outstanding balance, as of the date of reentry, of the unfunded vested benefits allocated to the employer for its previous withdrawal (as defined in paragraph (c)(2)(i) of this section) reduced as if that amount were being fully amortized in level annual installments, at the plan's funding rate as of the date of reentry, over the period described in paragraph (c)(2)(ii), beginning with the first plan year after reentry.

(i) The outstanding balance of the unfunded vested benefits allocated to an employer for its previous withdrawal is the excess of the amount determined under section 4211 (c)(2) or (c)(3) of ERISA as of the end of the plan year in which the employer initially withdrew, accumulated with interest at the plan's funding rate for that year, from that year to the date of reentry, over the withdrawal liability payments made by the employer, accumulated with interest from the date of payment to the date of reentry at the plan's funding rate for the year of entry.

(ii) The period referred to in paragraph (c)(2) for plans using the modified presumptive method is the greater of five years, or the number of full plan years remaining on the amortization schedule under section 4211(c)(2)(B)(i) of ERISA. For plans using the rolling-5 method, the period is five years.

(d) *Adjustments applicable to all employers in plans using ''presumptive'' method.* In a plan using the ''presumptive'' allocation method under section 4211(b) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The sum of the unamortized amounts of the annual credits of a reentered employer shall be treated as a reallocated amount under section 4211(b)(4) of ERISA in the plan year in which the employer reenters.

(2) In the event that the 5-year period used to compute the denominator of the fraction described in section 4211 (b)(2)(E) and (b)(4)(D) of ERISA includes a year during the period of withdrawal of a reentered employer, the contributions for a year during the period of withdrawal shall be adjusted to include any actual or imputed contributions of the employer, as determined under paragraph (b) of this section.

(e) *Adjustments applicable to all employers in plans using ''direct attribution'' method.* In a plan using the ''direct attribution'' method under section 4211(c)(4) of ERISA, when the plan has abated the withdrawal liability of a reentered employer pursuant to this

part, the following adjustments to the allocation method shall be made in computing the unfunded vested benefits allocable to any employer that withdraws from the plan in a plan year beginning after the reentry:

(1) The nonforfeitable benefits attributable to service with a reentered employer prior to its initial withdrawal shall be treated as benefits that are attributable to service with that employer.

(2) For purposes of section 4211(c)(4)(D)(ii) and (iii) of ERISA, withdrawal liability payments made by a reentered employer shall be treated as contributions made by the reentered employer.

(f) *Plans using alternative allocation methods under section 4211(c)(5).* A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and part 4211 of this chapter shall adopt by plan amendment a method of determining a reentered employer's allocable share of the plan's unfunded vested benefits upon its subsequent withdrawal. The method shall treat the reentered employer and other withdrawing employers in a manner consistent with the treatment under the paragraph(s) of this section applicable to plans using the statutory allocation method most similar to the plan's alternative allocation method.

(g) *Adjustments to amount of annual withdrawal liability payments for subsequent withdrawal.* For purposes of section 4219(c)(1)(C)(i)(I) and (ii)(I) of ERISA, in determining the amount of the annual withdrawal liability payments for a subsequent complete withdrawal, if the period of ten consecutive plan years ending before the plan year in which the withdrawal occurs includes a plan year during the period of withdrawal, the employer's number of contribution base units, used in section 4219(c)(1)(C)(i)(I), or the required employer contributions, used in section 4219(c)(1)(C)(ii)(I), for each such plan year during the period of withdrawal shall be deemed to be the greater of—

(1) The employer's contribution base units or the required employer contributions, as applicable, for that year; or

(2) The average of the employer's contribution base units or of the required employer contributions, as applicable, for those plan years not during the period of withdrawal, within the ten consecutive plan years ending before the plan year in which the employer's subsequent complete withdrawal occurred.

§ 4207.8 Liability for subsequent partial withdrawals.

(a) *General.* When an eligible employer that has had its liability for a complete withdrawal abated under this part partially withdraws from the plan, the employer's liability for that subsequent partial withdrawal shall be determined in accordance with the rules in sections 4201–4225 of ERISA, as modified by the rules in § 4207.7 (b) through (g) of this part and the rules in this section, and section 108 of the Multiemployer Act.

(b) *Liability for a 70-percent contribution decline.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal), section 4208 (relating to the reduction of liability for a partial withdrawal) and section 4219(c)(1) (relating to the schedule of partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(1) of ERISA (relating to a 70-percent contribution decline) shall be modified in accordance with the rules in this paragraph.

(1) *Definition of ''3-year testing period.''* For purposes of sections 4206(a) and 4219(c)(1) of ERISA, and paragraphs (b)(2)–(b)(4) of this section, the term ''3-year testing period'' means the period consisting of the plan year for which the determination is made and the two immediately preceding plan years, excluding any plan year during the period of withdrawal.

(2) *Determination date of section 4211 allocable share.* For purposes of section 4206(a)(1)(B) of ERISA, the amount determined under section 4211 shall be determined as if the employer had withdrawn from the plan in a complete withdrawal on the last day of the first plan year in the 3-year testing period or the last day of the plan year in

which the employer reentered the plan, whichever is later.

(3) *Calculation of fractional share of section 4211 amount.* For purposes of sections 4206(a)(2)(B)(ii) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then, in determining the denominator of the fraction described in section 4206(a)(2), the employer's contribution base units for each such year of withdrawal shall be deemed to be the greater of—

(i) The employer's contribution base units for that plan year; or

(ii) The average of the employer's contribution base units for the three plan years preceding the plan year in which the employer completely withdrew from the plan.

(4) *Contribution base units for high base year.* If the five plan years immediately preceding the beginning of the 3-year testing period include a plan year during the period of withdrawal, then for purposes of section 4208 (a) and (b)(1) of ERISA, the number of contribution base units for the high base year shall be the number of contribution base units determined under paragraph (b)(3) of this section.

(c) *Liability for partial cessation of contribution obligation.* The amount of an employer's liability under section 4206(a) (relating to the calculation of liability for a partial withdrawal) and section 4219(c)(1) (relating to the amount of the annual partial withdrawal liability payments) of ERISA, for a subsequent partial withdrawal described in section 4205(a)(2) of ERISA (relating to a partial cessation of the contribution obligation) shall be modified in accordance with the rules in this paragraph. For purposes of sections 4206(a)(2)(B)(i) and 4219(c)(1)(E)(ii) of ERISA, if the five plan years immediately preceding the plan year in which the partial withdrawal occurs include a plan year during the period of withdrawal, the denominator of the fraction described in section 4206(a)(2) shall be determined in accordance with the rule set forth in paragraph (b)(3) of this section.

§ 4207.9 Special rules.

(a) *Employer that has withdrawn and reentered the plan before the effective date of this part.* This part shall apply, in accordance with the rules in this paragraph, with respect to an eligible employer that completely withdraws from a multiemployer plan after September 25, 1980, and is performing covered work under the plan on the effective date of this part. Upon the application of an employer described in the preceding sentence, the plan sponsor of a multiemployer plan shall determine whether the employer satisfies the requirements for abatement of its complete withdrawal liability under this part. Pending the plan sponsor's determination, the employer may provide the plan with a bond or escrow that satisfies the requirements of § 4207.4, in lieu of making its withdrawal liability payments due after its application for an abatement determination. The plan sponsor shall notify the employer in writing of its determination and the consequences of its determination as described in § 4207.3 (c) or (d) and (e), as applicable. If the plan sponsor determines that the employer qualifies for abatement, only withdrawal liability payments made prior to the employer's reentry shall be retained by the plan; payments made by the employer after its reentry shall be refunded to the employer, with interest on those made prior to the application for abatement, in accordance with § 4207.3(e)(2). If a bond or escrow has been provided to the plan in accordance with § 4207.4, the plan sponsor shall send a copy of the notice to the bonding or escrow agent. Sections 4207.6 through 4207.8 shall apply with respect to the employer's subsequent complete withdrawal occurring on or after the effective date of this part, or partial withdrawal occurring either before or after that date. This paragraph shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4207(a) of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

(b) *Employer with multiple complete withdrawals that has reentered the plan before effective date of this part.* If an employer described in paragraph (a) of

this section has completely withdrawn from a multiemployer plan on two or more occasions before the effective date of this part, the rules in paragraph (a) of this section shall be applied as modified by this paragraph.

(1) The plan sponsor shall determine whether the employer satisfies the requirements for abatement under § 4207.5 based on the most recent complete withdrawal.

(2) If the employer satisfies the requirements for abatement, the employer's liability with respect to all previous complete withdrawals shall be abated.

(3) If the liability is abated, §§ 4207.6 and 4207.7 shall be applied as if the employer's earliest complete withdrawal were its initial complete withdrawal.

(c) *Employer with multiple complete withdrawals that has not reentered the plan as of the effective date of this part.* If an eligible employer has completely withdrawn from a multiemployer plan on two or more occasions between September 26, 1980, and the effective date of this part and is not performing covered work under the plan on the effective date of this regulation, the rules in this part shall apply, subject to the modifications specified in paragraphs (b)(1)–(b)(3) of this section, upon the employer's reentry into the plan.

(d) *Combination of withdrawn employer with contributing employer.* If a withdrawn employer merges or otherwise combines with an employer that has an obligation to contribute to the plan from which the first employer withdrew, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied—

(1) By subtracting from the measurement period contribution base units the contribution base units for which the non-withdrawn portion of the employer was obligated to contribute in the last plan year ending prior to the combination;

(2) By determining the base year contribution base units solely by reference to the contribution base units of the withdrawn portion of the employer; and

(3) By using the date of the combination, rather than the date of resumption of covered operations, to begin the measurement period.

(e) *Combination of two or more withdrawn employers.* If two or more withdrawn employers merge or otherwise combine, the combined entity is the eligible employer, and the rules of § 4207.5 shall be applied by combining the number of contribution base units with respect to which each portion of the employer had an obligation to contribute under the plan for its base year. However, the combined number of contribution base units shall not include contribution base units of a withdrawn portion of the employer that had fully paid its withdrawal liability as of the date of the resumption of covered operations.

§ 4207.10 Plan rules for abatement.

(a) *General rule.* Subject to the approval of the PBGC, a plan may, by amendment, adopt rules for the reduction or waiver of complete withdrawal liability under conditions other than those specified in §§ 4207.5 and 4207.9 (c) and (d), provided that such conditions relate to events occurring or factors existing subsequent to a complete withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. A plan amendment under this section may not be put into effect until it is approved by the PBGC. However, an amendment that is approved by the PBGC may apply retroactively to the date of the adoption of the amendment. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. Sections 4207.6, 4207.7, and 4207.8 shall apply to all subsequent partial withdrawals after a reduction or waiver of complete withdrawal liability under a plan amendment approved by the PBGC pursuant to this section.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of

the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with the PBGC. If no EIN or PN has been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date; and

(iii) The full text of the rules on the reduction or waiver of complete withdrawal liability.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes it pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement rule is not consistent with the purposes of ERISA if—

(1) Implementation of the rule would be adverse to the interest of plan participants and beneficiaries; or

(2) The rule would increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control number 1212–0044)

[61 FR 34088, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4207.11 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61355, Oct. 28, 2003]

PART 4208—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1388(c) and (e).

SOURCE: 61 FR 34093, July 1, 1996, unless otherwise noted.

§ 4208.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for reducing or waiving the liability of certain employers that have partially withdrawn from a multiemployer pension plan.

(b) *Scope.* This part applies to multiemployer pension plans covered under title IV of ERISA and to employers that have partially withdrawn from such plans after September 25, 1980, and that have not, as of the date on which they satisfy the conditions for reducing or eliminating their partial withdrawal

liability, fully satisfied their obligation to pay that partial withdrawal liability. This rule shall not negate reasonable actions taken by plans prior to the effective date of this part under plan rules implementing section 4208 of ERISA that were validly adopted pursuant to section 405 of the Multiemployer Act.

§ 4208.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, Multiemployer Act, multiemployer plan, PBGC, plan, and plan year.

In addition, for purposes of this part:

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Eligible employer means the employer, as defined in section 4001(b) of ERISA, as it existed on the date of its initial partial or complete withdrawal, as applicable. An eligible employer shall continue to be an eligible employer notwithstanding the occurrence of any of the following events:

(1) A restoration involving a mere change in identity, form or place of organization, however effected;

(2) A reorganization involving a liquidation into a parent corporation;

(3) A merger, consolidation or division solely between (or among) trades or businesses (whether or not incorporated) of the employer; or

(4) An acquisition by or of, or a merger or combination with another trade or business.

Partial withdrawal means a partial withdrawal as described in section 4205 of ERISA.

Partial withdrawal year means the third year of the 3-year testing period in the case of a partial withdrawal caused by a 70-percent contribution decline, or the year of the partial cessation in the case of a partial withdrawal caused by a partial cessation of the employer's contribution obligation.

§ 4208.3 Abatement.

(a) *General.* Whenever an eligible employer that has partially withdrawn from a multiemployer plan satisfies the requirements in § 4208.4 for the reduction or waiver of its partial withdrawal liability, it may apply to the plan for abatement of its partial withdrawal liability. Applications shall identify the eligible employer, the withdrawn employer (if different), the date of withdrawal, and the basis for reduction or waiver of its withdrawal liability. Upon receiving a complete application for abatement, the plan sponsor shall determine, in accordance with paragraph (b) of this section, whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4. If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability, the provisions of paragraph (c) of this section shall apply. If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability, the provisions of paragraphs (d) and (e) of this section shall apply.

(b) *Determination of abatement.* Within 60 days after an eligible employer that partially withdrew from a multiemployer plan applies for abatement in accordance with paragraph (a) of this section, the plan sponsor shall determine whether the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4 and shall notify the employer in writing of its determination and of the consequences of its determination, as described in paragraphs (c) or (d) and (e) of this section, as appropriate. If a bond or escrow has been provided to the plan under § 4208.5 of this part, the plan sponsor shall send a copy of the notice to the bonding or escrow agent.

(c) *Effects of abatement.* If the plan sponsor determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under § 4208.4, then—

(1) The employer's partial withdrawal liability shall be eliminated or its annual partial withdrawal liability payments shall be reduced in accordance with § 4208.6, as applicable;

(2) The employer's liability for a subsequent withdrawal shall be determined in accordance with § 4208.7;

(3) Any bonds furnished under § 4208.5 shall be canceled and any amounts held in escrow under § 4208.5 shall be refunded to the employer; and

(4) Any withdrawal liability payments originally due and paid after the end of the plan year in which the conditions for abatement were satisfied, in excess of the amount due under this part after that date shall be credited to the remaining withdrawal liability payments, if any, owed by the employer, beginning with the first payment due after the revised payment schedule is issued pursuant to this paragraph. If the credited amount is greater than the outstanding amount of the employer's partial withdrawal liability, the amount remaining after satisfaction of the liability shall be refunded to the employer. Interest on the credited amount at the rate prescribed in part 4219, subpart C, of this chapter (relating to overdue, defaulted, and overpaid withdrawal liability) shall be added if the plan sponsor does not issue a revised payment schedule reflecting the credit or make the required refund within 60 days after receipt by the plan sponsor of a complete abatement application. Interest shall accrue from the 61st day.

(d) *Effects of non-abatement.* If the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under §4208.4, then the employer shall take or cause to be taken the actions set forth in paragraphs (d)(1)–(d)(3) of this section. The rules in part 4219, subpart C, shall apply with respect to all payments required to be made under paragraphs (d)(2) and (d)(3). For this purpose, a payment required under paragraph (d)(2) shall be treated as a withdrawal liability payment due on the 30th day after the date of the plan sponsor's notice under paragraph (b) of this section.

(1) Any bond or escrow furnished under §4208.5 shall be paid to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section.

(2) The employer shall pay to the plan within 30 days after the date of the plan sponsor's notice under paragraph (b) of this section, the amount of its withdrawal liability payment or payments, with respect to which the bond or escrow was furnished, in excess of the bond or escrow.

(3) The employer shall resume or continue making its partial withdrawal liability payments as they are due to the plan.

(e) *Review of non-abatement determination.* A plan sponsor's determinations that the employer does not satisfy the requirements for abatement under §4208.4 and of the amount of reduction determined under §4208.6 shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA and part 4221 of this chapter, within the times prescribed by those provisions. For this purpose, the plan sponsor's notice under paragraph (b) of this section shall be treated as a demand under section 4219(b)(1) of ERISA. If the plan sponsor upon review or an arbitrator determines that the employer satisfies the requirements for abatement of its partial withdrawal liability under §4208.4, the plan sponsor shall immediately refund the amounts described in paragraph (e)(1) of this section if the liability is waived, or credit and refund the amounts described in paragraph (e)(2) if the annual payment is reduced.

(1) *Refund for waived liability.* If the employer's partial withdrawal liability is waived, the plan sponsor shall refund to the employer the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with §4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability).

(2) *Credit for reduced annual payment.* If the employer's annual partial withdrawal liability payment is reduced, the plan sponsor shall credit the payments made pursuant to paragraphs (d)(1)–(d)(3) of this section (plus interest determined in accordance with §4219.31(d) of this chapter as if the payments were overpayments of withdrawal liability) to future withdrawal liability payments owed by the employer, beginning with the first payment that is due after the determination, and refund any credit (including interest) remaining after satisfaction of the outstanding amount of the employer's partial withdrawal liability.

§4208.4 Conditions for abatement.

(a) *Waiver of liability for a 70-percent contribution decline.* An employer that

has incurred a partial withdrawal under section 4205(a)(1) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the conditions of either paragraph (a)(1) or (a)(2) are satisfied for each of the two years:

(1) The number of contribution base units with respect to which the employer has an obligation to contribute under the plan for each year is not less than 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section).

(2) The conditions of this paragraph are satisfied if—

(i) The number of contribution base units with respect to which the employer has an obligation to contribute for each year exceeds 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the high base year (as defined in paragraph (d) of this section); and

(ii) The total number of contribution base units with respect to which all employers under the plan have obligations to contribute in each of the two years is not less than 90 percent of the total number of contribution base units for which all employers had obligations to contribute in the partial withdrawal year.

(b) *Waiver of liability for a partial cessation of the employer's contribution obligation.* Except as provided in § 4208.8, an employer that has incurred partial withdrawal liability under section 4205(a)(2) of ERISA shall have no obligation to make payments with respect to that partial withdrawal (other than delinquent payments) for plan years beginning after the second consecutive plan year in which the employer satisfies the conditions under either paragraph (b)(1) or (b)(2) of this section.

(1) *Partial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement exceed 30 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals at least 90 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute under the plan for the high base year (as defined in paragraph (d) of this section).

(2) *Substantial restoration of withdrawn work.* The employer satisfies the conditions under this paragraph if, for each of two consecutive plan years—

(i) The employer makes contributions for the same facility or under the same collective bargaining agreement that gave rise to the partial withdrawal;

(ii) The employer's contribution base units for that facility or under that agreement are not less than 90 percent of the contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the high base year (as defined in paragraph (d) of this section); and

(iii) The total number of contribution base units with respect to which the employer has an obligation to contribute to the plan equals or exceeds the sum of—

(A) The number of contribution base units with respect to which the employer had an obligation to contribute in the year prior to the partial withdrawal year, determined without regard to the contribution base units for the facility or under the agreement that gave rise to the partial withdrawal; and

(B) 90 percent of the contribution base units with respect to which the

employer had an obligation to contribute for that facility or under that agreement in either the year prior to the partial withdrawal year or the high base year (as defined in paragraph (d) of this section), whichever is less.

(c) *Reduction in annual partial withdrawal liability payment*—(1) *Partial withdrawals under section 4205(a)(1).* An employer shall be entitled to a reduction of its annual partial withdrawal liability payment for a plan year if the number of contribution base units with respect to which the employer had an obligation to contribute during the plan year exceeds the greater of—

(i) 110 percent (or such lower number as the plan may, by amendment, adopt) of the number of contribution base units with respect to which the employer had an obligation to contribute in the partial withdrawal year; or

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the plan year following the partial withdrawal year.

(2) *Partial withdrawals under section 4205(a)(2).* An employer that resumes the obligation to contribute with respect to a facility or collective bargaining agreement that gave rise to a partial withdrawal, but does not qualify to have that liability waived under paragraph (b) of this section, shall have its annual partial withdrawal liability payment reduced for any plan year in which the total number of contribution base units with respect to which the employer has an obligation to contribute equals or exceeds the sum of—

(i) The number of contribution base units for the reentered facility or agreement during that year; and

(ii) The total number of contribution base units with respect to which the employer had an obligation to contribute to the plan for the year following the partial withdrawal year.

(d) *High base year.* For purposes of paragraphs (a) and (b)(1)(iii) of this section, the high base year contributions are the average of the total contribution base units for the two plan years for which the employer's total contribution base units were highest within the five plan years immediately preceding the beginning of the 3-year testing period defined in section 4205(b)(1)(B)(i) of ERISA, with respect to paragraph (a) of this section, or the partial withdrawal year, with respect to paragraph (b)(1)(iii) of this section. For purposes of paragraphs (b)(1)(ii) and (b)(2) of this section, the high base year contributions are the average number of contribution base units for the facility or under the agreement for the two plan years for which the employer's contribution base units for that facility or under that agreement were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.5 Withdrawal liability payments during pendency of abatement determination.

(a) *Bond/Escrow.* An employer that has satisfied the requirements of § 4208.4(a)(1) without regard to ''90 percent of'' or § 4208.4(b) for one year with respect to all partial withdrawals it incurred in a plan year may, in lieu of making scheduled withdrawal liability payments in the second year for those withdrawals, provide a bond to, or establish an escrow account for, the plan that satisfies the requirements of paragraph (b) of this section or any plan rules adopted under paragraph (d) of this section, pending a determination by the plan sponsor of whether the employer satisfies the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. An employer that applies for abatement and neither provides a bond/escrow nor makes its withdrawal liability payments remains eligible for abatement.

(b) *Amount of bond/escrow.* The bond or escrow allowed by this section shall be in an amount equal to 50 percent of the withdrawal liability payments that would otherwise be due. The bond or escrow relating to each payment shall be furnished before the due date of that payment. A single bond or escrow may be provided for more than one payment due during the pendency of the plan sponsor's determination. The bond or escrow agreement shall provide that if the plan sponsor determines that the employer does not satisfy the requirements for abatement of its partial withdrawal liability under § 4208.4 (a)(1) or (b), the bond or escrow shall be paid to the plan upon notice from the plan

sponsor to the bonding or escrow agent. A bond provided under this paragraph shall be issued by a corporate surety company that is an acceptable surety for purposes of section 412 of ERISA.

(c) *Notice of bond/escrow.* Concurrently with posting a bond or establishing an escrow account under this section, the employer shall notify the plan sponsor. The notice shall include a statement of the amount of the bond or escrow, the scheduled payment or payments with respect to which the bond or escrow is being furnished, and the name and address of the bonding or escrow agent.

(d) *Plan amendments concerning bond/escrow.* A plan may, by amendment, adopt rules decreasing the amount of the bond or escrow specified in paragraph (b) of this section. A plan amendment adopted under this paragraph may be applied only to the extent that it is consistent with the purposes of ERISA. An amendment satisfies this requirement only if it does not create an unreasonable risk of loss to the plan.

(e) *Plan sponsor determination.* Within 60 days after the end of the plan year in which the bond/escrow is furnished, the plan sponsor shall determine whether the employer satisfied the requirements of § 4208.4 (a)(1) or (b) for the second consecutive plan year. The plan sponsor shall notify the employer and the bonding or escrow agent in writing of its determination and of the consequences of its determination, as described in § 4208.3 (c) or (d) and (e), as appropriate.

§ 4208.6 Computation of reduced annual partial withdrawal liability payment.

(a) *Amount of reduced payment.* An employer that satisfies the requirements of § 4208.4 (c)(1) or (c)(2) shall have its annual partial withdrawal liability payment for that plan year reduced in accordance with paragraph (a)(1) or (a)(2) of this section, respectively.

(1) The reduced annual payment amount for an employer that satisfies § 4208.4(c)(1) shall be determined by substituting the number of contribution base units in the plan year in which the requirements are satisfied for the number of contribution base units in the year following the partial withdrawal year in the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(2) The reduced annual payment for an employer that satisfies § 4208.4(c)(2) shall be determined by adding the contribution base units for which the employer is obligated to contribute with respect to the reentered facility or agreement in the year in which the requirements are satisfied to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA.

(b) *Credit for reduction.* The plan sponsor shall credit the account of an employer that satisfies the requirements of § 4208.4(c)(1) or (c)(2) with the amount of annual withdrawal liability that it paid in excess of the amount described in paragraph (a)(1) or (a)(2) of this section, as appropriate. The credit shall be applied, a revised payment schedule issued, refund made and interest added, all in accordance with § 4208.3(c)(4).

§ 4208.7 Adjustment of withdrawal liability for subsequent withdrawals.

The liability of an employer for a partial or complete withdrawal from a plan subsequent to a partial withdrawal from that plan in a prior plan year shall be reduced in accordance with part 4206 of this chapter.

§ 4208.8 Multiple partial withdrawals in one plan year.

(a) *General rule.* If an employer partially withdraws from the same multiemployer plan on two or more occasions during the same plan year, the rules of § 4208.4 shall be applied as modified by this section.

(b) *Partial withdrawals under section 4205 (a)(1) and (a)(2) in the same plan year.* If an employer partially withdraws from the same multiemployer plan as a result of a 70-percent contribution decline and a partial cessation of the employer's contribution obligation in the same plan year, the employer shall not be eligible for abatement under § 4208.4 (b) or (c)(2) or under paragraph (c) of this section. The employer may qualify for abatement under § 4208.4(a) and (c)(1) and under

any rules adopted by the plan pursuant to § 4208.9.

(c) *Multiple partial cessations of the employer's contribution obligation.* If an employer permanently ceases to have an obligation to contribute for more than one facility, under more than one collective bargaining agreement, or for one or more facilities and under one or more collective bargaining agreements, resulting in multiple partial withdrawals under section 4205(b)(2)(A) in the same plan year, the abatement rules in § 4208.4(b) shall be applied as modified by this paragraph. If an employer resumes work at all such facilities and under all such collective bargaining agreements, the determination of whether the employer qualifies for elimination of its liability under § 4208.4(b) shall be made by substituting the test set forth in paragraph (c)(1) of this section for that prescribed by § 4208.4 (b)(1)(ii) or (b)(2)(ii), as applicable. If the employer resumes work at or under fewer than all the facilities or collective bargaining agreements described in this paragraph, the employer cannot qualify for elimination of its liability under § 4208.4(b). However, the employer may qualify for a reduction in its partial withdrawal liability pursuant to paragraph (c)(2) of this section.

(1) *Resumption of work at all facilities and under all bargaining agreements.* The test under this paragraph is satisfied if for each of the two consecutive plan years referred to in § 4208.4(b), the employer's total contribution base units for the facilities and under the collective bargaining agreements with respect to which the employer incurred the multiple partial withdrawals exceed 30 percent of the total number of contribution base units with respect to which the employer had an obligation to contribute for those facilities and under those agreements for the base year (as defined in paragraph (d) of this section).

(2) *Resumption at fewer than all facilities or under fewer than all bargaining agreements.* If the employer satisfies the conditions in § 4208.4 (b)(1)(i) and (b)(1)(iii) and paragraph (c)(2)(i) of this section, or the conditions in § 4208.4 (b)(2)(i) and (b)(2)(iii) and paragraph (c)(2)(ii) of this section, as applicable, the employer's withdrawal liability shall be partially waived as set forth in paragraph (c)(2)(iii) of this section.

(i) With respect to a resumption of work under § 4208.4(b)(1), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(1), the employer's contribution base units for any reentered facility or agreement exceed 30 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(ii) With respect to a resumption of work under § 4208.4(b)(2), the condition under this paragraph is satisfied if, for the two consecutive plan years referred to in § 4208.4(b)(2), the employer's contribution base units for any reentered facility or agreement exceed 90 percent of the number of contribution base units with respect to which the employer had an obligation to contribute for that facility or under that agreement for the base year (as defined in paragraph (d) of this section).

(iii) The employer's reduced withdrawal liability and, if any, the reduced annual payments of the liability shall be determined by adding the average number of contribution base units that the employer is required to contribute for those two consecutive years for that facility(ies) or agreement(s) to the numerator of the fraction described in section 4206(a)(2)(A) of ERISA. The amount of any remaining partial withdrawal liability shall be paid over the schedule originally established starting with the first payment due after the revised payment schedule is issued under § 4208.3(c)(4).

(d) *Base year.* For purposes of this section, the base year contribution base units for a reentered facility(ies) or under a reentered agreement(s) are the average number of contribution base units for the facility(ies) or under the agreement(s) for the two plan years for which the employer's contribution base units for that facility(ies) or under that agreement(s) were highest within the five plan years immediately preceding the partial withdrawal.

§ 4208.9 Plan adoption of additional abatement conditions.

(a) *General rule.* A plan may by amendment, subject to the approval of the PBGC, adopt rules for the reduction or waiver of partial withdrawal liability under conditions other than those specified in § 4208.4, provided that such conditions relate to events occurring or factors existing subsequent to a partial withdrawal year. The request for PBGC approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the amendment, other than repeal of the amendment. A plan amendment under this section may not be put into effect until it is approved by the PBGC. An amendment that is approved by the PBGC may apply retroactively.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned to the plan sponsor by the IRS and the three-digit Plan Identification Number (PIN) assigned to the plan by the plan sponsor, and, if different, also the EIN-PIN last filed with the PBGC. If an EIN-PIN has not been assigned, that should be indicated.

(3) A copy of the executed amendment, including—

(i) The date on which the amendment was adopted;

(ii) The proposed effective date;

(iii) The full text of the rules on the reduction or waiver of partial withdrawal liability; and

(iv) The full text of the rules adjusting the reduction in the employer's liability for a subsequent partial or complete withdrawal, as required by section 4206(b)(1) of ERISA.

(4) A copy of the most recent actuarial valuation report of the plan.

(5) A statement certifying that notice of the adoption of the amendment and of the request for approval filed under this section has been given to all employers that have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information that it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information that the PBGC determines that it needs to review a request under this section.

(f) *Criteria for PBGC approval.* The PBGC shall approve a plan amendment authorized by paragraph (a) of this section if it determines that the rules therein are consistent with the purposes of ERISA. An abatement amendment is not consistent with the purposes of ERISA unless the PBGC determines that—

(1) The amendment is not adverse to the interests of plan participants and beneficiaries in the aggregate; and

(2) The amendment would not significantly increase the PBGC's risk of loss with respect to the plan.

(Approved by the Office of Management and Budget under control no. 1212–0039)

[61 FR 34093, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4208.10 Method of filing; method and date of issuance.

(a) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part.

(c) *Date of issuance.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61355, Oct. 28, 2003]

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

Subpart A—General

Subpart B—Changes Not Subject to PBGC Approval

Subpart C—Changes Subject to PBGC Approval

Subpart D—Allocation Methods for Merged Multiemployer Plans

AUTHORITY: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

SOURCE: 61 FR 34097, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4211.1 Purpose and scope.

(a) *Purpose.* Section 4211 of ERISA provides four methods for allocating unfunded vested benefits to employers that withdraw from a multiemployer plan: the presumptive method (section 4211(b)); the modified presumptive method (section 4211(c)(2)); the rolling-5 method (section 4211(c)(3)); and the direct attribution method (section 4211(c)(4)). With the minor exceptions covered in §4211.3, a plan determines the amount of unfunded vested benefits allocable to a withdrawing employer in accordance with the presumptive method, unless the plan is amended to adopt an alternative allocative method. Generally, the PBGC must approve the adoption of an alternative allocation method. On September 25, 1984, 49 FR 37686, the PBGC granted a class approval of all plan amendments adopting one of the statutory alternative allocation methods. Subpart C sets forth the criteria and procedures for PBGC approval of nonstatutory alternative allocation methods. Section 4211(c)(5) of ERISA also permits certain modifications to the statutory allocation methods that PBGC may prescribe in a regulation. Subpart B of this part contains the permissible modifications to the statutory methods that plan sponsors may adopt without PBGC approval. Plans may adopt other modifications subject to PBGC approval under subpart C. Finally, under section 4211(f) of ERISA, the PBGC is required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

(b) *Scope.* This part applies to all multiemployer plans covered by title IV of ERISA.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1271, Jan. 8, 2021]

§ 4211.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, IRS, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Initial plan year means a merged plan's first complete plan year that begins after the effective date of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means, as described in section 4213(c) of ERISA, the amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

Withdrawing employer means the employer for which withdrawal liability is being calculated under section 4201 of ERISA.

Withdrawn employer means an employer that, in a plan year before the withdrawing employer withdraws, has discontinued contributions to the plan or covered operations under the plan and whose obligation to contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

[61 FR 34097, July 1, 1996, as amended at 73 FR 79635, Dec. 30, 2008; 86 FR 1271, Jan. 8, 2021]

§ 4211.3 Special rules for construction industry and Code section 404(c) plans.

(a) *Construction plans.* A plan that primarily covers employees in the building and construction industry must use the presumptive method for allocating unfunded vested benefits, except as provided in §§ 4211.11(b) and 4211.21(b).

(b) *Code section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan must use the rolling-5 method for allocating unfunded vested benefits unless the plan sponsor, by amendment, adopts an alternative method or modification.

[86 FR 1271, Jan. 8, 2021]

§ 4211.4 Contributions for purposes of the numerator and denominator of the allocation fractions.

(a) *In general.* Subject to paragraph (b) of this section, each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a 5-year period.

(1) The numerator of the allocation fraction, with respect to a withdrawing employer, is based on the ''sum of the contributions required to be made'' or the ''total amount required to be contributed'' by the employer for the specified period.

(2) The denominator of the allocation fraction is based on contributions that certain employers have made to the plan for a specified period.

(b) *Disregarding surcharges and contribution increases.* For each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods in determining the allocation of unfunded vested benefits to an employer, a plan in endangered or critical status must disregard:

(1) *Surcharge.* Any surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code.

(2) *Contribution increase.* Any increase in the contribution rate or other increase in contribution requirements that goes into effect during plan years beginning after December 31, 2014, so that a plan may meet the requirements of a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA and 432(e) of the Code, except to the extent that one of the following exceptions applies pursuant to section 305(g)(3) or (4) of ERISA and section 432(g)(3) or (4) of the Code:

(i) The increases in contribution requirements are due to increased levels of work, employment, or periods for which compensation is provided.

(ii) The additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA and section 432(d)(1)(B) or (f)(1)(B) of the Code.

(iii) The withdrawal occurs on or after the expiration date of the employer's collective bargaining agreement in effect in the plan year the plan is no longer in endangered or critical status, or, if earlier, the date as of which the employer renegotiates a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

(c) *Simplified methods.* See §§ 4211.14 and 4211.15 for simplified methods of meeting the requirements of this section.

[86 FR 1271, Jan. 8, 2021]

§ 4211.6 Disregarding benefit reductions and benefit suspensions.

(a) *In general.* A plan must disregard the following nonforfeitable benefit reductions and benefit suspensions in determining a plan's nonforfeitable benefits for purposes of determining an employer's withdrawal liability under section 4201 of ERISA:

(1) *Adjustable benefit.* A reduction to adjustable benefits under section 305(e)(8) of ERISA and section 432(e)(8) of the Code.

(2) *Lump sum.* A benefit reduction arising from a restriction on lump sums or other benefits under section 305(f) of ERISA and section 432(f) of the Code.

(3) *Benefit suspension.* A benefit suspension under section 305(e)(9) of ERISA and section 432(e)(9) of the Code, but only for withdrawals not more than 10 years after the end of the plan year in which the benefit suspension takes effect.

(b) *Simplified methods.* See § 4211.16 for simplified methods for meeting the requirements of this section.

[86 FR 1271, Jan. 8, 2021]

Subpart B—Changes Not Subject to PBGC Approval

§ 4211.11 Plan sponsor adoption of modifications and simplified methods.

(a) *General rule.* A plan sponsor, other than the sponsor of a plan that primarily covers employees in the building and construction industry, may adopt by amendment, without the approval of PBGC, any of the statutory allocation methods and any of the modifications and simplified methods set forth in §§ 4211.12 through 4211.16.

(b) *Building and construction industry plans.* The plan sponsor of a plan that primarily covers employees in the building and construction industry may adopt by amendment, without the approval of PBGC, any of the modifications to the presumptive rule and simplified methods set forth in § 4211.12 and §§ 4211.14 through 4211.16.

[86 FR 1271, Jan. 8, 2021]

§ 4211.12 Modifications to the presumptive, modified presumptive, and rolling-5 methods.

(a) *Disregarding certain contribution increases.* A plan amended to use the modifications in this section must apply the rules to disregard surcharges and contribution increases under § 4211.4. A plan sponsor may amend a plan to incorporate the simplified methods in §§ 4211.14 and 4211.15 to fulfill the requirements of § 4211.4 with the modifications in this section if done consistently from year to year.

(b) *Changing the period for counting contributions.* A plan sponsor may

amend a plan to modify the denominators in the presumptive, modified presumptive and rolling-5 methods in accordance with one of the alternatives described in this paragraph (b). Any amendment adopted under this paragraph (b) must be applied consistently to all plan years. Contributions counted for 1 plan year may not be counted for any other plan year. If a contribution is counted as part of the ''total amount contributed'' for any plan year used to determine a denominator, that contribution may not also be counted as a contribution owed with respect to an earlier year used to determine the same denominator, regardless of when the plan collected that contribution.

(1) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions that the plan actually received during the plan year, without regard to whether the contributions are treated as made for that plan year under section 304(b)(3)(A) of ERISA and section 431(b)(3)(A) of the Code.

(2) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions received during a specified period of time after the close of the plan year not to exceed the period described in section 304(c)(8) of ERISA and section 431(c)(8) of the Code and regulations thereunder.

(3) A plan sponsor may amend a plan to provide that ''the sum of all contributions made'' or ''total amount contributed'' for a plan year means the amount of contributions actually received during the plan year, increased by the amount of contributions accrued during the plan year and received during a specified period of time after the close of the plan year not to exceed the period described in section 304(c)(8) of ERISA and section 431(c)(8) of the Code and regulations thereunder.

(c) *Excluding contributions of significant withdrawn employers.* Contributions of certain withdrawn employers are excluded from the denominator in each of the fractions used to determine a withdrawing employer's share of unfunded vested benefits under the presumptive, modified presumptive and rolling-5 methods. Except as provided in paragraph (c)(1) of this section, contributions of all employers that permanently cease to have an obligation to contribute to the plan or permanently cease covered operations before the end of the period of plan years used to determine the fractions for allocating unfunded vested benefits under each of those methods (and contributions of all employers that withdrew before September 26, 1980) are excluded from the denominators of the fractions.

(1) The plan sponsor of a plan using the presumptive, modified presumptive or rolling-5 method may amend the plan to provide that only the contributions of significant withdrawn employers are excluded from the denominators of the fractions used in those methods.

(2) For purposes of this paragraph (c), ''significant withdrawn employer'' means—

(i) An employer to which the plan has sent a notice of withdrawal liability under section 4219 of ERISA; or

(ii) A withdrawn employer that in any plan year used to determine the denominator of a fraction contributed at least $250,000 or, if less, 1 percent of all contributions made by employers for that year.

(3) If a group of employers withdraw in a concerted withdrawal, the plan sponsor must treat the group as a single employer in determining whether the members are significant withdrawn employers under paragraph (c)(2) of this section. A ''concerted withdrawal'' means a cessation of contributions to the plan during a single plan year—

(i) By an employer association;

(ii) By all or substantially all of the employers covered by a single collective bargaining agreement; or

(iii) By all or substantially all of the employers covered by agreements with a single labor organization.

(d) *''Fresh start'' rules under presumptive method.* (1) The plan sponsor of a plan using the presumptive method (including a plan that primarily covers employees in the building and construction industry) may amend the plan to provide that—

(i) A designated plan year ending after September 26, 1980, will substitute for the plan year ending before September 26, 1980, in applying section 4211(b)(1)(B), section 4211(b)(2)(B)(ii)(I), section 4211(b)(2)(D), section 4211(b)(3), and section 4211(b)(3)(B) of ERISA; and

(ii) Plan years ending after the end of the designated plan year in paragraph (d)(1)(i) of this section will substitute for plan years ending after September 25, 1980, in applying section 4211(b)(1)(A), section 4211(b)(2)(A), and section 4211(b)(2)(B)(ii)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (d)(1) of this section must provide that the plan's unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

(3) In the case of a plan that primarily covers employees in the building and construction industry, the plan year designated by a plan amendment pursuant to paragraph (d)(1) of this section must be a plan year for which the plan has no unfunded vested benefits determined in accordance with section 4211 of ERISA without regard to § 4211.6.

(e) *''Fresh start'' rules under modified presumptive method.* (1) The plan sponsor of a plan using the modified presumptive method may amend the plan to provide—

(i) A designated plan year ending after September 26, 1980, will substitute for the plan year ending before September 26, 1980, in applying section 4211(c)(2)(B)(i) and section 4211(c)(2)(B)(ii)(I) and (II) of ERISA; and

(ii) Plan years ending after the end of the designated plan year will substitute for plan years ending after September 25, 1980, in applying section 4211(c)(2)(B)(ii)(II) and section 4211(c)(2)(C)(i)(II) of ERISA.

(2) A plan amendment made pursuant to paragraph (e)(1) of this section must provide that the plan's unfunded vested benefits for plan years ending after the designated plan year are reduced by the value of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn from the plan as of the end of the designated plan year.

[86 FR 1272, Jan. 8, 2021]

§ 4211.13 Modifications to the direct attribution method.

(a) *Error in direct attribution method.* The unfunded vested benefits allocated to a withdrawing employer under the direct attribution method are the sum of the employer's attributable liability, determined under section 4211(c)(4)(A)(i) and (B) of ERISA, and the employer's share of the plan's unattributable liability, determined under section 4211(c)(4)(E) and allocated to the employer under section 4211(c)(4)(F). Plan sponsors should allocate unattributable liabilities on the basis of the employer's share of the attributable liabilities. However, section 4211(c)(4)(F) of ERISA, which describes the allocation of unattributable liabilities, contains a typographical error. Therefore, plans adopting the direct attribution method must modify the phrase ''as the amount determined under subparagraph (C) for the employer bears to the sum of the amounts determined under subparagraph (C) for all employers under the plan'' in section 4211(c)(4)(F) by substituting ''subparagraph (B)'' for ''subparagraph (C)'' in both places it appears.

(b) *Allocating unattributable liability based on contributions in period before withdrawal.* A plan that is amended to adopt the direct attribution method may provide that instead of allocating the unattributable liability in accordance with section 4211(c)(4)(F) of ERISA, the employer's share of the plan's unattributable liability is determined by multiplying the plan's unattributable liability determined under section 4211(c)(4)(E) by a fraction—

(1) The numerator of which is the total amount of contributions required to be made by the withdrawing employer over a period of consecutive plan years (not fewer than five) ending before the withdrawal; and

(2) The denominator of which is the total amount contributed under the

plan by all employers for the same period of years used in paragraph (b)(1) of this section, decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1273, Jan. 8, 2021]

§4211.14 Simplified methods for disregarding certain contributions.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt any of the simplified methods in paragraphs (b) through (d) of this section to fulfill the requirements of section 305(g)(3) of ERISA and section 432(g)(3) of the Code and §4211.4(b)(2) in determining an allocation fraction. Examples illustrating calculations using the simplified methods in this section are provided in the appendix to this part.

(b) *Simplified method for the numerator—after 2014 plan year.* A plan sponsor may amend a plan to provide that the withdrawing employer's required contributions for each plan year (a ''target year'') after the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 and the last day of the plan year the employer first contributes to the plan (the ''employer freeze date'') is the product of—

(1) The employer's contribution rate in effect on the employer freeze date, plus any contribution increase in §4211.4(b)(2)(ii) that is effective after the employer freeze date but not later than the last day of the target year; times

(2) The employer's contribution base units for the target year.

(c) *Simplified method for the denominator—after 2014 plan year.* A plan sponsor may amend a plan to provide that the denominator for the allocation fraction for each plan year after the employer freeze date is calculated using the same principles as paragraph (b) of this section.

(d) *Simplified method for the denominator—proxy group averaging.* (1) A plan sponsor may amend a plan to provide that, for purposes of determining the denominator of the unfunded vested benefits allocation fraction, employer contributions for a plan year beginning after the plan freeze date described in paragraph (d)(2)(i) of this section are calculated, in accordance with this paragraph (d), based on an average of representative contribution rates that exclude contribution increases that are required to be disregarded in determining withdrawal liability. The method described in this paragraph (d) is effective only for plan years to which the amendment applies.

(2) For purposes of this paragraph (d)—

(i) *Plan freeze date* means the last day of the first plan year that ends on or after December 31, 2014.

(ii) *Base year* means the first plan year beginning after the plan freeze date.

(iii) *Contribution history* for a plan year means the history of total contribution rates, and contribution rates that are not required to be disregarded in determining withdrawal liability, from the plan freeze date up to the end of the plan year.

(iv) *Included employer* with respect to a plan for a plan year means an employer that is a contributing employer of the plan on at least 1 day of the plan year and whose contributions for the plan year are to be taken into account under the plan in determining the denominator of the unfunded vested benefits allocation fraction under section 4211 of ERISA. If the contribution histories of different categories of employees of an employer are not substantially the same, the employer may be treated as two or more employers that have more uniform contribution histories.

(v) *Rate history group* is defined in paragraph (d)(3) of this section.

(vi) *Proxy group* is defined in paragraph (d)(4) of this section.

(vii) *Adjusted* as applied to contributions for an employer, a rate history group, or a plan is defined in paragraphs (d)(5), (6), and (7) of this section.

(3) A rate history group of a plan for a plan year is a group of included employers satisfying all of the following requirements:

(i) Each included employer of the plan is in one and only one rate history group.

(ii) The employers in the rate history group have substantially the same contribution history (or the same percentage increases in contributions from year to year), but there need not be more than ten rate history groups.

(iii) There is consistency in the composition of rate history groups from year to year.

(4) The proxy group of a plan for a plan year is a group of included employers satisfying all of the following requirements:

(i) On at least 1 day of the plan year, the employers in the proxy group represent at least 10 percent of active plan participants.

(ii) There is at least one employer in the proxy group from each rate history group of the plan for the plan year that represents, on at least 1 day of the plan year, at least 5 percent of active plan participants.

(iii) There is consistency in the composition of the proxy group from year to year.

(5) The adjusted contributions of an employer under a plan for a plan year are —

(i) The employer's contribution base units for the plan year; multiplied by

(ii) The employer's contribution rate per contribution base unit at the end of the plan year, reduced by the sum of the employer's contribution rate increases since the plan freeze date that are required to be disregarded in determining withdrawal liability.

(6) The adjusted contributions of a rate history group that is represented in the proxy group of a plan for a plan year are the total contributions for the plan year attributable to employers in the rate history group, multiplied by the adjustment factor for the rate history group. The adjustment factor for the rate history group is the quotient, for all employers in the rate history group that are also in the proxy group, of —

(i) Total adjusted contributions for the plan year; divided by

(ii) Total contributions for the plan year.

(7) The adjusted contributions of a plan for a plan year are the plan's total contributions for the plan year by all employers, multiplied by the adjustment factor for the plan. For this purpose, ''the plan's total contributions for the plan year'' means the total unadjusted plan contributions for the plan year that would otherwise be included in the denominator of the allocation fraction in the absence of section 305(g)(1) of ERISA, including any employer contributions owed with respect to earlier periods that were collected in that plan year, and excluding any amounts contributed in that plan year by an employer that withdrew from the plan during that plan year. The adjustment factor for the plan is the quotient, for all rate history groups that are represented in the proxy group, of —

(i) Total adjusted contributions for the plan year; divided by

(ii) Total contributions for the plan year.

(8) Under this method, in determining the denominator of a plan's unfunded vested benefits allocation fraction, the contributions taken into account with respect to any plan year (beginning with the base year) are the plan's adjusted contributions for the plan year.

(9) Notwithstanding the foregoing provisions of this paragraph (d), if total contributions for a year for a rate history group or for a plan are not timely and reasonably available for calculating adjusted contributions for that year, each relevant contribution rate for the year may be multiplied by the projected contribution base units for the year corresponding to that rate and the sum, for all rates, may be used in place of total contributions for that year.

(e) *Effective and applicability dates*—(1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

[86 FR 1273, Jan. 8, 2021]

§ 4211.15 Simplified methods for determining expiration date of a collective bargaining agreement.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt any of the simplified methods

in this section to fulfill the requirements of section 305(g)(4) of ERISA and 432(g)(4) of the Code and §4211.4(b)(2)(iii) for a withdrawal that occurs on or after the plan's reversion date.

(b) *Reversion date.* The reversion date is either—

(1) The expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in endangered or critical status, or

(2) The date that is the later of—

(i) The end of the first plan year following the plan year in which the plan is no longer in endangered or critical status; or

(ii) The end of the plan year that includes the expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in endangered or critical status.

(3) For purposes of paragraph (b)(2) of this section, the expiration date of a collective bargaining agreement that by its terms remains in force until terminated by the parties thereto is considered to be the earlier of—

(i) The termination date agreed to by the parties thereto; or

(ii) The first day of the third plan year following the plan year in which the plan is no longer in endangered or critical status.

(c) *Example.* The simplified method in paragraph (b)(1) of this section is illustrated by the following example.

(1) *Facts.* A plan certifies that it is not in endangered or critical status for the plan year beginning January 1, 2021. The plan operates under several collective bargaining agreements. The plan sponsor adopts a rule providing that all contribution increases will be included in the numerator and denominator of the allocation fractions for withdrawals occurring after October 31, 2022, the expiration date of the first collective bargaining agreement requiring plan contributions that expires after January 1, 2021.

(2) *Allocation fraction.* A contributing employer withdraws from the plan in November 2022, after the date designated by the plan sponsor for the inclusion of all contribution rate increases in the allocation fraction. The allocation fraction used by the plan sponsor to determine the employer's share of the plan's unfunded vested benefits includes all of the employer's required contributions in the numerator and total contributions made by all employers in the denominator, including any amounts related to contribution increases previously disregarded.

(d) *Effective and applicability dates*—(1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

[86 FR 1274, Jan. 8, 2021]

§4211.16 Simplified methods for disregarding benefit reductions and benefit suspensions.

(a) *In general.* A plan sponsor may amend a plan without PBGC approval to adopt the simplified methods in this section to fulfill the requirements of section 305(g)(1) of ERISA and section 432(g)(1) of the Code and §4211.6 to disregard benefit reductions and benefit suspensions.

(b) *Basic rule.* The withdrawal liability of a withdrawing employer is the sum of paragraphs (b)(1) and (2) of this section, and then adjusted by paragraphs (A)-(D) of section 4201(b)(1) of ERISA. The amount determined under paragraph (b)(1) may not be less than zero.

(1) The amount that would be the employer's allocable amount of unfunded vested benefits determined in accordance with section 4211 of ERISA under the method in use by the plan without regard to §4211.6 (but taking into account §4211.4); and

(2) The employer's proportional share of the value of each of the benefit reductions and benefit suspensions required to be disregarded under §4211.6 determined in accordance with this section.

(c) *Benefit suspension.* This paragraph (c) applies to a benefit suspension under §4211.6(a)(3).

(1) *General.* The employer's proportional share of the present value of a benefit suspension as of the end of the

plan year before the employer's withdrawal is determined by applying paragraph (c)(2) or (3) of this section to the present value of the suspended benefits, as authorized by the Department of the Treasury in accordance with section 305(e)(9) of ERISA, calculated either as of the date of the benefit suspension or as of the end of the plan year coincident with or following the date of the benefit suspension (the ''authorized value'').

(2) *Static value method.* A plan may provide that the present value of the suspended benefits as of the end of the plan year in which the benefit suspension takes effect and for each of the succeeding 9 plan years is the authorized value in paragraph (c)(1) of this section. An employer's proportional share of the present value of a benefit suspension to which this paragraph (c) applies using the static value method is determined by multiplying the present value of the suspended benefits by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the plan year in which the benefit suspension takes effect; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the plan year in which the suspension takes effect, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years. If a plan uses an allocation method other than the presumptive method in section 4211(b) of ERISA or similar method, the denominator after the first year is decreased by the contributions of any employers that withdrew from the plan and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal.

(iii) In determining the numerator and the denominator in paragraph (c)(2) of this section, the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

(3) *Adjusted value method.* A plan may provide that the present value of the suspended benefits as of the end of the plan year in which the benefit suspension takes effect is the authorized value in paragraph (c)(1) of this section and that the present value as of the end of each of the succeeding nine plan years (the ''revaluation date'') is the present value, as of a revaluation date, of the benefits not expected to be paid after the revaluation date due to the benefit suspension. An employer's proportional share of the present value of a benefit suspension to which this paragraph (c) applies using the adjusted value method is determined by multiplying the present value of the suspended benefits by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the employer's withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

(iii) In determining the numerator and the denominator in this paragraph (c)(3), the rules under § 4211.4 (and permissible modifications under § 4211.12 and simplified methods under §§ 4211.14 and 4211.15) apply.

(iv) If a benefit suspension in § 4211.6(a)(3) is a temporary suspension of the plan's payment obligations as authorized by the Department of the Treasury, the present value of the suspended benefits in this paragraph (c)(3) includes only the value of the suspended benefits through the ending period of the benefit suspension.

(d) *Benefit reductions.* This paragraph (d) applies to benefits reduced under § 4211.6(a)(1) or (2).

(1) *Value of a benefit reduction.* The value of a benefit reduction is—

(i) The unamortized balance, as of the end of the plan year before the withdrawal, of;

(ii) The value of the benefit reduction as of the end of the plan year in which the reduction took effect; and

(iii) Determined using the same assumptions as for unfunded vested benefits and amortization in level annual installments over a period of 15 years.

(2) *Employer's proportional share of a benefit reduction.* An employer's proportional share of the value of a benefit reduction to which this paragraph (d) applies is determined by multiplying the value of the benefit reduction by a fraction—

(i) The numerator is the sum of all contributions required to be made by the withdrawing employer for the 5 consecutive plan years ending before the employer's withdrawal; and

(ii) The denominator is the total of all employers' contributions for the 5 consecutive plan years ending before the employer's withdrawal, increased by any employer contributions owed with respect to earlier periods which were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan during those plan years.

(iii) The 5 consecutive plan years ending before the plan year in which the adjustable benefit reduction takes effect may be used in determining the numerator and the denominator in this paragraph (d). If such 5-year period is used, in determining the denominator, if a plan uses an allocation method other than the presumptive method in section 4211(b) of ERISA or similar method, the denominator after the first year is decreased by the contributions of any employers that withdrew from the plan and were unable to satisfy their withdrawal liability claims in any year before the employer's withdrawal.

(iv) In determining the numerator and the denominator in this paragraph (d), the rules under §4211.4 (and permissible modifications under §4211.12 and simplified methods under §§4211.14 and 4211.15) apply.

(e) *Example.* The simplified framework using the static value method under §4211.16(c)(2) for disregarding a benefit suspension is illustrated by the following example.

(1) *Facts.* Assume that a calendar year multiemployer plan receives final authorization by the Secretary of the Treasury for a benefit suspension, effective January 1, 2018. The present value, as of that date, of the benefit suspension is $30 million. Employer A, a contributing employer, withdraws during the 2022 plan year. Employer A's proportional share of contributions for the 5 plan years ending in 2017 (the year before the benefit suspension takes effect) is 10 percent. Employer A's proportional share of contributions for the 5 plan years ending before Employer A's withdrawal in 2022 is 11 percent. The plan uses the rolling-5 method for allocating unfunded vested benefits to withdrawn employers under section 4211 of ERISA. The plan sponsor has adopted by amendment the static value simplified method for disregarding benefit suspensions in determining unfunded vested benefits. Accordingly, there is a one-time valuation of the initial value of the suspended benefits with respect to employer withdrawals occurring during the 2019 through 2028 plan years, the first 10 years of the benefit suspension.

(2) *Unfunded vested benefits allocable to Employer A.* To determine the amount of unfunded vested benefits allocable to Employer A, the plan's actuary first determines the amount of Employer A's withdrawal liability as of the end of 2021 assuming the benefit suspensions remain in effect. Under the rolling-5 method, if the plan's unfunded vested benefits as determined in the plan's 2021 plan year valuation were $170 million (not including the present value of the suspended benefits), the share of these unfunded vested benefits allocable to Employer A is equal to $170 million multiplied by Employer A's allocation fraction of 11 percent, or $18.7 million. The plan's actuary then adds to this amount Employer A's proportional 10 percent share of the $30 million initial value of the suspended benefits, or $3 million. Employer A's share of the plan's unfunded vested benefits for withdrawal liability purposes is $21.7 million ($18.7 million + $3 million).

(3) *Adjustment of allocation fraction.* If another significant contributing employer—Employer B—had withdrawn in 2019 and was unable to satisfy its withdrawal liability claim, the allocation

fraction applicable to the value of the suspended benefits is adjusted. The contributions in the denominator for the last 5 plan years ending in 2017 is reduced by the contributions that were made by Employer B, thereby increasing Employer A's allocable share of the $30 million value of the suspended benefits.

(f) *Effective and applicability dates*—(1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

[86 FR 1274, Jan. 8, 2021]

Subpart C—Changes Subject to PBGC Approval

§ 4211.21 Changes subject to PBGC approval.

(a) *General rule.* Subject to the approval of the PBGC pursuant to this subpart, a plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under subpart B of this part.

(b) *Building and construction industry plans.* Subject to the approval of the PBGC pursuant to this subpart, a plan that primarily covers employees in the building and construction industry may adopt, by amendment, any allocation method or modification to an allocation method that is not permitted under section 4211 of ERISA if the method or modification is applicable only to its employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA.

(c) *Substantial overallocation not allowed.* No plan may adopt an allocation method or modification to an allocation method that results in a systematic and substantial overallocation of the plan's unfunded vested benefits.

(d) *Use of method prior to approval.* A plan may implement an alternative allocation method or modification to an allocation method that requires PBGC approval before that approval is given. However, the plan sponsor shall assess liability in accordance with this paragraph.

(1) *Demand for payment.* Until the PBGC approves the allocation method or modification, a plan may not demand withdrawal liability under section 4219 of ERISA in an amount that exceeds the lesser of the amount calculated under the amendment or the amount calculated under the allocation method that the plan would be required to use if the PBGC did not approve the amendment. The plan must inform each withdrawing employer of both amounts and explain that the higher amount may become payable depending on the PBGC's decision on the amendment.

(2) *Adjustment of liability.* When necessary because of the PBGC decision on the amendment, the plan shall adjust the amount demanded from each employer under paragraph (c)(1) of this section and the employer's withdrawal liability payment schedule. The length of the payment schedule shall be increased, as necessary. The plan shall notify each affected employer of the adjusted liability and payment schedule and shall collect the adjusted amount in accordance with the adjusted schedule.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1275, Jan. 8, 2021]

§ 4211.22 Requests for PBGC approval.

(a) *Filing of request*—(1) *In general.* A plan shall submit a request for approval of an alternative allocation method or modification to an allocation method to the PBGC in accordance with the requirements of this section as soon as practicable after the adoption of the amendment.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(b) *Who shall submit.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign the request.

(c) *Where to submit.* See § 4000.4 of this chapter for information on where to file.

(d) *Content.* Each request shall contain the following information:

(1) The name, address and telephone number of the plan sponsor, and of the duly authorized representative, if any, of the plan sponsor.

(2) The name of the plan.

(3) The nine-digit Employer Identification Number (EIN) that the Internal Revenue Service assigned to the plan sponsor and the three-digit Plan Identification Number (PIN) that the plan sponsor assigned to the plan, and, if different, also the EIN-PIN that the plan last filed with the PBGC. If the plan has no EIN-PIN, the request shall so indicate.

(4) The date the amendment was adopted.

(5) A copy of the amendment, setting forth the full text of the alternative allocation method or modification.

(6) The allocation method that the plan currently uses and a copy of the plan amendment (if any) that adopted the method.

(7) A statement certifying that notice of the adoption of the amendment has been given to all employers that have an obligation to contribute under the plan and to all employee organizations that represent employees covered by the plan.

(e) *Additional information.* In addition to the information listed in paragraph (d) of this section, the PBGC may require the plan sponsor to submit any other information that the PBGC determines is necessary for the review of an alternative allocation method or modification to an allocation method.

(Approved by the Office of Management and Budget under control number 1212–0035)

[61 FR 34097, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§ 4211.23 Approval of alternative method.

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of section 4209, 4219(c)(1)(B) or 4225 of ERISA.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

§ 4211.24 Special rule for certain alternative methods previously approved.

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method approved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

Subpart D—Allocation Methods for Merged Multiemployer Plans

§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or any of the modifications to the statutory presumptive method subpart B of this part.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1275, Jan. 8, 2021]

§ 4211.32 Presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section) for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded vested benefits at the end of a plan year, less the value as of the end of such year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year, exceed the sum of the unamortized amount of the initial plan year unfunded vested benefits (determined under paragraph (c)(1)(i) of this section) and the unamortized amounts of the change in unfunded vested benefits for each plan year ending after the initial plan year and preceding the plan year for which the change is determined (determined under paragraph (c)(1)(ii) of this section).

(i) *Unamortized amount of initial plan year unfunded vested benefits.* The unamortized amount of the initial plan year unfunded vested benefits is the amount of those benefits reduced by five percent of the original amount for each succeeding plan year.

(ii) *Unamortized amount of the change.* The unamortized amount of the change in a plan's unfunded vested benefits with respect to a plan year is the change in unfunded vested benefits for the plan year, reduced by five percent of such change for each succeeding plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the plan year in which the change arose and the four preceding full plan years; and

(ii) The denominator of which is the total amount contributed under the plan (or under employer's prior plan) for the plan year in which the change arose and the four preceding full plan years by all employers that had an obligation to contribute under the plan for the plan year in which such change arose, reduced by any amount contributed by an employer that withdrew from the plan in the year in which the change arose.

(iii) In determining the numerator and the denominator in this paragraph (c), the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

(d) *Share of reallocated amounts.* An employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits, if any, is the sum of the employer's proportional shares (determined under paragraph (d)(2) of this section) of the

unamortized amount of the reallocated unfunded vested benefits (determined under paragraph (d)(1) of this section) for each plan year ending before the plan year in which the employer withdrew from the plan.

(1) *Unamortized amount of reallocated unfunded vested benefits.* The unamortized amount of the reallocated unfunded vested benefits with respect to a plan year is the sum of the amounts described in paragraphs (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) of this section for the plan year, reduced by five percent of such sum for each succeeding plan year.

(i) *Uncollectible amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible for reasons arising out of cases or proceedings under title 11, United States Code, or similar proceedings, with respect to an employer that withdrew after the close of the initial plan year.

(ii) *Relief amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year will not be assessed as a result of the operation of section 4209, 4219(c)(1)(B), or 4225 of ERISA with respect to an employer that withdrew after the close of the initial plan year.

(iii) *Other amounts.* Amounts included as reallocable under this paragraph are those that the plan sponsor determines in that plan year to be uncollectible or unassessable for other reasons under standards not inconsistent with regulations prescribed by the PBGC.

(2) *Employer's proportional share.* An employer's proportional share of the amount of the reallocated unfunded vested benefits with respect to a plan year is computed by multiplying the unamortized amount of the reallocated unfunded vested benefits (as of the end of the year preceding the plan year in which the employer withdraws) by the allocation fraction described in paragraph (c)(2) of this section for the same plan year.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1275, Jan. 8, 2021]

§ 4211.33 Modified presumptive method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over fifteen years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share (determined under paragraph (c)(2) of this section) of the plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws, reduced by the amount of the plan's unfunded vested benefits as of the close of the initial plan year (determined under paragraph (c)(1) of this section).

(1) *Amount of unfunded vested benefits.* The plan's unfunded vested benefits as of the end of the plan year preceding the plan year in which the employer withdraws shall be reduced by the sum of—

(i) The value as of that date of all outstanding claims for withdrawal liability that can reasonably be expected

to be collected, with respect to employers that withdrew before that plan year; and

(ii) The sum of the amounts that would be allocable under paragraph (b) of this section to all employers that have an obligation to contribute in the plan year preceding the plan year in which the employer withdraws and that also had an obligation to contribute in the first plan year ending after the initial plan year.

(2) *Employer's proportional share.* An employer's proportional share of the amount determined under paragraph (c)(1) of this section is computed by multiplying that amount by a fraction—

(i) The numerator of which is the total amount required to be contributed under the plan (or under the employer's prior plan) by the employer for the last five full plan years ending before the date on which the employer withdraws; and

(ii) The denominator of which is the total amount contributed under the plan (or under each employer's prior plan) by all employers for the last five full plan years ending before the date on which the employer withdraws, increased by the amount of any employer contributions owed with respect to earlier periods that were collected in those plan years, and decreased by any amount contributed by an employer that withdrew from the plan (or prior plan) during those plan years.

(iii) In determining the numerator and the denominator in this paragraph (c), the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1276, Jan. 8, 2021]

§ 4211.34 Rolling-5 method for withdrawals after the initial plan year.

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum of the employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits (determined under paragraph (b) of this section) and the employer's proportional share of the unamortized amount of the unfunded vested benefits arising after the initial plan year (determined under paragraph (c) of this section).

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities, as determined under § 4211.32(b)(1), and the employer's share of the adjusted initial plan year unfunded vested benefits, as determined under § 4211.32(b)(2), with such sum reduced as if it were being fully amortized in level annual installments over five years beginning with the first plan year after the initial plan year.

(c) *Share of unfunded vested benefits arising after the initial plan year.* An employer's proportional share of the amount of the plan's unfunded vested benefits arising after the initial plan year is the employer's proportional share determined under § 4211.33(c).

§ 4211.35 Direct attribution method for withdrawals after the initial plan year.

The allocation method under this section is the allocation method described in section 4211(c)(4) of ERISA.

§ 4211.36 Modifications to the determination of initial liabilities, the amortization of initial liabilities, and the allocation fraction.

(a) *General rule.* A plan using any of the allocation methods described in §§ 4211.32 through 4211.34 may, by plan amendment and without PBGC approval, adopt any of the modifications described in this section. In determining the numerators and the denominators in paragraph (d) of this section, the rules under § 4211.4 (and permissible simplified methods under §§ 4211.14 and 4211.15) apply.

(b) *Restarting initial liabilities.* A plan may be amended to allocate the initial plan year unfunded vested benefits under § 4211.32(b), § 4211.33(b), or § 4211.34(b) without separately allocating to employers the liabilities attributable to their participation under their prior plans. An amendment under this paragraph must include an allocation fraction under paragraph (d) of

this section for determining the employer's proportional share of the total unfunded benefits as of the close of the initial plan year.

(c) *Amortizing initial liabilities.* A plan may by amendment modify the amortization of initial liabilities in either of the following ways:

(1) If two or more plans that use the presumptive allocation method of section 4211(b) of ERISA merge, the merged plan may adjust the amortization of initial liabilities under § 4211.32(b) to amortize those unfunded vested benefits over the remaining length of the prior plans' amortization schedules.

(2) A plan that has adopted the allocation method under § 4211.33 or § 4211.34 may adjust the amortization of initial liabilities under § 4211.33(b) or § 4211.34(b) to amortize those unfunded vested benefits in level annual installments over any period of at least five and not more than fifteen years.

(d) *Changing the allocation fraction.* A plan may by amendment replace the allocation fraction under § 4211.32(b), § 4211.33(b), or § 4211.34(b) with any of the following contribution-based fractions—

(1) A fraction, the numerator of which is the total amount required to be contributed under the merged and prior plans by the withdrawing employer in the 60-month period ending on the last day of the initial plan year, and the denominator of which is the sum for that period of the contributions made by all employers that had not withdrawn as of the end of the initial plan year;

(2) A fraction, the numerator of which is the total amount required to be contributed by the withdrawing employer for the initial plan year and the four preceding full plan years of its prior plan, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year; or

(3) A fraction, the numerator of which is the total amount required to be contributed to the plan by the withdrawing employer since the effective date of the merger, and the denominator of which is the sum of all contributions made over that period by employers that had not withdrawn as of the end of the initial plan year.

[61 FR 34097, July 1, 1996, as amended at 86 FR 1276, Jan. 8, 2021]

§ 4211.37 Allocating unfunded vested benefits for withdrawals before the end of the initial plan year.

If an employer withdraws after the effective date of a merger and before the end of the initial plan year, the amount of unfunded vested benefits allocable to the employer shall be determined as if each plan had remained a separate plan. In making this determination, the plan sponsor shall use the allocation method of the withdrawing employer's prior plan and shall compute the employer's allocable share of the plan's unfunded vested benefits as if the day before the effective date of the merger were the end of the last plan year prior to the withdrawal.

APPENDIX TO PART 4211—EXAMPLES

The examples in this appendix illustrate simplified methods for disregarding certain contribution increases in the allocation fraction provided in § 4211.14 of this part.

Example 1. Determining the Numerator of the Allocation Fraction Using the Employer's Plan Year 2014 Contribution Rate (§ 4211.14(b)).

Assume Plan X is a calendar year multiemployer plan in critical status which did not have a benefit increase after plan year 2014. In accordance with section 305(g)(3)(B) of ERISA, the annual 5 percent contribution rate increases applicable to Employer A and other employers in Plan X after the 2014 plan year were deemed to be required to enable the plan to meet the requirement of its rehabilitation plan and must be disregarded. Employer A, a contributing employer, withdraws from Plan X in 2021. Using the rolling-5 method, Plan X has unfunded vested benefits of $200 million as of the end of the 2020 plan year. To determine Employer A's allocable share of these unfunded vested benefits, Employer A's hourly required contribution rate and contribution base units for the 2014 plan year and each of the 5 plan years between 2016 and 2020 are identified as shown in the following table:

	2014 PY	2016 PY	2017 PY	2018 PY	2019 PY	2020 PY	5-year total
Employer A's Contribution Rate	$5.51	n/a	n/a	n/a	n/a	n/a	
Contribution Base Units	800,000	800,000	800,000	900,000	900,000	900,000	4,300,000
Contributions	$4.41M	$4.86M	$5.10M	$6.03M	$6.33M	$6.64M	$28.96M

The plan sponsor makes a determination pursuant to section 305(g)(3) of ERISA that the annual 5 percent contribution rate increases applicable to Employer A and other employers in Plan X after the 2014 plan year were required to enable the plan to meet the requirement of its rehabilitation plan and should be disregarded; benefits were not increased after plan year 2014.

Applying the simplified method, contribution rate increases that went into effect during plan years beginning after December 31, 2014 would be disregarded: The $5.51 contribution rate in effect at the end of plan year 2014 would be held steady in computing Employer A's required contributions for the plan years included in the numerator of the allocation fraction. Based on 4.3 million contribution base units, this results in total required contributions of $23.7 million over 5 years. Absent section 305(g)(3) of ERISA, the sum of the contributions required to be made by Employer A would have been determined by multiplying Employer A's contribution rate in effect for each plan year by the contribution base units in that plan year, producing total required contributions of $28.96 million over 5 years.

Example 2. Determining the Denominator of the Allocation Fraction Using the Proxy Group Method (§4211.14(d)).

Assume a plan covers ten employers. For 2017, three small employers were in rate history group X, representing less than 5 percent of active plan participants; employers A and B and two other employers were in rate history group Y; and employer C and two other employers were in rate history group Z. For 2018, there were changes in contribution rates for some of B's employees, and as a result, employer B is being treated as two employers, B1 and B2. B1 remained in rate history group Y because, while B1 has a significantly lower contribution rate than A, the contributions of both are subject to the same percentage increase each year. B2 was added to rate history group X. X continues to represent less than 5 percent of active plan participants, and the plan continues to ignore it in forming the proxy group. The plan forms a 2018 proxy group of three employers—A and B1 from rate history group Y and C from rate history group Z—that together represent more than 10 percent of active plan participants.

Contributions for 2018 are $1,000,000: $20,000 for rate history group X, $740,000 for rate history group Y, and $240,000 for rate history group Z, with A and B1 accounting for $150,000 and C accounting for $45,000 of the total contribution amounts.

Contribution rates for 2018 for A, B1, and C (excluding rate increases required to be disregarded for withdrawal liability purposes) and contribution base units for the three employers are: For A, 87 cents and 100,000 CBUs; for B1, 43 cents and 50,000 CBUs; and for C, 70 cents and 60,000 CBUs, as shown in rows (1) and (2) of the table below. Thus, the three employers' adjusted contributions are $87,000, $21,500, and $42,000 respectively, as shown in row (3).

Moving from the employer level to the rate history group level, the adjusted contributions for employers in the proxy group that are in the same rate history group are added together (row (4)). Those totals are then divided by total actual contributions for the proxy group employers in each rate history group (row (6)) to derive an adjustment factor for each rate history group (row (7)) that is applied to the actual contributions of all employers in the rate history group (row (8)) to get the adjusted contributions for each rate history group represented in the proxy group (row (9)).

Moving from the rate history group level to the plan level, the same process is repeated. Adjusted employer contributions for the rate history group are summed (row (10)) and divided by the total contributions for all rate history groups represented in the proxy group (row (11)) to get an adjustment factor for the plan (row (12)). Contributions for rate history group X are excluded from row (11) because no employer in rate history group X is in the proxy group. The adjustment factor for the plan is then applied to total plan contributions (row (13)) to get adjusted plan contributions (row (14)). Contributions for rate history group X are included in row (13) because—although X was ignored in determining the adjustment factor for the plan — the adjustment factor applies to all plan contributions (other than those by employers excluded from the plan's allocation fraction denominator). The plan will use the adjusted plan contributions in row (14) as the total contributions for 2018 in determining the denominator of any allocation fraction that includes contributions for 2018.

Row number	Regulatory reference in § 4211.14(d)	Description of action	Rate history group		
			Y		Z
			Employer A	Employer B1	Employer C
(1)	(6)(ii)	2018 contribution rate excluding disregarded increases.	$0.87 per CBU.	$0.43 per CBU.	$0.70 per CBU
(2)	(6)(i)	2018 CBUs	100,000	50,000	60,000
(3)	(6)	Adjusted employer contributions (1)x(2)	$87,000	$21,500	$42,000
(4)	(7)(i)	Sum of adjusted contributions for proxy employers by rate history group.	$108,500		$42,000
(5)	(7)(ii)	Unadjusted contributions for proxy employers.	$100,000	$25,000	$45,000
(6)	(7)(ii)	Sum of unadjusted contributions for proxy employers by rate history group.	$125,000		$45,000
(7)	(7)	Adjustment factor by rate history group (4)/(6).	0.868		0.933
(8)	(7)	Total actual contributions by rate history group.	$740,000		$240,000
(9)	(7)	Adjusted contributions by rate history group (7)x(8).	$642,320		$223,920
(10)	(8)(i)	Sum of adjusted contributions for rate history groups represented in proxy group.	$866,240		
(11)	(8)(ii)	Total actual contributions for rate history groups represented in proxy group.	$980,000		
(12)	(8)	Adjustment factor for plan (10)/(11)	0.884		
(13)	(8)	Total plan contributions	$1,000,000		
(14)	(8)	Adjusted plan contributions (for allocation fraction denominators) (12)x(13).	$884,000		

[86 FR 1276, Jan. 8, 2021]

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

Subpart A—General

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

AUTHORITY: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

SOURCE: 61 FR 34102, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4219.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part describes the purpose and scope of the

provisions in this part and defined terms used in this part. Section 4219(c) of ERISA requires a withdrawn employer to make annual withdrawal liability payments at a set rate over the number of years necessary to amortize its withdrawal liability, generally limited to a period of 20 years. This subpart provides rules for disregarding certain contribution increases in determining the highest contribution rate under section 4219(c) of ERISA.

(b) *Subpart B*—(1) *Purpose.* When a multiemployer plan terminates by the withdrawal of every employer from the plan, or when substantially all employers withdraw from a multiemployer plan pursuant to an agreement or arrangement to withdraw from the plan, section 4219(c)(1)(D)(i) of ERISA requires that the liability of such withdrawing employers be determined (or redetermined) without regard to the 20-year limitation on annual payments established in section 4219(c)(1)(B) of ERISA. In addition, section 4219(c)(1)(D)(ii) requires that, upon the occurrence of a withdrawal described above, the total unfunded vested benefits of the plan be fully allocated among such withdrawing employers in a manner that is not inconsistent with PBGC regulations. Section 4209(c) of ERISA provides that the *de minimis* reduction established in sections 4209 (a) and (b) of ERISA does not apply to an employer that withdraws in a plan year in which substantially all employers withdraw from the plan, or to an employer that withdraws pursuant to an agreement to withdraw during a period of one or more plan years during which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw. The purpose of subpart B of this part is to prescribe rules, pursuant to sections 4219(c)(1)(D) and 4209(c) of ERISA, for redetermining an employer's withdrawal liability and fully allocating the unfunded vested benefits of a multiemployer plan in either of two mass-withdrawal situations: the termination of a plan by the withdrawal of every employer and the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. Subpart B also prescribes rules for redetermining the liability of an employer without regard to section 4209 (a) or (b) when the employer withdraws in a plan year in which substantially all employers withdraw, regardless of the occurrence of a mass withdrawal. (See part 4281 regarding the valuation of unfunded vested benefits to be fully allocated under subpart B, and parts 4041A and 4281 regarding the powers and duties of the plan sponsor of a plan terminated by mass withdrawal.)

(2) *Scope.* Subpart B applies to multiemployer plans covered by title IV of ERISA, with respect to which there is a termination by the withdrawal of every employer (including a plan created by a partition pursuant to section 4233 of ERISA) or a withdrawal of substantially all employers in the plan pursuant to an agreement or arrangement to withdraw from the plan, and to employers that withdraw from such multiemployer plans. The obligations of a plan sponsor of a mass-withdrawal-terminated plan under subpart B cease to apply when the plan assets are distributed in full satisfaction of all nonforfeitable benefits under the plan. Subpart B also applies, to the extent appropriate, to multiemployer plans with respect to which there is a withdrawal of substantially all employers in a single plan year and to employers that withdraw from such plans in that plan year.

(c) *Subpart C.* Subpart C establishes the interest rate to be charged on overdue, defaulted and overpaid withdrawal liability under section 4219(c)(6) of ERISA, and authorizes multiemployer plans to adopt alternative rules concerning assessment of interest and related matters. Subpart C applies to multiemployer plans covered under title IV of ERISA, and to employers that have withdrawn from such plans on or after September 26, 1980, except employers with respect to which section 4221(f) or section 4221(g) of ERISA applies (provided that such employers are in compliance with the provisions of those sections, as applicable).

[61 FR 34102, July 1, 1996, as amended at 73 FR 79636, Dec. 30, 2008; 86 FR 1277, Jan. 8, 2021]

§ 4219.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: employer,

ERISA, IRS, mass withdrawal, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

(b) For purposes of this part:

Initial withdrawal liability means the amount of withdrawal liability determined in accordance with sections 4201 through 4225 of title IV without regard to the occurrence of a mass withdrawal.

Mass withdrawal liability means the sum of an employer's liability for *de minimis* amounts, liability for 20-year-limitation amounts, and reallocation liability.

Mass withdrawal valuation date means—

(1) In the case of a termination by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) in the case of a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw, the last day of the plan year as of which substantially all employers have withdrawn.

Reallocation liability means the amount of unfunded vested benefits allocated to an employer in the event of a mass withdrawal.

Reallocation record date means a date selected by the plan sponsor, which is not earlier than the date of the plan's actuarial report for the year of the mass withdrawal and not later than one year after the mass withdrawal valuation date.

Redetermination liability means the sum of an employer's liability for *de minimis* amounts and the employer's liability for 20-year-limitation amounts.

Unfunded vested benefits means the amount by which the present value of a plan's nonforfeitable benefits exceeds the value of plan assets (including claims of the plan for unpaid initial withdrawal liability and redetermination liability), determined in accordance with section 4281 of ERISA and part 4281, subpart B.

(c) For purposes of subpart B—

Withdrawal means a complete withdrawal as defined in section 4203 of ERISA.

[61 FR 34102, July 1, 1996, as amended at 73 FR 79636, Dec. 30, 2008; 86 FR 1277, Jan. 8, 2021]

§ 4219.3 Disregarding certain contributions.

(a) *General rule.* For purposes of determining the highest contribution rate under section 4219(c) of ERISA, a plan must disregard:

(1) *Surcharge.* Any surcharge under section 305(e)(7) of ERISA and section 432(e)(7) of the Code the obligation for which accrues on or after December 31, 2014.

(2) *Contribution increase.* Any increase in the contribution rate or other increase in contribution requirements that goes into effect during a plan year beginning after December 31, 2014, so that a plan may meet the requirements of a funding improvement plan under section 305(c) of ERISA and section 432(c) of the Code or a rehabilitation plan under section 305(e) of ERISA and section 432(e) of the Code, except to the extent that one of the following exceptions applies pursuant to section 305(g)(3) of ERISA and section 432(g)(3) of the Code:

(i) The increases in contribution requirements are due to increased levels of work, employment, or periods for which compensation is provided.

(ii) The additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by section 305(d)(1)(B) or (f)(1)(B) of ERISA and section 432(d)(1)(B) or (f)(1)(B) of the Code.

(b) *Simplified method for a plan that is no longer in endangered or critical status.* A plan sponsor may amend a plan without PBGC approval to use the simplified method in this paragraph (b) for purposes of determining the highest contribution rate for a plan that is no longer in endangered or critical status. The highest contribution rate is the greater of—

(1) The employer's contribution rate as of the date that is the later of the last day of the first plan year that ends on or after December 31, 2014 and the last day of the plan year the employer first contributes to the plan (the ''employer freeze date'') plus any contribution increases after the employer freeze date, and before the employer's withdrawal date that are determined in accordance with the rules under § 4219.3(a)(2)(ii); or

(2) The highest contribution rate for any plan year after the plan year that includes the expiration date of the first collective bargaining agreement of the withdrawing employer requiring plan contributions that expires after the plan is no longer in endangered or critical status, or, if earlier, the date as of which the withdrawing employer renegotiated a contribution rate effective after the plan year the plan is no longer in endangered or critical status.

(c) *Example:* The simplified method in paragraph (b) of this section is illustrated by the following example.

(1) *Facts.* A contributing employer withdraws in plan year 2028, after the 2027 expiration date of the first collective bargaining agreement requiring plan contributions that expires after the plan is no longer in critical status in plan year 2026. The plan sponsor determines that under the expiring collective bargaining agreement the employer's $4.50 hourly contribution rate in plan year 2014 was required to increase each year to $7.00 per hour in plan year 2025, to enable the plan to meet its rehabilitation plan. The plan sponsor determines that, over this period, a cumulative increase of $0.85 per hour was used to fund benefit increases, as provided by plan amendment. Under a new collective bargaining agreement effective in 2027, the employer's hourly contribution rate is reduced to $5.00.

(2) *Highest contribution rate.* The plan sponsor determines that the employer's highest contribution rate for purposes of section 4219(c) of ERISA is $5.35, because it is the greater of the highest rate in effect after the plan is no longer in critical status ($5.00) and the employer's contribution rate in plan year 2014 ($4.50) plus any increases between 2015 and 2025 ($0.85) that were required to be taken into account under section 305(g)(3) of ERISA.

(d) *Effective and applicability dates*—(1) *Effective date.* This section is effective on February 8, 2021.

(2) *Applicability date.* This section applies to employer withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

[86 FR 1277, Jan. 8, 2021]

Subpart B—Redetermination of Withdrawal Liability Upon Mass Withdrawal

§4219.11 Withdrawal liability upon mass withdrawal.

(a) *Initial withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall determine initial withdrawal liability pursuant to section 4201 of ERISA of every employer that has completely or partially withdrawn from the plan and for whom the liability has not previously been determined and, in accordance with section 4202 of ERISA, notify each employer of the amount of the initial withdrawal liability and collect the amount of the initial withdrawal liability from each employer.

(b) *Mass withdrawal liability.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal shall also—

(1) Notify withdrawing employers, in accordance with §4219.16(a), that a mass withdrawal has occurred;

(2) Within 150 days after the mass withdrawal valuation date, determine the liability of withdrawn employers for *de minimis* amounts and for 20-year-limitation amounts in accordance with §§4219.13 and 4219.14;

(3) Within one year after the reallocation record date, determine the reallocation liability of withdrawn employers in accordance with §4219.15;

(4) Notify each withdrawing employer of the amount of mass withdrawal liability determined pursuant to this subpart and the schedule for payment of such liability, and demand payment of and collect that liability, in accordance with §4219.16; and

(5) Notify the PBGC of the occurrence of a mass withdrawal and certify, in accordance with §4219.17, that determinations of mass withdrawal liability have been completed.

(c) *Extensions of time.* The plan sponsor of a multiemployer plan that experiences a mass withdrawal may apply to the PBGC for an extension of the deadlines contained in paragraph (b) of this section. The PBGC shall approve such a request only if it finds that failure to grant the extension will create

an unreasonable risk of loss to plan participants or the PBGC.

§ 4219.12 Employers liable upon mass withdrawal.

(a) *Liability for de minimis amounts.* An employer shall be liable for *de minimis* amounts to the extent provided in section 4219(c)(1)(D) of ERISA if the employer's initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA.

(b) *Liability for 20-year-limitation amounts.* An employer shall be liable for 20-year-limitation amounts to the extent provided in section 4219(c)(1)(D) of ERISA.

(c) *Liability for reallocation liability.* An employer shall be liable for reallocation liability if the employer withdrew pursuant to an agreement or arrangement to withdraw from a multiemployer plan from which substantially all employers withdrew pursuant to an agreement or arrangement to withdraw, or if the employer withdrew after the beginning of the second full plan year preceding the termination date from a plan that terminated by the withdrawal of every employer, and, as of the reallocation record date—

(1) The employer has not been completely liquidated or dissolved;

(2) The employer is not the subject of a case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws, except that a plan sponsor may determine that such an employer is liable for reallocation liability if the plan sponsor determines that the employer is reasonably expected to be able to pay its initial withdrawal liability and its redetermination liability in full and on time to the plan; and

(3) The plan sponsor has not determined that the employer's initial withdrawal liability or its redetermination liability is limited by section 4225 of ERISA.

(d) *General exclusion.* In the event that a plan experiences successive mass withdrawals, an employer that has been determined to be liable under this subpart for any component of mass withdrawal liability shall not be liable as a result of the same withdrawal for that component of mass withdrawal liability with respect to a subsequent mass withdrawal.

(e) *Free-look rule.* An employer that is not liable for initial withdrawal liability pursuant to a plan amendment adopting section 4210(a) of ERISA shall not be liable for *de minimis* amounts or for 20-year-limitation amounts, but shall be liable for reallocation liability in accordance with paragraph (c) of this section.

(f) *Payment of initial withdrawal liability.* An employer's payment of its total initial withdrawal liability, whether by prepayment or otherwise, for a withdrawal which is later determined to be part of a mass withdrawal shall not exclude the employer from or otherwise limit the employer's mass withdrawal liability under this subpart.

(g) *Agreement presumed.* Withdrawal by an employer during a period of three consecutive plan years within which substantially all employers withdraw from a plan shall be presumed to be a withdrawal pursuant to an agreement or arrangement to withdraw unless the employer proves otherwise by a preponderance of the evidence.

§ 4219.13 Amount of liability for *de minimis* amounts.

An employer that is liable for *de minimis* amounts shall be liable to the plan for the amount by which the employer's allocable share of unfunded vested benefits for the purpose of determining its initial withdrawal liability was reduced pursuant to section 4209 (a) or (b) of ERISA. Any liability for *de minimis* amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the *de minimis* reduction.

§ 4219.14 Amount of liability for 20-year-limitation amounts.

An employer that is liable for 20-year-limitation amounts shall be liable to the plan for an amount equal to the present value of all initial withdrawal liability payments for which the employer was not liable pursuant to section 4219(c)(1)(B) of ERISA. The present value of such payments shall be determined as of the end of the plan year

preceding the plan year in which the employer withdrew, using the assumptions that were used to determine the employer's payment schedule for initial withdrawal liability pursuant to section 4219(c)(1)(A)(ii) of ERISA. Any liability for 20-year-limitation amounts determined under this section shall be limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's initial withdrawal liability been determined without regard to the 20-year limitation.

§4219.15 Determination of reallocation liability.

(a) *General rule.* In accordance with the rules in this section, the plan sponsor shall determine the amount of unfunded vested benefits to be reallocated and shall fully allocate those unfunded vested benefits among all employers liable for reallocation liability.

(b) *Amount of unfunded vested benefits to be reallocated.* For purposes of this section, the amount of a plan's unfunded vested benefits to be reallocated shall be the amount of the plan's unfunded vested benefits, determined as of the mass withdrawal valuation date, adjusted to exclude from plan assets the value of the plan's claims for unpaid initial withdrawal liability and unpaid redetermination liability that are deemed to be uncollectible under §4219.12(c)(1) or (c)(2).

(c) *Amount of reallocation liability.* An employer's reallocation liability shall be equal to the sum of the employer's initial allocable share of the plan's unfunded vested benefits, as determined under paragraph (c)(1) of this section, plus any unassessable amounts allocated to the employer under paragraph (c)(2), limited by section 4225 of ERISA to the extent that section would have been limiting had the employer's reallocation liability been included in the employer's initial withdrawal liability. If a plan is determined to have no unfunded vested benefits to be reallocated, the reallocation liability of each liable employer shall be zero.

(1) *Initial allocable share.* Except as otherwise provided in rules adopted by the plan pursuant to paragraph (d) of this section, and in accordance with paragraph (c)(3) of this section, an employer's initial allocable share shall be equal to the product of the plan's unfunded vested benefits to be reallocated, multiplied by a fraction—

(i) The numerator of which is the yearly average of the employer's contribution base units during the three plan years preceding the employer's withdrawal; and

(ii) The denominator of which is the sum of the yearly averages calculated under paragraph (c)(1)(i) of this section for each employer liable for reallocation liability.

(2) *Allocation of unassessable amounts.* If after computing each employer's initial allocable share of unfunded vested benefits, the plan sponsor knows that any portion of an employer's initial allocable share is unassessable as withdrawal liability because of the limitations in section 4225 of ERISA, the plan sponsor shall allocate any such unassessable amounts among all other liable employers. This allocation shall be done by prorating the unassessable amounts on the basis of each such employer's initial allocable share. No employer shall be liable for unfunded vested benefits allocated under paragraph (c)(1) or this paragraph to another employer that are determined to be unassessable or uncollectible subsequent to the plan sponsor's demand for payment of reallocation liability.

(3) *Contribution base unit.* For purposes of paragraph (c)(1) of this section, a contribution base unit means a unit with respect to which an employer has an obligation to contribute, such as an hour worked or shift worked or a unit of production, under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes) or with respect to which the employer would have an obligation to contribute if the contribution requirement with respect to the plan were greater than zero.

(d) *Plan rules.* Plans may adopt rules for calculating an employer's initial allocable share of the plan's unfunded vested benefits in a manner other than that prescribed in paragraph (c)(1) of this section, provided that those rules allocate the plan's unfunded vested benefits to substantially the same extent the prescribed rules would. Plan rules adopted under this paragraph

shall operate and be applied uniformly with respect to each employer. If such rules would increase the reallocation liability of any employer, they may be effective with respect to that employer earlier than three full plan years after their adoption only if the employer consents to the application of the rules to itself. The plan sponsor shall give a written notice to each contributing employer and each employee organization that represents employees covered by the plan of the adoption of plan rules under this paragraph.

[61 FR 34102, July 1, 1996, as amended at 73 FR 79636, Dec. 30, 2008]

§ 4219.16 Imposition of liability.

(a) *Notice of mass withdrawal.* Within 30 days after the mass withdrawal valuation date, the plan sponsor shall give written notice of the occurrence of a mass withdrawal to each employer that the plan sponsor reasonably expects may be a liable employer under § 4219.12. The notice shall include—

(1) The mass withdrawal valuation date;

(2) A description of the consequences of a mass withdrawal under this subpart; and

(3) A statement that each employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule. Failure of the plan sponsor to notify an employer of a mass withdrawal as required by this paragraph shall not cancel the employer's mass withdrawal liability or waive the plan's claim for such liability.

(b) *Notice of redetermination liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(2) to have determined the redetermination liability of employers, the plan sponsor shall issue a notice of redetermination liability in writing to each employer liable under § 4219.12 for *de minimis* amounts or 20-year-limitation amounts, or both. The notice shall include—

(1) The amount of the employer's liability, if any, for *de minimis* amounts determined pursuant to § 4219.13;

(2) The amount of the employer's liability, if any, for 20-year-limitation amounts determined pursuant to § 4219.14;

(3) The schedule for payment of the liability determined under paragraph (f) of this section;

(4) A demand for payment of the liability in accordance with the schedule; and

(5) A statement of when the plan sponsor expects to issue notices of reallocation liability to liable employers.

(c) *Notice of reallocation liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(3) to have determined the reallocation liability of employers, the plan sponsor shall issue a notice of reallocation liability in writing to each employer liable for reallocation liability. The notice shall include—

(1) The amount of the employer's reallocation liability determined pursuant to § 4219.15;

(2) The schedule for payment of the liability determined under paragraph (f) of this section; and

(3) A demand for payment of the liability in accordance with the schedule.

(d) *Notice to employers not liable.* The plan sponsor shall notify in writing any employer that receives a notice of mass withdrawal under paragraph (a) of this section and subsequently is determined not to be liable for mass withdrawal liability or any component thereof. The notice shall specify the liability from which the employer is excluded and shall be provided to the employer not later than the date by which liable employers are to be provided notices of reallocation liability pursuant to paragraph (c) of this section. If the employer is not liable for mass withdrawal liability, the notice shall also include a statement, if applicable, that the employer is obligated to continue to make initial withdrawal liability payments in accordance with its existing schedule for payment of such liability.

(e) *Combined notices.* A plan sponsor may combine a notice of redetermination liability with the notice of and demand for payment of initial withdrawal liability. If a mass withdrawal and a withdrawal described in § 4219.18 occur concurrently, a plan sponsor may combine—

(1) A notice of mass withdrawal with a notice of withdrawal issued pursuant to §4219.18(d); and

(2) A notice of redetermination liability with a notice of liability issued pursuant to §4219.18(e).

(f) *Payment schedules.* The plan sponsor shall establish payment schedules for payment of an employer's mass withdrawal liability in accordance with the rules in section 4219(c) of ERISA, as modified by this paragraph. For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall establish new payment schedules for each element of mass withdrawal liability by amending the initial withdrawal liability payment schedule in accordance with the paragraph (f)(1) of this section. For all other employers, the payment schedules shall be established in accordance with paragraph (f)(2).

(1) *Employers owing initial withdrawal liability as of mass withdrawal valuation date.* For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall amend the existing schedule of payments in order to amortize the new amounts of liability being assessed, *i.e.*, redetermination liability and reallocation liability. With respect to redetermination liability, the plan sponsor shall add that liability to the total initial withdrawal liability and determine a new payment schedule, in accordance with section 4219(c)(1) of ERISA, using the interest assumptions that were used to determine the original payment schedule. For reallocation liability, the plan sponsor shall add that liability to the present value, as of the date following the mass withdrawal valuation date, of the unpaid portion of the amended payment schedule described in the preceding sentence and determine a new payment schedule of level annual payments, calculated as if the first payment were made on the day following the mass withdrawal valuation date using the interest assumptions used for determining the amount of unfunded vested benefits to be reallocated.

(2) *Other employers.* For an employer that had no initial withdrawal liability, or had fully paid its liability prior to the mass withdrawal valuation date, the plan sponsor shall determine the payment schedule for redetermination liability, in accordance with section 4219(c)(1) of ERISA, in the same manner and using the same interest assumptions as were used or would have been used in determining the payment schedule for the employer's initial withdrawal liability. With respect to reallocation liability, the plan sponsor shall follow the rules prescribed in paragraph (f)(1) of this section.

(g) *Review of mass withdrawal liability determinations.* Determinations of mass withdrawal liability made pursuant to this subpart shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA within the times prescribed by those sections. Matters that relate solely to the amount of, and schedule of payments for, an employer's initial withdrawal liability are not matters relating to the employer's liability under this subpart and are not subject to review pursuant to this paragraph.

(h) *Cessation of withdrawal liability obligations.* If the plan sponsor of a terminated plan distributes plan assets in full satisfaction of all nonforfeitable benefits under the plan, the plan sponsor's obligation to impose and collect liability, and each employer's obligation to pay liability, in accordance with this subpart ceases on the date of such distribution.

(i) *Determination that a mass withdrawal has not occurred.* If a plan sponsor determines, after imposing mass withdrawal liability pursuant to this subpart, that a mass withdrawal has not occurred, the plan sponsor shall refund to employers all payments of mass withdrawal liability with interest, except that a plan sponsor shall not refund payments of liability for *de minimis* amounts to an employer that remains liable for such amounts under §4219.18. Interest shall be credited at the interest rate prescribed in subpart C and shall accrue from the date the payment was received by the plan until the date of the refund.

§4219.17 Filings with PBGC.

(a) *Filing requirements*—(1) *In general.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications

that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this subpart.

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this subpart for filing with the PBGC.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign and file the notice and the certifications.

(c) *When to file.* A notice of mass withdrawal for a plan from which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw shall be filed with the PBGC no later than 30 days after the mass withdrawal valuation date. A notice of mass withdrawal termination shall be filed within the time prescribed for the filing of that notice in part 4041A, subparts A and B, of this chapter. Certifications of liability determinations shall be filed with the PBGC no later than 30 days after the date on which the plan sponsor is required to have provided employers with notices pursuant to § 4219.16.

(d) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(e) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this subpart was filed with the PBGC.

(f) *Contents of notice of mass withdrawal.* If a plan terminates by the withdrawal of every employer, a notice of termination filed in accordance with part 4041A, subparts A and B, of this chapter shall satisfy the requirements for a notice of mass withdrawal under this subpart. If substantially all employers withdraw from a plan pursuant to an agreement or arrangement to withdraw, the notice of mass withdrawal 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 duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The mass withdrawal valuation date.

(5) A description of the facts on which the plan sponsor has based its determination that a mass withdrawal has occurred, including the number of contributing employers withdrawn and the number remaining in the plan, and a description of the effect of the mass withdrawal on the plan's contribution base.

(g) *Contents of certifications.* Each certification 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 duly authorized representative, if any, of the plan sponsor.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) last assigned by the plan sponsor to the plan, and, if different, the EIN or PIN filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) Identification of the liability determination to which the certification relates.

(5) A certification, signed by the plan sponsor or a duly authorized representative, that the determinations have been made and the notices given in accordance with this subpart.

(6) For reallocation liability certifications—

(i) A certification, signed by the plan's actuary, that the determination of unfunded vested benefits has been done in accordance with part 4281, subpart B; and

(ii) A copy of plan rules, if any, adopted pursuant to § 4219.15(d).

(h) *Additional information.* In addition to the information described in paragraph (g) of this section, the PBGC may require the plan sponsor to submit any other information the PBGC determines it needs in order to monitor compliance with this subpart.

[61 FR 34102, July 1, 1996, as amended at 68 FR 61355, Oct. 28, 2003]

§4219.18 Withdrawal in a plan year in which substantially all employers withdraw.

(a) *General rule.* An employer that withdraws in a plan year in which substantially all employers withdraw from the plan shall be liable to the plan for *de minimis* amounts if the employer's initial withdrawal liability was reduced pursuant to section 4209(a) or (b) of ERISA.

(b) *Amount of liability.* An employer's liability for *de minimis* amounts under this section shall be determined pursuant to §4219.13.

(c) *Plan sponsor's obligations.* The plan sponsor of a plan that experiences a withdrawal described in paragraph (a) shall—

(1) Determine and collect initial withdrawal liability of every employer that has completely or partially withdrawn, in accordance with sections 4201 and 4202 of ERISA;

(2) Notify each employer that is or may be liable under this section, in accordance with paragraph (d) of this section;

(3) Within 90 days after the end of the plan year in which the withdrawal occurred, determine, in accordance with paragraph (b) of this section, the liability of each withdrawing employer that is liable under this section;

(4) Notify each liable employer, in accordance with paragraph (e) of this section, of the amount of its liability under this section, demand payment of and collect that liability; and

(5) Certify to the PBGC that determinations of liability have been completed, in accordance with paragraph (g) of this section.

(d) *Notice of withdrawal.* Within 30 days after the end of a plan year in which a plan experiences a withdrawal described in paragraph (a), the plan sponsor shall notify in writing each employer that is or may be liable under this section. The notice shall specify the plan year in which substantially all employers have withdrawn, describe the consequences of such withdrawal under this section, and state that an employer obligated to make initial withdrawal liability payments shall continue to make those payments in accordance with its schedule.

(e) *Notice of liability.* Within 30 days after the determination of liability, the plan sponsor shall issue a notice of liability in writing to each liable employer. The notice shall include—

(1) The amount of the employer's liability for *de minimis* amounts;

(2) A schedule for payment of the liability, determined under §4219.16(f); and

(3) A demand for payment of the liability in accordance with the schedule.

(f) *Review of liability determinations.* Determinations of liability made pursuant to this section shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA, subject to the limitations contained in §4219.16(g).

(g) *Notice to the PBGC.* No later than 30 days after the notices of liability under this section are required to be provided to liable employers, the plan sponsor shall file with the PBGC a notice. The notice shall include the items described in §4219.17 (g)(1) through (g)(3), as well as the information listed below. In addition, the PBGC may require the plan sponsor to submit any further information that the PBGC determines it needs in order to monitor compliance with this section.

(1) The plan year in which the withdrawal occurred.

(2) A description of the effect of the withdrawal, including the number of contributing employers that withdrew in the plan year in which substantially all employers withdrew, the number of employers remaining in the plan, and a description of the effect of the withdrawal on the plan's contribution base.

(3) A certification, signed by the plan sponsor or duly authorized representative, that determinations have been made and notices given in accordance with this section.

§ 4219.19 Method and date of issuance; computation of time.

The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this subpart. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this subpart was provided. The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances to third parties under this subpart.

[68 FR 61356, Oct. 28, 2003]

§ 4219.20 Information collection.

The information collection requirements contained in §§ 4219.16, 4219.17, and 4219.18 have been approved by the Office of Management and Budget under control number 1212–0034.

[61 FR 34102, July 1, 1996. Redesignated at 68 FR 61356, Oct. 28, 2003]

Subpart C—Overdue, Defaulted, and Overpaid Withdrawal Liability

§ 4219.31 Overdue and defaulted withdrawal liability; overpayment.

(a) *Overdue withdrawal liability payment.* Except as otherwise provided in rules adopted by the plan in accordance with § 4219.33, a withdrawal liability payment is overdue if it is not paid on the date set forth in the schedule of payments established by the plan sponsor.

(b) *Default.* (1) Except as provided in paragraph (c)(1), ''default'' means—

(i) The failure of an employer to pay any overdue withdrawal liability payment within 60 days after the employer receives written notification from the plan sponsor that the payment is overdue; and

(ii) Any other event described in rules adopted by the plan which indicates a substantial likelihood that an employer will be unable to pay its withdrawal liability.

(2) In the event of a default, a plan sponsor may require immediate payment of all or a portion of the outstanding amount of an employer's withdrawal liability, plus interest. In the event that the plan sponsor accelerates only a portion of the outstanding amount of an employer's withdrawal liability, the plan sponsor shall establish a new schedule of payments for the remaining amount of the employer's withdrawal liability.

(c) *Plan review or arbitration of liability determination.* The following rules shall apply with respect to the obligation to make withdrawal liability payments during the period for plan review and arbitration and with respect to the failure to make such payments:

(1) A default as a result of failure to make any payments shall not occur until the 61st day after the last of—

(i) Expiration of the period described in section 4219(b)(2)(A) of ERISA;

(ii) If the employer requests review under section 4219(b)(2)(A) of ERISA of the plan's withdrawal liability determination or the schedule of payments established by the plan, expiration of the period described in section 4221(a)(1) of ERISA for initiation of arbitration; or

(iii) If arbitration is timely initiated either by the plan, the employer or both, issuance of the arbitrator's decision.

(2) Any amounts due before the expiration of the period described in paragraph (c)(1) shall be paid in accordance with the schedule established by the plan sponsor. If a payment is not made when due under the schedule, the payment is overdue and interest shall accrue in accordance with the rules and at the same rate set forth in § 4219.32.

(d) *Overpayments.* If the plan sponsor or an arbitrator determines that payments made in accordance with the schedule of payments established by the plan sponsor have resulted in an overpayment of withdrawal liability, the plan sponsor shall refund the overpayment, with interest, in a lump sum. The plan sponsor shall credit interest on the overpayment from the date of the overpayment to the date on which the overpayment is refunded to the employer at the same rate as the rate for overdue withdrawal liability payments, as established under § 4219.32 or by the plan pursuant to § 4219.33.

§ 4219.32 Interest on overdue, defaulted and overpaid withdrawal liability.

(a) *Interest assessed.* The plan sponsor of a multiemployer plan—

(1) Shall assess interest on overdue withdrawal liability payments from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e); and

(2) In the event of a default, may assess interest on any accelerated portion of the outstanding withdrawal liability from the due date, as defined in paragraph (d) of this section, until the date paid, as defined in paragraph (e).

(b) *Interest rate.* Except as otherwise provided in rules adopted by the plan pursuant to §4219.33, interest under this section shall be charged or credited for each calendar quarter at an annual rate equal to the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of each calendar quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates'').

(c) *Calculation of interest.* The interest rate under paragraph (b) of this section is the nominal rate for any calendar quarter or portion thereof. The amount of interest due the plan for overdue or defaulted withdrawal liability, or due the employer for overpayment, is equal to the overdue, defaulted, or overpaid amount multiplied by:

(1) For each full calendar quarter in the period from the due date (or date of overpayment) to the date paid (or date of refund), one-fourth of the annual rate in effect for that quarter;

(2) For each full calendar month in a partial quarter in that period, one-twelfth of the annual rate in effect for that quarter; and

(3) For each day in a partial month in that period, one-three-hundred-sixtieth of the annual rate in effect for that month.

(d) *Due date.* Except as otherwise provided in rules adopted by the plan, the due date from which interest accrues shall be, for an overdue withdrawal liability payment and for an amount of withdrawal liability in default, the date of the missed payment that gave rise to the delinquency or the default.

(e) *Date paid.* Any payment of withdrawal liability shall be deemed to have been paid on the date on which it is received.

§ 4219.33 Plan rules concerning overdue and defaulted withdrawal liability.

Plans may adopt rules relating to overdue and defaulted withdrawal liability, provided that those rules are consistent with ERISA. These rules may include, but are not limited to, rules for determining the rate of interest to be charged on overdue, defaulted and overpaid withdrawal liability (provided that the rate reflects prevailing market rates for comparable obligations); rules providing reasonable grace periods during which late payments may be made without interest; additional definitions of default which indicate a substantial likelihood that an employer will be unable to pay its withdrawal liability; and rules pertaining to acceleration of the outstanding balance on default. Plan rules adopted under this section shall be reasonable. Plan rules shall operate and be applied uniformly with respect to each employer, except that the rules may take into account the creditworthiness of an employer. Rules which take into account the creditworthiness of an employer shall state with particularity the categories of creditworthiness the plan will use, the specific differences in treatment accorded employers in different categories, and the standards and procedures for assigning an employer to a category.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1400.

SOURCE: 61 FR 34108, July 1, 1996, unless otherwise noted.

§ 4220.1 Purpose and scope.

(a) *General.* This part establishes procedures under which a plan sponsor shall request the PBGC to approve a plan amendment under section 4220 of ERISA. This part applies to all multiemployer plans covered by title IV of ERISA that adopt amendments pursuant to the authorization of sections 4201–4219 of ERISA (except for amendments adopted pursuant to section 4211(c)(5)). (The covered amendments are set forth in paragraph (b) of this section.) The subsequent modification of a plan amendment adopted by authorization of those sections is also covered by this part. This part does not, however, cover a plan amendment that merely repeals a previously adopted amendment, returning the plan to the statutorily prescribed rule.

(b) *Covered amendments.* Amendments made pursuant to the following sections of ERISA are covered by this part:

(1) Section 4203 (b)(1)(B)(ii).
(2) Section 4203(c)(4).
(3) Section 4205(c)(1).
(4) Section 4205(d).
(5) Section 4209(b).
(6) Section 4210(b)(2).
(7) Section 4211(c)(1).
(8) Section 4211(c)(4)(D).
(9) Section 4211(d)(1).
(10) Section 4211(d)(2).
(11) Section 4219(c)(1)(C)(ii)(I).
(12) Section 4219(c)(1)(C)(iii).

(c) *Exception.* Submission of a request for approval under this part is not required for a plan amendment for which the PBGC has published a notice in the FEDERAL REGISTER granting class approval.

§ 4220.2 Definitions.

The following terms are defined in §4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

§ 4220.3 Requests for PBGC approval.

(a) *Filing of request*—(1) *In general.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of ERISA. A request is treated as filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of a plan sponsor, shall sign and submit the request.

(c) *Where to file.* See §4000.4 of this chapter for information on where to file.

(d) *Information.* Each request filed shall contain the following information:

(1) The name of the plan for which the amendment is being submitted, and the name, address and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, that fact must be indicated.

(3) A copy of the amendment as adopted, including its proposed effective date.

(4) A copy of the most recent actuarial valuation of the plan.

(5) A statement containing a certification that notice of the adoption of the amendment has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered by the plan.

(6) Any other information that the plan sponsor believes to be pertinent to its request.

(e) *Supplemental information.* The PBGC may require a plan sponsor to submit any other information that the PBGC determines to be necessary to review a request under this part. The PBGC may suspend the running of the 90-day period pursuant to §4220.4(c), pending the submission of the supplemental information.

(f) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

(Approved by the Office of Management and Budget under control number 1212–0031)

[61 FR 34108, July 1, 1996, as amended at 68 FR 61356, Oct. 28, 2003]

§ 4220.4 PBGC action on requests.

(a) *General.* Upon receipt of a complete request, the PBGC shall notify the plan sponsor in writing of the date of commencement of the 90-day period specified in section 4220 of ERISA. Except as provided in paragraph (c) of this section, the PBGC shall approve or disapprove a plan amendment submitted to it under this part within 90 days after receipt of a complete request for approval. If the PBGC fails to act within the 90-day period, or within that period notifies the plan sponsor that it will not disapprove the amendment, the amendment may be made effective without the approval of the PBGC.

(b) *Decision on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the plan amendment, the decision shall state the reasons for the disapproval. An approval by the PBGC constitutes its finding only with respect to the issue of risk as set forth in section 4220(c) of ERISA, and not with respect to whether the amendment is otherwise properly adopted in accordance with the terms of ERISA and the plan in question.

(c) *Suspension of the 90-day period.* The PBGC may suspend the running of the 90-day period referred to in paragraph (a) of this section if it determines that additional information is required under § 4220.3(e). When it does so, PBGC's request for additional information will advise the plan sponsor that the running of 90-day period has been suspended. The 90-day period will resume running on the date on which the additional information is received by the PBGC, and the PBGC will notify the plan sponsor of that date upon receipt of the information.

PART 4221—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1401.

SOURCE: 61 FR 34109, July 1, 1996, unless otherwise noted.

§ 4221.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish procedures for the arbitration, pursuant to section 4221 of ERISA, of withdrawal liability disputes arising under sections 4201 through 4219 and 4225 of ERISA.

(b) *Scope.* This part applies to arbitration proceedings initiated pursuant to section 4221 of ERISA and this part on or after September 26, 1985. On and after the effective date, any plan rules governing arbitration procedures (other than a plan rule adopting a PBGC-approved arbitration procedure in accordance with § 4221.14) are effective only to the extent that they are consistent with this part and adopted by the arbitrator in a particular proceeding.

§ 4221.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor.

In addition, for purposes of this part:

Arbitrator means an individual or panel of individuals selected according to this part to decide a dispute concerning withdrawal liability.

Employer means an individual, partnership, corporation or other entity against which a plan sponsor has made

a demand for payment of withdrawal liability pursuant to section 4219(b)(1) of ERISA.

Party or *parties* means the employer and the plan sponsor involved in a withdrawal liability dispute.

Withdrawal liability dispute means a dispute described in § 4221.1(a) of this chapter.

§ 4221.3 Initiation of arbitration.

(a) *Time limits—in general.* Arbitration of a withdrawal liability dispute may be initiated within the time limits described in section 4221(a)(1) of ERISA.

(b) *Waiver or extension of time limits.* Arbitration shall be initiated in accordance with this section, notwithstanding any inconsistent provision of any agreement entered into by the parties before the date on which the employer received notice of the plan's assessment of withdrawal liability. The parties may, however, agree at any time to waive or extend the time limits for initiating arbitration.

(c) *Establishment of timeliness of initiation.* A party that unilaterally initiates arbitration is responsible for establishing that the notice of initiation of arbitration was timely received by the other party. If arbitration is initiated by agreement of the parties, the date on which the agreement to arbitrate was executed establishes whether the arbitration was timely initiated.

(d) *Contents of agreement or notice.* If the employer initiates arbitration, it shall include in the notice of initiation a statement that it disputes the plan sponsor's determination of its withdrawal liability and is initiating arbitration. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the notice. If a party other than an employer initiates arbitration, it shall include in the notice a statement that it is initiating arbitration and a brief description of the questions on which arbitration is sought. If arbitration is initiated by agreement, the agreement shall include a brief description of the questions submitted to arbitration. In no case is compliance with formal rules of pleading required.

(e) *Effect of deficient agreement or notice.* If a party fails to object promptly in writing to deficiencies in an initiation agreement or a notice of initiation of arbitration, it waives its right to object.

§ 4221.4 Appointment of the arbitrator.

(a) *Appointment of and acceptance by arbitrator.* The parties shall select the arbitrator within 45 days after the arbitration is initiated, or within such other period as is mutually agreed after the initiation of arbitration, and shall mail to the designated arbitrator a notice of his or her appointment. The notice of appointment shall include a copy of the notice or agreement initiating arbitration, a statement that the arbitration is to be conducted in accordance with this part, and a request for a written acceptance by the arbitrator. The arbitrator's appointment becomes effective upon his or her written acceptance, stating his or her availability to serve and making any disclosures required by paragraph (b) of this section. If the arbitrator does not accept in writing within 15 days after the notice of appointment is mailed or delivered to him or her, he or she is deemed to have declined to act, and the parties shall select a new arbitrator in accordance with paragraph (d) of this section.

(b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 4221.6). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

(c) *Challenge and withdrawal.* After the arbitrator has been selected, a party may request that he or she withdraw from the proceedings at any point

before a final award is rendered on the ground that he or she is unable to render an award impartially. The request for withdrawal shall be served on all other parties and the arbitrator by hand or by certified or registered mail (or by any other method that includes verification or acknowledgment of receipt and meets (if applicable) the requirements of § 4000.14 of this chapter) and shall include a statement of the circumstances that, in the requesting party's view, affect the arbitrator's impartiality and a statement that the requesting party has brought these circumstances to the attention of the arbitrator and the other parties at the earliest practicable point in the proceedings. If the arbitrator determines that the circumstances adduced are likely to affect his or her impartiality and have been presented in a timely fashion, he or she shall withdraw from the proceedings and notify the parties of the reasons for his or her withdrawal. The parties shall then select a new arbitrator in accordance with paragraph (d) of this section.

(d) *Filling vacancies.* If the designated arbitrator declines his or her appointment or, after accepting his or her appointment, is disqualified, resigns, dies, withdraws, or is unable to perform his or her duties at any time before a final award is rendered, the parties shall select another arbitrator to fill the vacancy. The selection shall be made, in accordance with the procedure used in the initial selection, within 20 days after the parties receive notice of the vacancy. The matter shall then be reheard by the newly chosen arbitrator, who may, in his or her discretion, rely on all or any portion of the record already established.

(e) *Failure to select arbitrator.* If the parties fail to select an arbitrator within the time prescribed by this section, either party or both may seek the designation and appointment of an arbitrator in a United States district court pursuant to the provisions of title 9 of the United States Code.

[61 FR 34109, July 1, 1996, as amended at 68 FR 61356, Oct. 28, 2003]

§ 4221.5 Powers and duties of the arbitrator.

(a) *Arbitration hearing.* Except as otherwise provided in this part, the arbitrator shall conduct the arbitration hearing under § 4221.6 in the same manner, and shall possess the same powers, as an arbitrator conducting a proceeding under title 9 of the United States Code.

(1) *Application of the law.* In reaching his or her decision, the arbitrator shall follow applicable law, as embodied in statutes, regulations, court decisions, interpretations of the agencies charged with the enforcement of ERISA, and other pertinent authorities.

(2) *Prehearing discovery.* The arbitrator may allow any party to conduct prehearing discovery by interrogatories, depositions, requests for the production of documents, or other means, upon a showing that the discovery sought is likely to lead to the production of relevant evidence and will not be disproportionately burdensome to the other parties. The arbitrator may impose appropriate sanctions if he or she determines that a party has failed to respond to discovery in good faith or has conducted discovery proceedings in bad faith or for the purpose of harassment. The arbitrator may, at the request of any party or on his or her own motion, require parties to give advance notice of expert or other witnesses that they intend to introduce.

(3) *Admissibility of evidence.* The arbitrator determines the relevance and materiality of the evidence offered during the course of the hearing and is the judge of the admissibility of evidence offered. Conformity to legal rules of evidence is not necessary. To the extent reasonably practicable, all evidence shall be taken in the presence of the arbitrator and the parties. The arbitrator may, however, consider affidavits, transcripts of depositions, and similar documents.

(4) *Production of documents or other evidence.* The arbitrator may subpoena witnesses or documents upon his or her own initiative or upon request by any party after determining that the evidence is likely to be relevant to the dispute.

(b) *Prehearing conference.* If it appears that a prehearing conference will expedite the proceedings, the arbitrator may, at any time before the commencement of the arbitration hearing under § 4221.6, direct the parties to appear at a conference to consider settlement of the case, clarification of issues and stipulation of facts not in dispute, admission of documents to avoid unnecessary proof, limitations on the number of expert or other witnesses, and any other matters that could expedite the disposition of the proceedings.

(c) *Proceeding without hearing.* The arbitrator may render an award without a hearing if the parties agree and file with the arbitrator such evidence as the arbitrator deems necessary to enable him or her to render an award under § 4221.8.

§ 4221.6 Hearing.

(a) *Time and place of hearing established.* Unless the parties agree to proceed without a hearing as provided in § 4221.5(c), the parties and the arbitrator shall, no later than 15 days after the written acceptance by the arbitrator is mailed to the parties, establish a date and place for the hearing. If agreement is not reached within the 15-day period, the arbitrator shall, within 10 additional days, choose a location and set a hearing date. The date set for the hearing may be no later than 50 days after the mailing date of the arbitrator's written acceptance.

(b) *Notice.* After the time and place for the hearing have been established, the arbitrator shall serve a written notice of the hearing on the parties by hand, by certified or registered mail, or by any other method that includes verification or acknowledgment of receipt and meets (if applicable) the requirements of § 4000.14 of this chapter.

(c) *Appearances.* The parties may appear in person or by counsel or other representatives. Any party that, after being duly notified and without good cause shown, fails to appear in person or by representative at a hearing or conference, or fails to file documents in a timely manner, is deemed to have waived all rights with respect thereto and is subject to whatever orders or determinations the arbitrator may make.

(d) *Record and transcript of hearing.* Upon the request of either party, the arbitrator shall arrange for a record of the arbitration hearing to be made by stenographic means or by tape recording. The cost of making the record and the costs of transcription and copying are costs of the arbitration proceedings payable as provided in § 4221.10(b) except that, if only one party requests that a transcript of the record be made, that party shall pay the cost of the transcript.

(e) *Order of hearing.* The arbitrator shall conduct the hearing in accordance with the following rules:

(1) *Opening.* The arbitrator shall open the hearing and place in the record the notice of initiation of arbitration or the initiation agreement. The arbitrator may ask for statements clarifying the issues involved.

(2) *Presentation of claim and response.* The arbitrator shall establish the procedure for presentation of claim and response in such a manner as to afford full and equal opportunity to all parties for the presentation of their cases.

(3) *Witnesses.* All witnesses shall testify under oath or affirmation and are subject to cross-examination by opposing parties. If testimony of an expert witness is offered by a party without prior notice to the other party, the arbitrator shall grant the other party a reasonable time to prepare for cross-examination and to produce expert witnesses on its own behalf. The arbitrator may on his or her own initiative call expert witnesses on any issue raised in the arbitration. The cost of any expert called by the arbitrator is a cost of the proceedings payable as provided in § 4221.10(b).

(f) *Continuance of hearing.* The arbitrator may, for good cause shown, grant a continuance for a reasonable period. When granting a continuance, the arbitrator shall set a date for resumption of the hearing.

(g) *Filing of briefs.* Each party may file a written statement of facts and argument supporting the party's position. The parties' briefs are due no later than 30 days after the close of the hearing. Within 15 days thereafter,

each party may file a reply brief concerning matters contained in the opposing brief. The arbitrator may establish a briefing schedule and may reduce or extend these time limits. Each party shall deliver copies of all of its briefs to the arbitrator and to all opposing parties.

[61 FR 34109, July 1, 1996, as amended at 68 FR 61356, Oct. 28, 2003]

§ 4221.7 Reopening of proceedings.

(a) *Grounds for reopening.* At any time before a final award is rendered, the proceedings may be reopened, on the motion of the arbitrator or at the request of any party, for the purpose of taking further evidence or rehearing or rearguing any matter, if the arbitrator determines that—

(1) The reopening is likely to result in new information that will have a material effect on the outcome of the arbitration;

(2) Good cause exists for the failure of the party that requested reopening to present such information at the hearing; and

(3) The delay caused by the reopening will not be unfairly injurious to any party.

(b) *Comments on and notice of reopening.* The arbitrator shall allow all affected parties the opportunity to comment on any motion or request to reopen the proceedings. If he or she determines that the proceedings should be reopened, he or she shall give all parties written notice of the reasons for reopening and of the schedule of the reopened proceedings.

§ 4221.8 Award.

(a) *Form.* The arbitrator shall render a written award that—

(1) States the basis for the award, including such findings of fact and conclusions of law (which need not be explicitly designated as such) as are necessary to resolve the dispute;

(2) Adjusts (or provides a method for adjusting) the amount or schedule of payments to be made after the award to reflect overpayments or underpayments made before the award was rendered or requires the plan sponsor to refund overpayments in accordance with § 4219.31(d); and

(3) Provides for an allocation of costs in accordance with § 4221.10.

(b) *Time of award.* Except as provided in paragraphs (c), (d), and (e) of this section, the arbitrator shall render the award no later than 30 days after the proceedings close. The award is rendered when filed or served on the parties as provided in § 4221.13. The award is final when the period for seeking modification or reconsideration in accordance with § 4221.9(a) has expired or the arbitrator has rendered a revised award in accordance with § 4221.9(c).

(c) *Reopened proceedings.* If the proceedings are reopened in accordance with § 4221.7 after the close of the hearing, the arbitrator shall render the award no later than 30 days after the date on which the reopened proceedings are closed.

(d) *Absence of hearing.* If the parties have chosen to proceed without a hearing, the arbitrator shall render the award no later than 30 days after the date on which final statements and proofs are filed with him or her.

(e) *Agreement for extension of time.* Notwithstanding paragraphs (b), (c), and (d), the parties may agree to an extension of time for the arbitrator's award in light of the particular facts and circumstances of their dispute.

(f) *Close of proceedings.* For purposes of paragraphs (b) and (c) of this section, the proceedings are closed on the date on which the last brief or reply brief is due or, if no briefs are to be filed, on the date on which the hearing or rehearing closes.

(g) *Publication of award.* After a final award has been rendered, the plan sponsor shall make copies available upon request to the PBGC and to all companies that contribute to the plan. The plan sponsor may impose reasonable charges for copying and postage.

§ 4221.9 Reconsideration of award.

(a) *Motion for reconsideration and objections.* A party may seek modification or reconsideration of the arbitrator's award by filing a written motion with the arbitrator and all opposing parties within 20 days after the award is rendered. Opposing parties may file objections to modification or reconsideration within 10 days after the motion is filed. The filing of a written motion for

modification or reconsideration suspends the 30-day period under section 4221(b)(2) of ERISA for requesting court review of the award. The 30-day statutory period again begins to run when the arbitrator denies the motion pursuant to paragraph (c) of this section or renders a revised award.

(b) *Grounds for modification or reconsideration.* The arbitrator may grant a motion for modification or reconsideration of the award only if—

(1) There is a numerical error or a mistake in the description of any person, thing, or property referred to in the award; or

(2) The arbitrator has rendered an award upon a matter not submitted to the arbitrator and the matter affects the merits of the decision; or

(3) The award is imperfect in a matter of form not affecting the merits of the dispute.

(c) *Decision of arbitrator.* The arbitrator shall grant or deny the motion for modification or reconsideration, and may render an opinion to support his or her decision within 20 days after the motion is filed with the arbitrator, or within 30 days after the motion is filed if an objection is also filed.

§ 4221.10 Costs.

The costs of arbitration under this part shall be borne by the parties as follows:

(a) *Witnesses.* Each party to the dispute shall bear the costs of its own witnesses.

(b) *Other costs of arbitration.* Except as provided in § 4221.6(d) with respect to a transcript of the hearing, the parties shall bear the other costs of the arbitration proceedings equally unless the arbitrator determines otherwise. The parties may, however, agree to a different allocation of costs if their agreement is entered into after the employer has received notice of the plan's assessment of withdrawal liability.

(c) *Attorneys' fees.* The arbitrator may require a party that initiates or contests an arbitration in bad faith or engages in dilatory, harassing, or other improper conduct during the course of the arbitration to pay reasonable attorneys' fees of other parties.

§ 4221.11 Waiver of rules.

Any party that fails to object in writing in a timely manner to any deviation from any provision of this part is deemed to have waived the right to interpose that objection thereafter.

§ 4221.12 Calculation of periods of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[68 FR 61356, Oct. 28, 2003]

§ 4221.13 Filing and issuance rules.

(a) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

[68 FR 61356, Oct. 28, 2003]

§ 4221.14 PBGC-approved arbitration procedures.

(a) *Use of PBGC-approved arbitration procedures.* In lieu of the procedures prescribed by this part, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with paragraph (c) of this section. A plan may by plan amendment require the use of a PBGC-approved procedure for all arbitrations of withdrawal liability disputes, or the parties may agree to the use of a PBGC-approved procedure in a particular case.

(b) *Scope of alternative procedures.* If an arbitration is conducted in accordance with a PBGC-approved arbitration procedure, the alternative procedure

shall govern all aspects of the arbitration, with the following exceptions:

(1) The time limits for the initiation of arbitration may not differ from those provided for by §4221.3.

(2) The arbitrator shall be selected after the initiation of the arbitration.

(3) The arbitrator shall give the parties opportunity for prehearing discovery substantially equivalent to that provided by §4221.5(a)(2).

(4) The award shall be made available to the public to at least the extent provided by §4221.8(g).

(5) The costs of arbitration shall be allocated in accordance with §4221.10.

(c) *Procedure for approval of alternative procedures.* The PBGC may approve arbitration procedures on its own initiative by publishing an appropriate notice in the FEDERAL REGISTER. The sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application shall include:

(1) A copy of the procedures for which approval is sought;

(2) A description of the history, structure and membership of the organization that sponsors the procedures; and

(3) A discussion of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

(d) *Criteria for approval of alternative procedures.* The PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. The PBGC may request comments on the application by publishing an appropriate notice in the FEDERAL REGISTER. Notice of the PBGC's decision on the application shall be published in the FEDERAL REGISTER. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a FEDERAL REGISTER notice.

[61 FR 34109, July 1, 1996, as amended at 68 FR 61356, Oct. 28, 2003]

SUBCHAPTER J—INSOLVENCY, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS

PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

Subpart A—General Provisions

Subpart B—Additional Rules for Facilitated Mergers

AUTHORITY: 29 U.S.C. 1302(b)(3)

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Subpart A—General Provisions

§ 4231.1 Purpose and scope.

(a) *General*—(1) *Purpose.* The purpose of this part is to prescribe notice requirements under section 4231 of ERISA for mergers and transfers of assets or liabilities among multiemployer pension plans. This part also interprets the other requirements of section 4231 of ERISA and prescribes special rules for de minimis mergers and transfers.

(2) *Scope.* This part applies to mergers and transfers among multiemployer plans where all of the plans immediately before and immediately after the transaction are multiemployer plans covered by title IV of ERISA.

(b) *Additional requirements.* Subpart B of this part sets forth the additional requirements for and procedures specific to a request for a facilitated merger.

§ 4231.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: *annuity*, *Code*, *EIN*, *ERISA*, *fair market value*, *guaranteed benefit*, *IRS*, *multiemployer plan*, *normal retirement age*, *PBGC*, *plan*, *plan sponsor*, *plan year*, and *PN*. In addition, the following terms are defined for purposes of this part:

Actuarial valuation means a valuation of assets and liabilities performed by an enrolled actuary using the actuarial assumptions used for purposes of determining the charges and credits to the funding standard account under section 304 of ERISA and section 431 of the Code.

Advocate means the Participant and Plan Sponsor Advocate under section 4004 of ERISA.

Critical and declining status has the same meaning as the term has under section 305(b)(6) of ERISA and section 432(b)(6) of the Code.

Critical status has the same meaning as the term has under section 305(b)(2) of ERISA and section 432(b)(2) of the Code, and includes ''critical and declining status'' as defined in section 305(b)(6) of ERISA and section 432(b)(6) of the Code.

De minimis merger is defined in § 4231.7(b).

De minimis transfer is defined in § 4231.7(c).

Effective date means, with respect to a merger or transfer, the earlier of—

(1) The date on which one plan assumes liability for benefits accrued under another plan involved in the transaction; or

(2) The date on which one plan transfers assets to another plan involved in the transaction.

Facilitated merger means a merger of two or more multiemployer plans facilitated by PBGC under section 4231(e) of ERISA, including a merger that is facilitated with financial assistance under section 4231(e)(2) of ERISA.

Fair market value of assets has the same meaning as the term has for minimum funding purposes under section 304 of ERISA and section 431 of the Code.

Financial assistance means periodic or lump sum financial assistance payments from PBGC under section 4261 of ERISA.

Financial assistance merger means a merger facilitated by PBGC for which PBGC provides financial assistance (within the meaning of section 4261 of ERISA) under section 4231(e)(2) of ERISA.

Insolvent has the same meaning as insolvent under section 4245(b) of ERISA.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more plans into a single plan. For example, a consolidation of two plans into a new plan is a merger.

Significantly affected plan means a plan that—

(1) Transfers assets that equal or exceed 15 percent of its assets before the transfer,

(2) Receives a transfer of unfunded accrued benefits that equal or exceed 15 percent of its assets before the transfer,

(3) Is created by a spinoff from another plan, or

(4) Engages in a merger or transfer (other than a de minimis merger or transfer) either—

(i) After such plan has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, or

(ii) With another plan that has so terminated.

Transfer and *transfer of assets or liabilities* mean a diminution of assets or liabilities with respect to one plan and the acquisition of these assets or the assumption of these liabilities by another plan or plans (including a plan that did not exist prior to the transfer). However, the shifting of assets or liabilities pursuant to a written reciprocity agreement between two multiemployer plans in which one plan assumes liabilities of another plan is not a transfer of assets or liabilities. In addition, the shifting of assets between several funding media used for a single plan (such as between trusts, between annuity contracts, or between trusts and annuity contracts) is not a transfer of assets or liabilities.

Unfunded accrued benefits means the excess of the present value of a plan's accrued benefits over the plan's fair market value of assets, determined on the basis of the actuarial valuation required under § 4231.5.

§ 4231.3 Requirements for mergers and transfers.

(a) *General requirements.* A plan sponsor may not cause a multiemployer plan to merge with one or more multiemployer plans or transfer assets or liabilities to or from another multiemployer plan unless the merger or transfer satisfies all of the following requirements:

(1) No participant's or beneficiary's accrued benefit is lower immediately after the effective date of the merger or transfer than the benefit immediately before that date (except as provided under § 4231.4(b)).

(2) Actuarial valuations of the plans that existed before the merger or transfer have been performed in accordance with § 4231.5.

(3) For each plan that exists after the transaction, an enrolled actuary—

(i) Determines that the plan meets the applicable plan solvency requirement set forth in § 4231.6; or

(ii) Otherwise demonstrates that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA.

(4) The plan sponsor notifies PBGC of the merger or transfer in accordance with §§ 4231.8 and 4231.9.

(b) *Compliance determination.* If a plan sponsor requests a determination that a merger or transfer that may otherwise be prohibited by section 406(a) or (b)(2) of ERISA satisfies the requirements of section 4231 of ERISA, the plan sponsor must submit the information described in § 4231.10 in addition to

the information required by §4231.9. PBGC may request additional information if necessary to determine whether a merger or transfer complies with the requirements of section 4231 and subpart A of this part. Plan sponsors are not required to request a compliance determination. Under section 4231(c) of ERISA, if PBGC determines that the merger or transfer complies with section 4231 of ERISA and subpart A of this part, the merger or transfer will not constitute a violation of the prohibited transaction provisions of section 406(a) and (b)(2) of ERISA.

(c) *Certified change in bargaining representative.* Transfers of assets and liabilities pursuant to a change of collective bargaining representative certified under the Labor-Management Relations Act of 1947 or the Railway Labor Act, as amended, are governed by section 4235 of ERISA. Plan sponsors involved in such transfers are not required to comply with subpart A of this part. However, under section 4235(f)(1) of ERISA, the plan sponsors of the plans involved in the transfer may agree to a transfer that complies with sections 4231 and 4234 of ERISA. Plan sponsors that elect to comply with sections 4231 and 4234 of ERISA must comply with the rules in subpart A of this part.

(d) *Informal consultation.* A plan sponsor may contact PBGC on an informal basis to discuss a potential merger or transfer.

§4231.4 Preservation of accrued benefits.

(a) *General.* Section 4231(b)(2) of ERISA and §4231.3(a)(1) require that no participant's or beneficiary's accrued benefit may be lower immediately after the effective date of the merger or transfer than the benefit immediately before the merger or transfer. Except as provided in paragraph (b) of this section, a plan that assumes an obligation to pay benefits for a group of participants satisfies this requirement only if the plan contains a provision preserving all accrued benefits. The determination of what is an accrued benefit must be made in accordance with section 411 of the Code and the regulations thereunder.

(b) *Waiver.* PBGC may waive the requirement of paragraph (a) of this section, §4231.3(a)(1), and section 4231(b)(2) of ERISA to the extent the accrued benefit is suspended under section 305(e)(9) of ERISA contemporaneously with the merger or transfer. If waived, the plan provision described under paragraph (a) of this section may exclude accrued benefits only to the extent those benefits are suspended under section 305(e)(9) of ERISA contemporaneously with the merger or transfer.

§4231.5 Valuation requirement.

The actuarial valuation requirement under section 4231(b)(4) of ERISA and §4231.3(a)(2) is satisfied if an actuarial valuation has been performed for the plan based on the plan's assets and liabilities as of a date not earlier than the first day of the last plan year ending before the proposed effective date of the transaction. If the actuarial valuation required under this section is not complete when the notice of merger or transfer is filed, the plan sponsor may provide the most recent actuarial valuation for the plan with the notice, and the actuarial valuation required under this section when complete. For a significantly affected plan involved in a transfer (other than a plan that is a significantly affected plan only because the transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA), the valuation must separately identify assets, contributions, and liabilities being transferred and must be based on the actuarial assumptions and methods that are expected to be used for the plan for the first plan year beginning after the transfer.

§4231.6 Plan solvency tests.

(a) *General.* For a plan that is not a significantly affected plan, the plan solvency requirement of section 4231(b)(3) of ERISA and §4231.3(a)(3)(i) is satisfied if—

(1) The plan's expected fair market value of assets immediately after the merger or transfer equals or exceeds five times the benefit payments for the last plan year ending before the proposed effective date of the merger or transfer; or

(2) In each of the first five plan years beginning on or after the proposed effective date of the merger or transfer, the plan's expected fair market value of assets as of the beginning of the plan year plus expected contributions and investment earnings equal or exceed expected expenses and benefit payments for the plan year.

(b) *Significantly affected plans.* The plan solvency requirement of section 4231(b)(3) of ERISA and § 4231.3(a)(3)(i) is satisfied for a significantly affected plan if all of the following requirements are met:

(1) Expected contributions equal or exceed the estimated amount necessary to satisfy the minimum funding requirement of section 431 of the Code for the five plan years beginning on or after the proposed effective date of the transaction.

(2) The plan's expected fair market value of assets immediately after the transaction equals or exceeds the total amount of expected benefit payments for the first five plan years beginning on or after the proposed effective date of the transaction.

(3) Expected contributions for the first plan year beginning on or after the proposed effective date of the transaction equal or exceed expected benefit payments for that plan year.

(4) Expected contributions for the amortization period equal or exceed the unfunded accrued benefits plus expected normal costs for the period. The enrolled actuary may select as the amortization period either—

(i) The first 25 plan years beginning on or after the proposed effective date of the transaction, or

(ii) The amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 431(b)(5) of the Code.

(c) *Rules for determinations.* In determining whether a transaction satisfies the plan solvency requirements set forth in this section, the following rules apply:

(1) Expected contributions after a merger or transfer must be determined by assuming that contributions for each plan year will equal contributions for the last full plan year ending before the date on which the notice of merger or transfer is filed with PBGC. If expected contributions include withdrawal liability payments, such payments must be shown separately. If the withdrawal liability payments are not the assessed amounts, or are not in accordance with the schedule of payments, or include future assessments, include the basis for such differences, with supporting data, calculations, assumptions, and methods. In addition, contributions must be adjusted to reflect—

(i) The merger or transfer;

(ii) Any change in the rate of employer contributions that has been negotiated (whether or not in effect); and

(iii) Any trend of changing contribution base units over the preceding five plan years or other period of time that can be demonstrated to be more appropriate.

(2) Expected normal costs must be determined under the funding method and assumptions expected to be used by the plan actuary for purposes of determining the minimum funding requirement under section 431 of the Code. If an aggregate funding method is used for the plan, normal costs must be determined under the entry age normal method.

(3) Expected benefit payments must be determined by assuming that current benefits remain in effect and that all scheduled increases in benefits occur.

(4) The plan's expected fair market value of assets immediately after the merger or transfer must be based on the most recent data available immediately before the date on which the notice is filed.

(5) Expected investment earnings must be determined using the same interest assumption to be used for determining the minimum funding requirement under section 431 of the Code.

(6) Expected expenses must be determined using expenses in the last plan year ending before the notice is filed, adjusted to reflect any anticipated changes.

(7) Expected plan assets for a plan year must be determined by adjusting the most current data on the plan's fair market value of assets to reflect expected contributions, investment

earnings, benefit payments and expenses for each plan year between the date of the most current data and the beginning of the plan year for which expected assets are being determined.

§ 4231.7 De minimis mergers and transfers.

(a) *Special plan solvency rule.* The determination of whether a de minimis merger or transfer satisfies the plan solvency requirement in § 4231.6(a) may be made without regard to any other de minimis mergers or transfers that have occurred since the most recent actuarial valuation.

(b) *De minimis merger defined.* A merger is de minimis if the present value of accrued benefits (whether or not vested) of one plan is less than 3 percent of the other plan's fair market value of assets.

(c) *De minimis transfer defined.* A transfer of assets or liabilities is de minimis if—

(1) The fair market value of assets transferred, if any, is less than 3 percent of the fair market value of assets of all of the transferor plan's assets;

(2) The present value of the accrued benefits transferred (whether or not vested) is less than 3 percent of the fair market value of assets of all of the transferee plan's assets; and

(3) The transferee plan is not a plan that has terminated under section 4041A(a)(2) of ERISA.

(d) *Value of assets and benefits.* For purposes of paragraphs (b) and (c) of this section, the value of plan assets and accrued benefits may be determined as of any date prior to the proposed effective date of the transaction, but not earlier than the date of the most recent actuarial valuation.

(e) *Aggregation required.* In determining whether a merger or transfer is de minimis, the assets and accrued benefits transferred in previous de minimis mergers and transfers within the same plan year must be aggregated as described in paragraphs (e)(1) and (2) of this section. For the purposes of those paragraphs, the value of plan assets may be determined as of the date during the plan year on which the total value of the plan's assets is the highest.

(1) A merger is not de minimis if the total present value of accrued benefits merged into a plan, when aggregated with all prior de minimis mergers of and transfers to that plan effective within the same plan year, equals or exceeds 3 percent of the value of the plan's assets.

(2) A transfer is not de minimis if, when aggregated with all previous de minimis mergers and transfers effective within the same plan year—

(i) The value of all assets transferred from a plan equals or exceeds 3 percent of the value of the plan's assets; or

(ii) The present value of all accrued benefits transferred to a plan equals or exceeds 3 percent of the plan's assets.

§ 4231.8 Filing requirements; timing and method of filing.

(a) *When to file.* Except as provided in paragraph (g) of this section, a notice of a proposed merger or transfer, and, if applicable, a request for a compliance determination or facilitated merger (which may be filed separately or combined), must be filed not less than the following number of days before the proposed effective date of the transaction—

(1) 270 days in the case of a facilitated merger under § 4231.12;

(2) 120 days in the case of a merger (other than a facilitated merger) for which a compliance determination under § 4231.10 is requested, or a transfer; or

(3) 45 days in the case of a merger for which a compliance determination under § 4231.10 is not requested.

(b) *Method of filing.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part.

(c) *Computation of time.* PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

(d) *Who must file.* The plan sponsors of all plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsors, must jointly file the notice required by subpart A of this part, and, if applicable, a request for a facilitated merger under § 4231.12.

(e) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(f) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date a submission under this part was filed with PBGC. For purposes of paragraph (a) of this section, the notice, and, if applicable, a request for a compliance determination or facilitated merger, is not considered filed until all of the information required under this part has been submitted.

(g) *Waiver of timing of notice.* PBGC may waive the timing requirements of paragraph (a) of this section and section 4231(b)(1) of ERISA if—

(1) A plan sponsor demonstrates to the satisfaction of PBGC that failure to complete the merger or transfer in less than the applicable notice period set forth in paragraph (a) of this section will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) PBGC completes its review of the transaction.

§ 4231.9 Notice of merger or transfer.

Each notice of proposed merger or transfer required under section 4231(b)(1) of ERISA and this subpart must contain the following information:

(a) For each plan involved in the merger or transfer—

(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; and

(3) The plan sponsor's EIN and the plan's PN and, if different, the EIN or PN last filed with PBGC. If no EIN or PN has been assigned, the notice must so indicate.

(b) Whether the transaction being reported is a merger or transfer, whether it involves any plan that has terminated under section 4041A(a)(2) of ERISA, whether any significantly affected plan is involved in the transaction (and, if so, identifying each such plan), and whether it is a de minimis transaction as defined in § 4231.7 (and, if so, including an enrolled actuary's certification to that effect).

(c) The proposed effective date of the transaction.

(d) Except as provided under § 4231.4(b), a copy of each plan provision stating that no participant's or beneficiary's accrued benefit will be lower immediately after the effective date of the merger or transfer than the benefit immediately before that date.

(e) For each plan that exists after the transaction, one of the following statements, certified by an enrolled actuary:

(1) A statement that the plan satisfies the applicable plan solvency test set forth in § 4231.6, indicating which is the applicable test, and including the supporting data, calculations, assumptions, and methods.

(2) A statement of the basis on which the actuary has determined under § 4231.3(a)(3)(ii) that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including the supporting data, calculations, assumptions, and methods.

(f) For each plan that exists before a transaction (unless the transaction is de minimis and does not involve either a request for financial assistance, or any plan that has terminated under section 4041A(a)(2) of ERISA), a copy of the most recent actuarial valuation report that satisfies the requirements of § 4231.5.

(g) For each significantly affected plan that exists after the transaction, the following information used in making the plan solvency determination under § 4231.6(b):

(1) The present value of the accrued benefits and plan's fair market value of assets under the valuation required by § 4231.5, allocable to the plan after the transaction.

(2) The fair market value of assets in the plan after the transaction (determined in accordance with § 4231.6(c)(4)).

(3) The expected benefit payments for the plan for the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(3)).

(4) The contribution rates in effect for the plan for the first plan year beginning on or after the proposed effective date of the transaction.

(5) The expected contributions for the plan for the first plan year beginning on or after the proposed effective date of the transaction (determined in accordance with § 4231.6(c)(1)).

§ 4231.10 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. If the plan sponsor(s) requests a compliance determination, the request must be filed with the notice of merger or transfer under § 4231.3(a)(4), and must contain the information described in paragraph (c) of this section, as applicable.

(b) *Single request permitted for all de minimis transactions.* A plan sponsor may submit a single request for a compliance determination covering all de minimis mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each de minimis merger or transfer separately, in accordance with §§ 4231.8 and 4231.9. The single request for a compliance determination may be filed concurrently with any one of the notices of a de minimis merger or transfer.

(c) *Contents of request.* A request for a compliance determination concerning a merger or transfer that is not de minimis must contain—

(1) A copy of the merger or transfer agreement; and

(2) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.3(a)(4).

§ 4231.11 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be performed by an enrolled actuary based on methods and assumptions each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(c) *Updated calculations.* PBGC may require updated calculations and representations based on the actual effective date of a merger or transfer if that date is more than one year after the notice is filed, based on revised actuarial assumptions, or based on other good cause.

Subpart B—Additional Rules for Facilitated Mergers

§ 4231.12 Request for facilitated merger.

(a) *General.* (1) The plan sponsors of the plans involved in a proposed merger may request that PBGC facilitate the merger. Facilitation may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies. Facilitation may also include financial assistance to the merged plan. PBGC has discretion under section 4231(e) of ERISA to take such actions as it deems appropriate to facilitate the merger of two or more multiemployer plans if it determines, after consultation with the Advocate, that the proposed merger is in the interests of the participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the proposed merger. For a facilitated merger, including a financial assistance merger, the requirements of section 4231(b) of ERISA and subpart A of this part must be satisfied in addition to the requirements of section 4231(e) of ERISA

and this subpart. The procedures set forth in this subpart represent the exclusive means by which PBGC will approve a request for a facilitated merger under section 4231(e) of ERISA.

(2) *Financial assistance.* Subject to the requirements in section 4231(e) of ERISA and this subpart, in the case of a request for a financial assistance merger, PBGC may in its discretion provide financial assistance (within the meaning of section 4261 of ERISA). Such financial assistance will be with respect to the guaranteed benefits payable under the critical and declining status plan(s) involved in the facilitated merger.

(b) *Information requirements.* (1) A request for a facilitated merger, including a request for a financial assistance merger, must be filed with the notice of merger under § 4231.3(a)(4), and must contain the information described in § 4231.10, and a detailed narrative description with supporting documentation demonstrating that the proposed merger is in the interests of participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. If a financial assistance merger is requested, the narrative description and supporting documentation may consider the effect of financial assistance in making these demonstrations.

(2) If a financial assistance merger is requested, the request must contain the information required in §§ 4231.13 through 4231.16 in addition to the information required in paragraph (b)(1) of this section.

(3) PBGC may require the plan sponsors to submit additional information to determine whether the requirements of section 4231(e) of ERISA are met or to enable it to facilitate the merger.

(c) *Duty to amend and supplement.* During any time in which a request for a facilitated merger, including a request for a financial assistance merger, is pending final action by PBGC, the plan sponsors must promptly notify PBGC in writing of any material fact or representation contained in or relating to the request, or in any supporting documents, that is no longer accurate or was omitted.

§ 4231.13 Plan information for financial assistance merger.

A request for a financial assistance merger must include the following information for each plan involved in the merger:

(a) The most recent trust agreement, including all amendments adopted since the last restatement.

(b) The most recent plan document, including all amendments adopted since the last restatement.

(c) The most recent summary plan description (SPD), and all summaries of material modification issued since the most recent SPD.

(d) If applicable, the most recent rehabilitation plan (or funding improvement plan), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan (or funding improvement plan) for the most recent plan year available.

(e) A copy of the plan's most recent IRS determination letter.

(f) A copy of the plan's most recent Form 5500 (Annual Report Form) and all schedules and attachments (including the audited financial statement).

(g) A current listing of employers who have an obligation to contribute to the plan, and the approximate number of participants for whom each employer is currently making contributions.

(h) A schedule of withdrawal liability payments collected in each of the most recent five plan years.

(i) If applicable, a copy of the plan sponsor's application for suspension of benefits under section 305(e)(9)(G) of ERISA (including all attachments and exhibits).

§ 4231.14 Description of financial assistance merger.

A request for a financial assistance merger must include the following information about the proposed financial assistance merger:

(a) A detailed description of the proposed financial assistance merger, including any larger integrated transaction of which the merger is a part (including, but not limited to, an application for suspension of benefits under section 305(e)(9)(G) of ERISA).

(b) A narrative description of the events that led to the plan sponsors' decision to submit a request for a financial assistance merger.

(c) A narrative description of significant risks and assumptions relating to the proposed financial assistance merger and the projections provided in support of the request.

(d) A detailed description of the estimated total amount of financial assistance the plan sponsors request for each year, including the supporting data, calculations, assumptions, and a description of the methodology used to determine the estimated amounts.

§ 4231.15 Actuarial and financial information for financial assistance merger.

A request for a financial assistance merger must include the following actuarial and financial information for the plans involved in the merger:

(a) A copy of the actuarial valuation performed for each of the two plan years before the most recent actuarial valuation filed in accordance with § 4231.9(f).

(b) If applicable, a copy of the plan actuary's most recent annual actuarial certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(c) A detailed statement certified by an enrolled actuary that the merger is necessary for one or more of the plans involved to avoid or postpone insolvency, including the basis for the conclusion, supporting data, calculations, assumptions, and a description of the methodology. This statement must demonstrate for each critical and declining status plan involved in the merger that the date the plan projects to become insolvent (without reflecting the merger) is earlier than the date the merged plan projects to become insolvent (the merged plan may reflect the proposed financial assistance). Include as an exhibit annual cash flow projections for each critical and declining status plan involved in the merger through the date the plan projects to become insolvent (using an open group valuation and without reflecting the merger). Annual cash flow projections must reflect the following information:

(1) Fair market value of assets as of the beginning of the year.

(2) Contributions and withdrawal liability payments.

(3) Benefit payments organized by participant type (*e.g.*, active, retiree, terminated vested).

(4) Administrative expenses.

(5) Fair market value of assets as of the end of the year.

(d) For each critical and declining status plan involved in the merger, a long-term projection (at least 50 to 90 years) of benefit disbursements by participant type (*e.g.*, active, retiree, terminated vested) (without reflecting the merger) reflecting reduced benefit disbursements at the PBGC-guarantee level (which may be estimated) beginning with the proposed effective date of the merger (using a closed group valuation and no accruals after the proposed effective date of the merger). Include the supporting data, calculations, assumptions, and, if applicable, a description of estimates used for this projection.

(e) A detailed statement certified by an enrolled actuary that financial assistance is necessary for the merged plan to become or remain solvent, including the basis for the conclusion, supporting data, calculations, assumptions, and a description of the methodology. Include as an exhibit annual cash flow projections for the merged plan with the proposed financial assistance (based on the actuarial assumptions and methods that will be used under the merged plan). Annual cash flow projections must reflect the information listed in paragraphs (c)(1) through (5) of this section. In addition, include as an exhibit a statement certified by an enrolled actuary of whether the merged plan would be in critical status for purposes of paragraph (e)(1) or (2) of this section, including the basis for the conclusion.

(1) If the merged plan would be in critical status immediately following

the merger without the proposed financial assistance (as reasonably determined by the enrolled actuary or as set forth in this paragraph), the enrolled actuary's certified statement must demonstrate that the merged plan will avoid insolvency under section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder (excluding stochastic projections) with the proposed financial assistance. The enrolled actuary may determine whether the merged plan would be in critical status based on the combined data and projections underlying the status certifications of each of the plans for the plan year immediately preceding the merger, including any selected updates in the data based on the experience of the plans in the immediately preceding plan year (reasonable adjustments are permitted but not required).

(2) If the merged plan would not be in critical status immediately following the merger without the proposed financial assistance (as reasonably determined by the enrolled actuary or as set forth in paragraph (e)(1) of this section), the enrolled actuary's certified statement must demonstrate that the merged plan is not projected to become insolvent during the 20 plan years beginning after the proposed effective date of the merger with the proposed financial assistance (using the methodologies set forth under section 305(b)(3)(B)(iv) of ERISA and the regulations thereunder). If such a demonstration is possible without the proposed financial assistance, or if the amount of financial assistance requested exceeds the amount needed to satisfy this demonstration, the enrolled actuary's certified statement must demonstrate that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent. The demonstration that financial assistance is necessary to mitigate the adverse effects of the merger on the merged plan's ability to remain solvent may be based on stress testing over a long-term period (and may reflect reasonable future adverse experience), using a reasonable method in accordance with generally accepted actuarial standards.

(f) If applicable, a copy of the plan actuary's certification under section 305(e)(9)(C)(i) of ERISA.

(g) The rules in §4231.6(c) apply to the solvency projections described in paragraphs (c) and (e) of this section, unless section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder apply and specify otherwise.

§4231.16 Participant census data for financial assistance merger.

A request for a financial assistance merger must include a copy of the census data used for the projections described in §4231.15(c) through (e), including:

(a) Participant type (retiree, beneficiary, disabled, terminated vested, active, alternate payee).

(b) Gender.

(c) Date of birth.

(d) Credited service for guarantee calculation (*i.e.*, number of years of participation).

(e) Vested accrued monthly benefit.

(f) Monthly benefit guaranteed by PBGC.

(g) Benefit commencement date (for participants in pay status and others for which the reported benefit will not be payable at normal retirement age).

(h) For each participant in pay status—

(1) Form of payment, and

(2) Data relevant to the form of payment, including:

(i) For a joint-and-survivor benefit, the beneficiary's benefit amount and the beneficiary's date of birth;

(ii) For a Social Security level income benefit, the date of any change in the benefit amount, and the benefit amount after such change;

(iii) For a 5-year certain or 10-year certain benefit (or similar benefit), the relevant defined period; or

(iv) For a form of payment not otherwise described in this section, the data necessary for the valuation of the form of payment.

(i) If an actuarial increase for postponed retirement applies, or if the form of annuity is a Social Security level income benefit, the monthly vested benefit payable at normal retirement age in normal form of annuity.

§ 4231.17 PBGC action on a request for facilitated merger.

(a) *General.* PBGC may approve or deny a request for a facilitated merger, including a request for a financial assistance merger, at its discretion if the requirements of section 4231 of ERISA are satisfied. PBGC will notify the plan sponsor(s) in writing of its decision on a request. If PBGC denies the request, PBGC's written decision will state the reason(s) for the denial. If PBGC approves a request for a financial assistance merger, PBGC will provide a financial assistance agreement detailing the total amount and terms of the financial assistance as soon as practicable after notifying the plan sponsor(s) in writing of its approval.

(b) *Final agency action.* PBGC's decision to approve or deny a request for a facilitated merger, including a request for a financial assistance merger, is a final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 4231.18 Jurisdiction over financial assistance merger.

(a) *General.* PBGC will retain jurisdiction over the merged plan resulting from a financial assistance merger to carry out the purposes, terms, and conditions of the financial assistance merger, the financial assistance agreement, sections 4231 and 4261 of ERISA, and the regulations thereunder.

(b) *Financial assistance agreement.* PBGC may, upon providing notice to the plan sponsor, make changes to the financial assistance agreement in response to changed circumstances consistent with sections 4231 and 4261 of ERISA and the regulations thereunder.

PART 4233—PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1413.

SOURCE: 80 FR 35229, June 19, 2015, unless otherwise noted.

§ 4233.1 Purpose and scope.

The purpose of this part is to prescribe rules governing applications for partition under section 4233 of ERISA, and related notice requirements.

§ 4233.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor. In addition, the following terms are defined for purposes of this part:

Advocate means the Participant and Plan Sponsor Advocate under section 4004 of ERISA.

Application for partition means a plan sponsor's application for partition under section 4233 of ERISA and this part.

Application for a suspension of benefits means a plan sponsor's application for a suspension of benefits to the Secretary of the Treasury (Treasury) under section 305(e)(9)(G) of ERISA.

Completed application means an application for partition for which PBGC has made a determination under § 4233.10 that the application contains all required information and satisfies the requirements described in §§ 4233.4 through 4233.9.

Effective date of partition means the date upon which a partition is effective and which is set forth in a partition order.

Financial assistance means financial assistance from PBGC under section 4261 of ERISA.

Insolvent has the same meaning as insolvent under section 4245(b) of ERISA.

Interested party means, with respect to a plan—

(1) Each participant in the plan;

(2) Each beneficiary of a deceased participant;

(3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;

(4) Each employer that has an obligation to contribute under the plan; and

(5) Each employee organization that currently has a collective bargaining agreement pursuant to which the plan is maintained.

Original plan means an eligible multiemployer plan under 4233(b) of ERISA that is partitioned upon the issuance of a partition order under section 4233(c) of ERISA.

Partition order means a formal PBGC order of partition under section 4233 of ERISA and § 4233.14.

Proposed partition means a proposed partition as structured and described by the plan sponsor in an application for partition.

Remain solvent has the same meaning as ''avoid insolvency'' in section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder, with respect to the determinations made by PBGC under sections 4233(b)(3) and 4233(c) of ERISA.

Residual benefit means, with respect to a participant or beneficiary whose benefit was partially transferred to a successor plan pursuant to a partition order, the portion of the benefit payable under the original plan, the amount of which is equal to the difference between the benefit defined in section 4233(e)(1)(A) of ERISA, and the successor plan benefit. The residual benefit as of the effective date of the partition is not subject to a separate guarantee under section 4022A of ERISA.

Successor plan means the plan created by a partition order under section 4233(c) of ERISA.

Successor plan benefit means, with respect to a participant or beneficiary whose benefit was wholly or partially transferred from an original plan to a successor plan, the portion of the accrued nonforfeitable monthly benefit which would be guaranteed under section 4022A as of the effective date of the partition, calculated under the terms of the original plan without reflecting any changes relating to a benefit suspension under section 305(e)(9) of ERISA. The payment of a successor plan benefit is subject to the limitations and conditions contained in sections 4022A(a)–(f) of ERISA.

§ 4233.3 Application filing requirements.

(a) *Method of filing.* PBGC applies the rules in part 4000, subpart A of this chapter to determine permissible methods of filing with PBGC under this part, and the rules in part 4000, subpart D of this chapter to determine the computation of time.

(b) *Who may file.* An application for partition under section 4233 of ERISA must be submitted by the plan sponsor. The application must be signed and dated by an authorized trustee who is a current member of the board of trustees, and must include the following statement under penalties of perjury: ''Under penalties of perjury, I declare that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application, and such facts are true, correct, and complete.'' A stamped signature or faxed signature is not permitted.

(c) *Where to file. See* § 4000.4 of this chapter for information on where to file.

§ 4233.4 Information to be filed.

(a) *General.* An application for partition must include the information specified in § 4233.5 (plan information), § 4233.6 (partition information), § 4233.7 (actuarial and financial information), § 4233.8 (participant census data), and § 4233.9 (financial assistance information). If any of the information is not included, the application may not be considered complete.

(b) *Additional information.* (1) PBGC may require a plan sponsor to submit additional information necessary to make a determination on an application under this part and any information PBGC may need to calculate or verify the amount of financial assistance necessary for a partition. Any additional information must be submitted by the date specified in PBGC's request.

(2) PBGC may suspend the running of the 270-day review period (described in

§ 4233.10) pending the submission of any additional information requested by PBGC, or upon the issuance of a conditional determination under § 4233.12(c).

(c) *Duty to amend and supplement application.* During any time in which an application is pending final action by PBGC, the plan sponsor must promptly notify PBGC in writing of any material fact or representation contained in or relating to the application, or in any supporting documents, that is no longer accurate, or any material fact or representation omitted from the application or supporting documents, that the plan sponsor discovers.

[80 FR 35229, June 19, 2015, as amended at 80 FR 79694, Dec. 23, 2015]

§ 4233.5 Plan information.

An application for partition must include the following information with respect to the plan:

(a) The name of the plan, Employer Identification Number (EIN), and three-digit Plan Number (PN).

(b) The name, address, and telephone number of the plan sponsor and the plan sponsor's duly authorized representative, if any.

(c) The most recent trust agreement, including all amendments adopted since the last restatement.

(d) The most recent plan document, including all amendments adopted since the last restatement.

(e) The most recent summary plan description (SPD), and all summaries of material modification (SMM) issued since the effective date of the most recent SPD.

(f) The most recent rehabilitation plan (or funding improvement plan, if applicable), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan for the most recent plan year available.

(g) A copy of the plan's most recent IRS determination letter.

(h) A copy of the plan's most recent Form 5500 (Annual Report Form) and all schedules and attachments (including the audited financial statement).

(i) A current listing of employers who have an obligation to contribute to the plan, and the approximate number of participants for whom each employer is currently making contributions.

(j) A schedule of withdrawal liability payments collected in each of the most recent five plan years.

§ 4233.6 Partition information.

An application for partition must include the following information with respect to the proposed partition:

(a) A detailed description of the proposed partition, including the proposed structure, proposed effective date, and any larger integrated transaction of which the proposed partition is a part (including, but not limited to, an application for suspension of benefits under section 305(e)(9)(G), or a merger under section 4231 of ERISA). With respect to coordinated applications for partition and suspension of benefits, proposed effective dates for both transactions must satisfy the requirements of section 305(e)(9)(D)(v) of ERISA.

(b) A narrative description of the events that led to the plan sponsor's decision to submit an application for partition (and, if applicable, application for suspension of benefits).

(c) A narrative description of significant risks and assumptions relating to the proposed partition and the projections provided in support of the application.

(d) If applicable, a copy of the plan sponsor's application for suspension of benefits (including all attachments and exhibits). If the plan sponsor intends to apply for a suspension of benefits with Treasury, but has not yet submitted an application to Treasury, a draft of the application may be filed, which must be supplemented by filing a copy of the completed application within the timeframe established in § 4233.10(d).

(e) A detailed description of all measures the plan sponsor has taken (or is taking) to avoid insolvency, and any measures the plan sponsor considered taking but did not take, including the factor(s) the plan sponsor considered in making these determinations. Include all relevant documentation relating to the plan sponsor's determination that it has taken (or is taking) measures to avoid insolvency.

(f) A detailed description of the estimated benefit amounts the plan sponsor has determined are necessary to be

partitioned for the plan to remain solvent, including the following information:

(1) The estimated number of participants and beneficiaries whose benefits (or any portion thereof) would be transferred, including the number of retirees receiving payments (if any), terminated vested participants (if any), and active participants (if any).

(2) Supporting data, calculations, assumptions, and a description of the methodology used to determine the estimated benefit amounts.

(3) If applicable, a description of any classifications or specific group(s) of participants and beneficiaries whose benefits (or any portion thereof) the plan sponsor proposes to transfer, and the plan sponsor's rationale or basis for selecting those classifications or groups.

(g) A copy of the draft notice of application for partition described in § 4233.11.

[80 FR 35229, June 19, 2015, as amended at 80 FR 79694, Dec. 23, 2015]

§ 4233.7 Actuarial and financial information.

(a) *Required information.* An application for partition must include the following plan actuarial and financial information:

(1) A copy of the plan's most recent actuarial report and copies of the actuarial reports for the two preceding plan years.

(2) A copy of the plan actuary's most recent certification of critical and declining status, including a detailed description of the assumptions used in the certification, the basis for the projection of future contributions, withdrawal liability payments, investment return assumptions, and any other assumption that may have a material effect on projections.

(3) A detailed statement of the basis for the conclusion that the plan will not remain solvent without a partition and, if applicable, suspension of benefits, including supporting data, calculations, assumptions, and a description of the methodology. Include as an exhibit annual cash flow projections for the plan without partition (or suspension, if applicable) through the projected date of insolvency. Annual cash flow projections must reflect the following information:

(i) Market value of assets as of the beginning of the year.

(ii) Contributions and withdrawal liability payments.

(iii) Benefit payments organized by participant status (e.g., active, retiree, terminated vested, beneficiary).

(iv) Administrative expenses.

(v) Market value of assets at year end.

(4) A long-term projection reflecting reduced benefit disbursements at the PBGC-guarantee level after insolvency, and a statement of the present value of all future financial assistance without a partition (using the interest and mortality assumptions applicable to the valuation of plans terminated by mass withdrawal as specified in § 4281.13 of this chapter and other reasonable actuarial assumptions, including retirement age, form of benefit payment, and administrative expenses, certified by an enrolled actuary).

(5) A detailed statement of the basis for the conclusion that the original plan will remain solvent if the application for partition, and, if applicable, the application for suspension of benefits, is granted, including supporting data, calculations, assumptions, and a description of the methodology, which must be consistent with section 305(e)(9)(D)(iv) and the regulations thereunder (including any adjustment to the cash flows in the initial year to incorporate recent actual fund activity required to be included under that section). Annual cash flow projections for the original plan with partition (and suspension, if applicable) must be included as an exhibit and must reflect the following information:

(i) Market value of assets as of the beginning of the year.

(ii) Contributions and withdrawal liability payments.

(iii) Benefit payments organized by participant status (e.g., active, retiree, terminated vested, beneficiary).

(iv) Administrative expenses.

(v) Market value of assets at year end.

(6) If applicable, a copy of the plan actuary's certification under section 305(e)(9)(C)(i) of ERISA.

(7) The plan's projected insolvency date with benefit suspension alone (if applicable), including supporting data.

(8) A long-term projection reflecting benefit disbursements from the successor plan (organized by participant status (e.g., active, retiree, terminated vested, beneficiary)), and a statement of the present value of all future financial assistance to be paid as a result of a partition (using the interest and mortality assumptions applicable to the valuation of plans terminated by mass withdrawal as specified in § 4281.13 of this chapter and other reasonable actuarial assumptions, including retirement age, form of benefit payment, and administrative expenses, certified by an enrolled actuary).

(9) A long-term projection of pre-partition benefit disbursements from the original plan reflecting reduced benefit disbursements at the PBGC-guarantee level beginning on the proposed effective date of the partition (using a closed group valuation and no accruals after the proposed effective date of partition, and organized separately by participant status groupings (e.g., active, retiree, terminated vested, beneficiary)).

(10) A long-erm projection of pre-partition benefit disbursements from the original plan reflecting the maximum benefit suspensions permissible under section 305(e)(9) of ERISA beginning on the proposed effective date of the partition (using an open group valuation and organized separately by participant status groupings (e.g., active, retiree, terminated vested, beneficiary)).

(b) *Additional projections.* PBGC may ask the plan for additional projections based on assumptions that it specifies.

(c) *Actuarial calculations and assumptions*—(1) *General.* All calculations required by this part must be performed by an enrolled actuary.

(2) *Assumptions.* All calculations required by this part must be consistent with calculations used for purposes of an application for suspension of benefits under section 305(e)(9) of ERISA, and based on methods and assumptions each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and which, in combination, offer the actuary's best estimate of anticipated experience under the plan. Any change(s) in assumptions from the most recent actuarial valuation, and critical and declining status certification, must be disclosed and must be accompanied by a statement explaining the reason(s) for any change(s) in assumptions.

(3) *Updates.* PBGC may, in its discretion, require updated calculations and representations based on the actual effective date of a partition, revised actuarial assumptions, or for other good cause.

[80 FR 35229, June 19, 2015, as amended at 80 FR 79694, Dec. 23, 2015]

§ 4233.8 Participant census data.

An application for partition must include a copy of the census data used for the projections described in § 4233.7(a)(3) and (5), including:

(a) Participant type (retiree, beneficiary, disabled, terminated vested, active, alternate payee).

(b) Date of birth.

(c) Gender.

(d) Credited service for guarantee calculation (*i.e.*, number of years of participation).

(e) Vested accrued monthly benefit before benefit suspension under section 305(e)(9) of ERISA.

(f) Vested accrued monthly benefit after benefit suspension under section 305(e)(9) of ERISA.

(g) Monthly benefit guaranteed by PBGC (determined under the terms of the original plan without respect to benefit suspensions).

(h) Benefit commencement date (for participants in pay status and others for which the reported benefit is not payable at Normal Retirement Date).

(i) For each participant in pay status—

(1) Form of payment, and

(2) Data relevant to the form of payment, including:

(i) For a joint and survivor benefit, the beneficiary's benefit amount (before and after suspension) and the beneficiary's date of birth;

(ii) For a Social Security level income benefit, the date of any change in the benefit amount, and the benefit amount after such change;

(iii) For a 5-year certain or 10-year certain benefit (or similar benefit), the relevant defined period.

(iv) For a form of payment not otherwise described in this section, the data necessary for the valuation of the form of payment, including the benefit amount before and after suspension.

(j) If an actuarial increase for postponed retirement applies or if the form of annuity is a Social Security level income option, the monthly vested benefit payable at normal retirement age in normal form of annuity.

[80 FR 79694, Dec. 23, 2015]

§ 4233.9 Financial assistance information.

(a) *Required information.* An application for partition must include the estimated amount of annual financial assistance requested from PBGC for the first year the plan receives financial assistance if partition is approved.

(b) *Additional information.* PBGC may ask the plan for additional information in accordance with § 4233.4(b)(1).

§ 4233.10 Initial review.

(a) *Determination on completed application.* PBGC will make a determination on an application not later than 270 days after the date such application is deemed completed.

(b) *Incomplete application.* If the application is incomplete, PBGC will issue a written notice to the plan sponsor describing the information missing from the application no later than 14 calendar days after the submission of such application.

(c) *Complete application.* Upon making a determination that an application is complete (*i.e.*, the application includes all the information specified in §§ 4233.5 through 4233.9), PBGC will issue a written notice to the plan sponsor no later than 14 calendar days after the submission of such application. The date of the written notice will mark the beginning of PBGC's 270-day review period under section 4233(a)(1) of ERISA, and the plan sponsor's 30-day notice period under 4233(a)(2) of ERISA.

(d) *Special rule for coordinated applications for partition and benefit suspension.* For a plan requiring both partition and benefit suspensions to remain solvent, PBGC's initial determination that a partition application is complete will be conditioned on the plan sponsor's filing of an application for benefit suspensions with Treasury within 30 days after receiving written notice from PBGC under paragraph (c) of this section. Such a plan is permitted, but not required, to issue a combined notice under § 4233.13(b).

(e) *Informal consultation.* Nothing in this subsection precludes a plan sponsor from contacting PBGC on an informal basis to discuss a potential partition application.

[80 FR 35229, June 19, 2015, as amended at 80 FR 79694, Dec. 23, 2015]

§ 4233.11 Notice of application for partition.

(a) *When to file.* Not later than 30 days after receipt of the written notice described in § 4233.10(c) that an application for partition is complete, the plan sponsor must provide notice of such application to each interested party and PBGC, in accordance with the rules in part 4000, subpart B of this chapter.

(b) *Form of notice.* The notice must be readable and written in a matter calculated to be understood by the average plan participant. The Model Notices in appendix A to this part (when properly completed) are examples of notices meeting the requirements of this section.

(c) *Information required.* A notice of completed application for partition must include the following information:

(1) *Identifying information.* The name of the plan, the name, address, and phone number of the plan sponsor, the Employer Identification Number (EIN), and three-digit Plan Number (PN).

(2) *Relevant partition application dates.* A brief statement that the plan sponsor has submitted an application for partition to PBGC, the date of the completed application under § 4233.10(c), and a statement that PBGC must issue its decision not later than 270 days after the date on which PBGC notified the plan sponsor that the application was complete.

(3) *Application for suspension of benefits.* If applicable, a statement of whether the plan sponsor has submitted an application for suspension of benefits under section 305(e)(9)(G) of ERISA, and, if so, information on how to obtain a copy of the application and

notice required by section 305(e)(9)(F) of ERISA.

(4) *Description of statutory partition provisions.* A brief description of the requirements under section 4233 of ERISA, and other related statutory requirements, including:

(i) The interrelationship between the partition rules under section 4233 of ERISA and suspensions of benefits under section 305(e)(9) of ERISA (if applicable).

(ii) The multiemployer guarantee under section 4022A of ERISA.

(iii) The eligibility requirements for a partition under section 4233(b) of ERISA, including the Advocate consultation requirement.

(5) *Impact of partition on interested parties.* A brief description of how the proposed partition may impact affected participants, beneficiaries, and alternate payees including:

(i) A statement describing the benefit payment obligations of the original plan and the successor plan.

(ii) A statement explaining that the Board of Trustees of the original plan will also administer the successor plan, but the successor plan will be funded solely by PBGC financial assistance payments.

(6) *Partition application contents summary.* A brief summary of the content of the plan sponsor's application for partition, including the following information:

(i) The plan's critical and declining status and projected insolvency date.

(ii) A statement that the plan sponsor has taken (or is taking) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9), if applicable.

(iii) If known, a brief statement on the proposed total estimated amount and percentage of liabilities to be partitioned.

(iv) If known, a brief statement summarizing the proposed class or classes of participants whose benefits would be partially or wholly transferred if the application for partition is granted, including a summary of the factors considered by the plan sponsor in preparing its application.

(7) *Contact information for plan sponsor.* The name, address, and telephone number of the plan sponsor or other person designated by the plan sponsor to answer inquiries concerning the application for partition.

(8) *Contact information for PBGC.* Multiemployer Program Division, PBGC, 445 12th Street SW, Washington, DC 20024–2101, *Multiemployerprogram@pbgc.gov*.

(9) *Contact information for Participant and Plan Sponsor Advocate.* PBGC Participant and Plan Sponsor Advocate, 445 12th Street SW, Washington, DC 20024–2101, *Advocate@pbgc.gov*.

(d) *Model notice.* The appendix to this section contains two model notices—one for plan sponsors that submit coordinated applications for partition with PBGC and for benefit suspensions with Treasury, and one for plans sponsors who apply for partition only. The model notices are intended to assist plan sponsors in discharging their notice obligations under section 4233(a)(2) of ERISA and this part. Use of the model notices is not mandatory, but will be deemed to satisfy the requirements of section 4233(a)(2) of ERISA and this part.

(e) *Foreign languages.* The plan sponsor of a plan that covers the numbers or percentages in §2520.104b–10(e) of this title of participants literate only in the same non-English language must, for any notice to interested parties—

(1) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or

(2) Provide the notice in that common non-English language to those interested parties literate only in that language.

[80 FR 35229, June 19, 2015, as amended at 87 FR 57825, Sept. 22, 2022]

§ 4233.12 PBGC action on application for partition.

(a) *Review period.* Except as provided in paragraph (c) of this section, PBGC will approve or deny an application for partition submitted to it under this part within 270 days after the date PBGC issued a notice to the plan sponsor of the completed application under §4233.10(c).

(b) *Determination on application.* PBGC may approve or deny an application at its discretion. PBGC will notify the plan sponsor in writing of PBGC's decision on an application. If PBGC denies the application, PBGC's written decision will state the reason(s) for the denial. If PBGC approves the application, PBGC will issue a partition order under section 4233(c) of ERISA and § 4233.14.

(c) *Conditional determination on application.* At the request of a plan sponsor, PBGC may, in its discretion, issue an approval of an application conditioned on Treasury issuing a final authorization to suspend under section 305(e)(9)(H)(vi) of ERISA and any other terms and conditions set forth in the conditional approval. The conditional approval will include a written statement of preliminary findings, conclusions, and conditions. The conditional approval is not a final agency action. The proposed partition will only become effective upon satisfaction of the required conditions, and the issuance of an order of partition under section 4233(c) of ERISA.

(d) *Final agency action.* Except as provided in paragraph (c) of this section, PBGC's decision on an application for partition under this section is a final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

[80 FR 35229, June 19, 2015, as amended at 80 FR 79695, Dec. 23, 2015]

§ 4233.13 Coordinated application process for partition and benefit suspension.

(a) *Interagency coordination.* For a plan sponsor that has requested a conditional approval of a partition pursuant to § 4233.12(c), PBGC may render either a conditional approval or a final denial of the application on an expedited basis, provided that the plan sponsor has submitted a completed application to PBGC as prescribed by § 4233.10. PBGC will consult with Treasury and the Department of Labor in the course of reviewing an application for partition.

(1) If PBGC denies the application for partition, it will notify the plan sponsor in writing of PBGC's decision in accordance with § 4233.12(b), and will notify Treasury to allow it to take appropriate action on the benefit suspension application.

(2) If PBGC grants a conditional approval of partition, it will notify the plan sponsor in writing of PBGC's decision in accordance with § 4233.12(c), and will provide Treasury with a copy of PBGC's decision along with PBGC's record of the decision.

(3) If Treasury does not issue the final authorization to suspend, PBGC's conditional approval under § 4233.12(c) will be null and void.

(4) If Treasury issues a final authorization to suspend, PBGC will issue a final partition order under § 4233.14 and section 4233(c) of ERISA. The effective date of a final partition order must satisfy the requirements of section 305(e)(9)(D)(v) of ERISA.

(b) *Combined notice.* A plan sponsor submitting an application for benefit suspensions under section 305(e)(9) of ERISA with Treasury, and a partition under section 4233 of ERISA with PBGC, may combine the PBGC model notice for coordinated applications provided at Appendix A with the Treasury model notice in Appendix A of Rev. Proc. 2015–34 in satisfaction of the notice requirement of this part.

[80 FR 35229, June 19, 2015, as amended at 80 FR 79695, Dec. 23, 2015]

§ 4233.14 Partition order.

(a) *General provisions.* The partition order will describe the liabilities to be transferred to the successor plan under section 4233(c) of ERISA, and the manner in which financial assistance will be provided by PBGC under section 4261 of ERISA. The partition order will also set forth PBGC's findings and conclusions on an application for partition, the effective date of partition, the obligations and responsibilities of the plan sponsor to the original plan and successor plan, and such other information as PBGC may deem appropriate.

(b) *Terms and conditions.* The partition order will set forth the terms and conditions of the partition and will incorporate by reference the applicable requirements under sections 4233(d) and 4233(e) of ERISA.

(1) The plan sponsors of the original plan and the successor plan must amend the original plan and successor

plan, respectively, to reflect the benefits payable to participants and beneficiaries as a result of the partition order.

(2) The plan sponsors of the original plan and successor plan must maintain a written record of the respective plans' compliance with the terms of the partition order, section 4233 of ERISA, and this part.

§ 4233.15 Nature and operation of successor plan.

(a) *Nature of plan.* The plan created by the partition order is a successor plan to which section 4022A applies, and an insolvent plan under section 4245 of ERISA.

(b) *Treatment of plan.* The successor plan will be treated as a terminated multiemployer plan to which section 4041A(d) of ERISA applies because there are no contributing employers with an obligation to contribute within the meaning of section 4212 of ERISA as of the effective date of the partition. The treatment of the successor plan as a terminated plan under this paragraph will not be taken into account for purposes of determining the withdrawal liability of contributing employers to the original plan under sections 4201 and 4233(d)(3) of ERISA.

(c) *Administration of plan.* The plan sponsor of the original plan and the administrator of such plan will be the plan sponsor and the administrator, respectively, of the successor plan. PBGC will retain the right to remove and replace the plan sponsor of the successor plan pursuant to section 4042(b)(2) of ERISA.

§ 4233.16 Coordination of benefits under original plan and successor plan.

(a) *Successor plan benefits.* Subject to the limitations contained in section 4022A of ERISA, the only benefit amounts payable under a successor plan are successor plan benefits as defined in § 4233.2.

(b) *Guarantee of successor plan benefit.* When a participant's or beneficiary's benefit is partially or wholly transferred to a successor plan, the PBGC guarantee applicable to such benefit becomes payable under the successor plan. The benefit remaining in the original plan as of the effective date of the partition, if any, is not subject to a new guarantee, and any increase in the PBGC guarantee amount payable under the original plan will arise solely, if at all, due to an increase in the accrued benefit under a plan amendment following the effective date of the partition, or an additional accrual attributable to service after the effective date of the partition.

(c) *PBGC financial assistance.* Subject to the conditions contained in section 4261 of ERISA, PBGC will provide financial assistance to the successor plan in an amount sufficient to enable the successor plan to pay only the PBGC-guaranteed amount transferred to the successor plan pursuant to the partition order, and reasonable and necessary administrative expenses if approved by PBGC. The receipt of benefits payable under a successor plan receiving financial assistance from PBGC will be treated as the receipt of guaranteed benefits under section 4022A.

(d) *Payment of monthly benefits.* The plan sponsors of an original plan and a successor plan may, but are not required to, pay monthly benefits payable under the original plan and successor plan, respectively, in a single monthly payment pursuant to a written cost-sharing or expense allocation agreement between the plans.

§ 4233.17 Continuing jurisdiction.

(a) PBGC will continue to have jurisdiction over the original plan and the successor plan to carry out the purposes, terms, and conditions of the partition order, section 4233 of ERISA, and this part.

(b) PBGC may, upon providing notice to the plan sponsor, make changes to the partition order in response to changed circumstances consistent with section 4233 of ERISA and this part.

APPENDIX A TO PART 4233—MODEL NOTICES

NOTICE OF APPLICATION FOR PARTITION FOR [INSERT PLAN NAME]

[For plans filing an application for partition only]

[Insert Date]

This notice is to inform you that, on [*insert Date*], [*insert Plan Sponsor's Name*] (''Board of

Trustees'') filed a complete application with the Pension Benefit Guaranty Corporation (''PBGC'') requesting approval for a partition of the [*insert Pension Fund name, Employer Identification Number, and three-digit Plan Number*] (the ''Plan'').

What is partition?

A multiemployer plan that is in critical and declining status may apply to PBGC for an order that separates (*i.e.*, partitions) and transfers the PBGC-guaranteed portion of certain participants' and beneficiaries' benefits to a newly-created successor plan. The total amount transferred from the original plan to the successor plan is the minimum amount needed to keep the original plan solvent. While the Board of Trustees will administer the successor plan, PBGC will provide financial assistance to the successor plan to pay the transferred benefits.

PBGC guarantees benefits up to a legal limit. However, if the PBGC-guaranteed amount payable by the successor plan is less than the benefit payable under the original plan, Federal law requires the original plan to pay the difference. Therefore, partition will *not* change the total amount payable to any participant or beneficiary.

What are the rules for partition?

Federal law permits, but does not require, PBGC to approve an application for partition. PBGC generally will make a decision on the application for partition within 270 days. A plan is eligible for partition if certain requirements are met, including:

1. The pension plan is in critical and declining status. A plan is in critical and declining status if it is in critical status (which generally means the plan's funded percentage is less than 65%) and is projected to run out of money within 15 years (or 20 years if there are twice as many inactive as active participants, or if the plan's funded percentage is less than 80%).

2. PBGC determines, after consulting with the PBGC Participant and Plan Sponsor Advocate, that the Board of Trustees has taken (or is taking) all reasonable measures to avoid insolvency. Reasonable measures may include contribution increases or reductions in the rate of benefit accruals.

3. PBGC determines that: (1) Providing financial assistance in a partition will be significantly less than providing financial assistance in the event the plan becomes insolvent; and (2) partition is necessary for the plan to remain solvent.

4. PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other multiemployer plans (including plans that are insolvent or projected to become insolvent within 10 years) will not be impaired by the partition.

5. The cost of the partition is paid exclusively from PBGC's multiemployer insurance fund.

Why is partition needed?

The Plan is in critical and declining status, is [*insert funded percentage*] funded, and is projected to become insolvent by [*insert expected insolvency date*]. The Board of Trustees asserts that it has taken reasonable measures to avoid insolvency, but has determined that these measures are insufficient and that the proposed partition is necessary for the Plan to avoid insolvency.

[*Insert brief statement of the amount of liabilities the Board of Trustees proposes to partition and indicate whether it is the minimum amount needed for the Plan to remain solvent.*] [*If applicable, insert brief statement summarizing the proposed classes of participants and beneficiaries whose benefits will be partially or wholly transferred if the application is granted, and a summary of the factors considered.*] If instead the Plan is allowed to become insolvent, the benefits of *all* participants and beneficiaries whose benefits exceed the PBGC-guaranteed amount would be reduced to the PBGC-guaranteed amount.

What is PBGC's multiemployer plan guarantee?

Federal law sets the maximum that PBGC may guarantee. For multiemployer plan benefits, PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

PBGC guarantees vested pension benefits payable at normal retirement age, early retirement benefits, and certain survivor benefits, if the participant met the eligibility requirements for a benefit before plan termination or insolvency. A benefit or benefit increase that has been in effect for less than 60 months is not eligible for PBGC's guarantee. PBGC also does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

How will I know when PBGC has made a decision on the application for partition?

If PBGC approves the Board of Trustees' application for partition, PBGC will issue a notice to affected participants and beneficiaries whose benefits will be transferred to the successor plan no later than 14 days after it issues the order of partition. You may also visit *www.pbgc.gov/MPRA* for a list of applications for partition received by PBGC and the status of those applications.

Your Rights To Receive Information About Your Plan and its Benefits

Your plan's Summary Plan Description (''SPD'') will include information on the procedures for claiming benefits, which will apply to both the original and successor plans until the Plan provides you a new SPD. You also have the legal right to request documents from the original plan to help you understand the partition and your rights such as:

• The plan document, trust agreement, and other documents governing the Plan (e.g., collective bargaining agreements);

• The latest SPD and summaries of material modification;

• The Plan's Form 5500 annual reports, including audited financial statements, filed with the U.S. Department of Labor during the last six years;

• The Plan's annual funding notices for the last six years;

• Actuarial reports (including reports submitted in support of the application for partition) furnished to the Plan within the last six years;

• The Plan's current rehabilitation plan, including contribution schedules; and

• Any quarterly, semi-annual or annual financial reports prepared for the Plan by an investment manager, fiduciary or other advisor and furnished to the Plan within the last six years.

If your benefits are transferred to the successor plan, you will be furnished a successor plan SPD within 120 days of the partition; and the plan document, trust agreement, and other documents governing the successor plan will be available for review following the partition.

The plan administrator must respond to your request for these documents within 30 days, and may charge you the cost per page for the least expensive means of reproducing documents, but cannot charge more than 25 cents per page. The Plan's Form 5500 annual reports are also available free of charge at *http://www.dol.gov/ebsa/5500main.html*. Some of the documents also may be available for examination, without charge, at the plan administrator's office, your worksite, or union hall.

Plan Contact Information

For more information about this Notice, you may contact:

[Insert Name of Plan Administrator, address, email address, and phone number]

PBGC Contact Information

Multiemployer Program Division, PBGC, 445 12th Street SW, Washington, DC 20024–2101
Email: *Multiemployerprogram@pbgc.gov*
Phone: (202) 229–6047

PBGC Participant and Plan Sponsor Advocate Contact Information

Constance Donovan, PBGC, 445 12th Street SW, Washington, DC 20024–2101
Email: *Advocate@pbgc.gov*.
Phone: (202) 229–4448

NOTICE OF APPLICATION FOR PARTITION FOR [INSERT PLAN NAME]

[For plans filing coordinated applications for partition and suspension of benefits]

[Insert Date]

This notice is to inform you that, on [*insert Date*], [*insert Plan Sponsor's Name*] (''Board of Trustees'') filed a complete application with the Pension Benefit Guaranty Corporation (''PBGC'') requesting approval for a partition of the [*insert Pension Fund name, Employer Identification Number, and three-digit Plan Number*] (the ''Plan''). [*Insert statement that the plan sponsor has submitted an application for suspension of benefits under section 305(e)(9)(G) of ERISA, and identify how to obtain a copy of the application and notice required by section 305(e)(9)(F) of ERISA.*]

What is partition?

A multiemployer plan that is in critical and declining status may apply to PBGC for an order that separates (*i.e.*, partitions) and transfers the PBGC-guaranteed portion of certain participants' and beneficiaries' benefits to a newly-created successor plan. The total amount transferred from the original plan to the successor plan is the minimum amount needed to keep the original plan solvent. While the Board of Trustees will administer the successor plan, PBGC will provide financial assistance to the successor plan to pay the transferred benefits.

PBGC guarantees benefits up to a legal limit. However, if the PBGC-guaranteed amount payable by the successor plan is less than the benefit payable under the original plan after taking into account benefit reductions or any plan amendments after the effective date of the partition, Federal law requires the original plan to pay the difference. Therefore, partition will *not* further change the total amount payable to any participant or beneficiary.

What are the rules for partition?

Federal law permits, but does not require, PBGC to approve an application for partition. PBGC generally will make a decision on the application for partition within 270 days. A plan is eligible for partition if certain requirements are met, including:

1. The pension plan is in critical and declining status. A plan is in critical and declining status if it is in critical status (which generally means the plan's funded percentage is less than 65%) and is projected to run out of money within 15 years (or 20 years if

there are at least twice as many inactive as active participants, or if the plan's funded percentage is less than 80%).

2. PBGC determines, after consulting with the PBGC Participant and Plan Sponsor Advocate, that the Board of Trustees has taken (or is taking) all reasonable measures to avoid insolvency, including reducing benefits to the maximum allowed under the law.

3. PBGC determines that: (1) Providing financial assistance in a partition will be significantly less than providing financial assistance in the event the plan becomes insolvent; and (2) partition is necessary for the plan to remain solvent.

4. PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other multiemployer plans (including plans that are insolvent or projected to become insolvent within 10 years) will not be impaired by the partition.

5. The cost of the partition is paid exclusively from PBGC's multiemployer insurance fund.

Why are partition and benefit reductions needed?

The Plan is in critical and declining status, is [*insert funded percentage*] funded, and is projected to become insolvent by [*insert expected insolvency date*]. The Board of Trustees has taken reasonable measures to avoid insolvency, but has determined that these measures are insufficient and that the proposed partition and reduction of benefits combined are necessary for the Plan to avoid insolvency.

[*Insert brief statement of the amount of liabilities the Board of Trustees proposes to partition and indicate whether it is the minimum amount needed for the Plan to remain solvent.*] [*If applicable, insert brief statement summarizing the proposed classes of participants and beneficiaries whose benefits will be partially or wholly transferred if the application is granted, and a summary of the factors considered.*] If instead the Plan is allowed to become insolvent, the benefits of *all* participants and beneficiaries whose benefits exceed the PBGC-guaranteed amount would be reduced to the PBGC-guaranteed amount.

What is PBGC's multiemployer plan guarantee?

Federal law sets the maximum that PBGC may guarantee. For multiemployer plan benefits, PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

PBGC guarantees vested pension benefits payable at normal retirement age, early retirement benefits, and certain survivor benefits, if the participant met the eligibility requirements for a benefit before plan termination or insolvency. A benefit or benefit increase that has been in effect for less than 60 months is not eligible for PBGC's guarantee. PBGC also does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

How will I know when PBGC has made a decision on the application for partition?

If PBGC approves the Board of Trustees' application for partition, PBGC will issue a notice to affected participants and beneficiaries whose benefits will be transferred to the successor plan no later than 14 days after it issues the order of partition. You may also visit *www.pbgc.gov/MPRA* for a list of applications for partition received by PBGC and the status of those applications.

How do I obtain information on the application for approval to reduce benefits?

The application for approval of the proposed reduction of benefits will be publicly available within 30 days after the Treasury Department receives the application. *See www.treasury.gov* for a copy of the application, instructions on how to send comments on the application, and how to contact the Treasury Department for further information and assistance.

Your Rights To Receive Information About Your Plan and its Benefits

Your Plan's Summary Plan Description (''SPD'') will include information on the procedures for claiming benefits, which will apply to both the original and successor plans until the Plan provides you a new SPD. You also have the legal right to request documents from the original plan to help you understand the partition and your rights such as:

- The plan document, trust agreement, and other documents governing the Plan (e.g., collective bargaining agreements);
- The latest SPD and summaries of material modification;
- The Plan's Form 5500 annual reports, including audited financial statements, filed with the U.S. Department of Labor during the last six years;
- The Plan's annual funding notices for the last six years;
- Actuarial reports (including reports submitted in support of the application for partition) furnished to the Plan within the last six years;
- The Plan's current rehabilitation plan, including contribution schedules; and
- Any quarterly, semi-annual or annual financial reports prepared for the Plan by an

investment manager, fiduciary or other advisor and furnished to the Plan within the last six years.

If your benefits are transferred to the successor plan, you will be furnished a successor plan SPD within 120 days of the partition; and the plan document, trust agreement, and other documents governing the successor plan will be available for review following the partition.

The plan administrator must respond to your request for these documents within 30 days, and may charge you the cost per page for the least expensive means of reproducing documents, but cannot charge more than 25 cents per page. The Plan's Form 5500 annual reports are also available free of charge at *http://www.dol.gov/ebsa/5500main.html*. Some of the documents also may be available for examination, without charge, at the plan administrator's office, your worksite, or union hall.

Plan Contact Information

For more information about this Notice, you may contact:

[Insert Name of Plan Administrator, address, email address, and phone number]

PBGC Contact Information

Multiemployer Program Division, PBGC, 445 12th Street SW, Washington, DC 20024–2101
Email: *Multiemployerprogram@pbgc.gov*
Phone: (202) 229–6047

PBGC Participant and Plan Sponsor Advocate Contact Information

Constance Donovan, PBGC, 445 12th Street SW, Washington, DC 20024–2101
Email: *Advocate@pbgc.gov*
Phone: (202) 229–4448

[80 FR 35229, June 19, 2015, as amended at 85 FR 6064, Feb. 4, 2020; 87 FR 57825, Sept. 22, 2022]

PART 4245—DUTIES OF PLAN SPONSOR OF AN INSOLVENT PLAN

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1426(e).

SOURCE: 61 FR 34115, July 1, 1996, unless otherwise noted.

§ 4245.1 Purpose, scope, and filing and issuance rules.

(a) *Purpose and scope.* This part prescribes insolvency notice requirements and financial assistance requirements pertaining to critical status plans. Plan sponsors of plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA are required to file and issue similar insolvency notices under part 4281 of this chapter and withdrawal liability and actuarial valuation information under part 4041A of this chapter.

(b) *Filing and issuance rules*—(1) *Method of filing.* Filing with PBGC under this part must be made by a method permitted under the rules in subpart A of part 4000 of this chapter.

(2) *Method of issuance.* The issuance of the required notices to interested parties under this part must be made by one of the following methods—

(i) A method permitted under the rules in subpart B of part 4000 of this chapter.

(ii) For interested parties other than participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, and other than alternate payees, the plan sponsor may post the notice at participants' work sites or publish the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Except with respect to an alternate payee, notice to a participant is deemed notice to that participant's beneficiary or beneficiaries.

(3) *Filing and issuance dates.* The date that a filing is sent and the date that an issuance is provided are determined under the rules in subpart C of part 4000 of this chapter.

(4) *Where to file.* Filings with PBGC under this part must be made as described in § 4000.4 of this chapter.

(5) *Computation of time.* The time period for filing or issuance under this part must be computed under the rules in subpart D of part 4000 of this chapter.

[84 FR 18724, May 2, 2019]

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Employer, ERISA, IRS, multiemployer plan, nonforfeitable benefit, PBGC, person, plan, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of part 4281 of this chapter.

Available resources means available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means unable to pay benefits when due during the plan year.

Interested parties means, with respect to a plan—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

[61 FR 34115, July 1, 1996, as amended at 84 FR 18724, May 2, 2019]

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* The plan sponsor of a plan that determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must file with PBGC a notice of insolvency containing the information described in § 4245.4(a) and must issue to interested parties a notice of insolvency containing the information described in § 4245.4(b). Once notices of insolvency with respect to a plan have been provided as required, no notices of insolvency need be provided with respect to the plan for any subsequent plan year. A notice of insolvency may be combined with a notice of insolvency benefit level under § 4245.5 for the same plan year.

(b) *When to provide notice.* The plan sponsor must provide the notices of insolvency under paragraph (a) of this section at the time described in § 4281.43(b) of this chapter.

[84 FR 18724, May 2, 2019]

§ 4245.4 Contents of notice of insolvency.

(a) *Notice to PBGC.* A notice of insolvency under § 4245.3 required to be filed with PBGC must contain the information and certification specified in the notice of insolvency instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notices to interested parties.* A notice of insolvency under § 4245.3 required to be given to interested parties must contain all of the following information—

(1) The information set forth in § 4281.44(b)(1) through (4) of this chapter.

(2) The estimated total amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(3) The estimated amount of the plan's available resources for the insolvency year.

[84 FR 18724, May 2, 2019]

§ 4245.5 Notice of insolvency benefit level.

(a) *Requirement of notice.* The plan sponsor of an insolvent plan must file with PBGC and issue to interested parties notices of insolvency benefit level containing the information described in § 4245.6 in each of the following circumstances—

(1) For the initial insolvency year, provide the notices of insolvency benefit level to PBGC and to interested parties.

(2) For any insolvency year following the initial insolvency year—

(i) If there is a change in the insolvency benefit level that affects plan payees generally, provide the notices of insolvency benefit level to PBGC and to plan payees (which, for purposes of this section, means participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year).

(ii) If there is a change in the insolvency benefit level that affects only one plan payee or a class of plan payees but not plan payees generally (treating commencement of a person's benefits for this purpose as a change in the insolvency benefit level for that person), provide the notices of insolvency benefit level to PBGC and to each affected plan payee.

(b) *Combined notices.* The plan sponsor may combine a notice of insolvency benefit level and a notice of insolvency under § 4245.3 for the same plan year.

(c) *When to provide notice.* The plan sponsor must provide the required notices under this section at the time described in § 4281.45(c) of this chapter.

[84 FR 18724, May 2, 2019]

§ 4245.6 Contents of notice of insolvency benefit level.

(a) *Notice to PBGC.* A notice of insolvency benefit level under § 4245.5(a) required to be filed with PBGC must contain the information and certification specified in the notice of insolvency benefit level instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notices to interested parties other than participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level under § 4245.5(a) required to be delivered to interested parties, other than to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, must include all of the following information—

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level under § 4245.5(a) required to be delivered to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given must include the information set forth in § 4281.46(b)(1) through (7) of this chapter.

[84 FR 18725, May 2, 2019]

§ 4245.7 Successor plan.

The plan sponsor of a successor plan created by a partition order under § 4233.14 of this chapter must issue to participants and beneficiaries any notice required under the partition order and is not required to file or issue notices under § 4245.3 or § 4245.5.

[84 FR 18725, May 2, 2019]

§ 4245.8 Financial assistance.

(a) *Application for financial assistance.* If the plan sponsor of a plan determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor must apply to PBGC for financial assistance pursuant to section 4261 of ERISA and in accordance with § 4281.47 of this chapter.

(b) *Actuarial valuations and withdrawal liability.* The plan sponsor of an insolvent plan or a terminated plan that is expected to become insolvent under section 4245 of ERISA must—

(1) File withdrawal liability information with PBGC in accordance with § 4041A.23 of this chapter. The filing under § 4041A.23(b) of this chapter must be not later than 180 days after the earlier of the end of the plan year in which the plan becomes insolvent or terminates and each plan year thereafter.

(2) Have performed and file with PBGC actuarial valuations in accordance with § 4041A.24 of this chapter, except that if a plan is not terminated, the termination year valuation under § 4041A.24(a)(1) of this chapter must be performed for the plan for the plan year in which the plan becomes insolvent.

[84 FR 18725, May 2, 2019]

PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

§ 4261.1 Cross-reference.

See § 4281.47 for procedures for applying to the PBGC for financial assistance under section 4261 of ERISA.

PART 4262—SPECIAL FINANCIAL ASSISTANCE BY PBGC

Sec.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1432.

SOURCE: 87 FR 41006, July 8, 2022, unless otherwise noted.

§ 4262.1 Purpose.

The purpose of this part is to prescribe rules governing applications for special financial assistance under section 4262 of ERISA and related requirements.

§ 4262.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: *Code*, *controlled group*, *ERISA*, *fair market value*, *IRS*, *multiemployer plan*, *PBGC*, *plan*, and *plan sponsor*. In addition, for purposes of this part:

Form 5500 means the Annual Return/Report of Employee Benefit Plan required to be filed for employee benefit plans under sections 104 and 4065 of ERISA and sections 6058(a) and 6059(b) of the Code.

Merged plan means merged plan as defined in § 4231.2 of this chapter.

Merger means merger as defined in § 4231.2 of this chapter.

SFA coverage period means the period beginning on the plan's SFA measurement date and ending on the last day of the last plan year ending in 2051.

SFA measurement date for a plan other than a plan described in § 4262.4(g) means the last day of the third calendar month immediately preceding the date the plan's initial application for special financial assistance was filed.

Special financial assistance or *SFA* means special financial assistance from PBGC under section 4262 of ERISA.

Transfer and transfer of assets or liabilities means transfer and transfer of assets or liabilities as defined in § 4231.2 of this chapter.

§ 4262.3 Eligibility for special financial assistance.

(a) *In general.* Subject to all the provisions of this section, a multiemployer plan is eligible for special financial assistance in any of the following cases:

(1) *Critical and declining status plans.* The plan is in critical and declining status within the meaning of section 305(b)(6) of ERISA for the specified year; or

(2) *Plans with a suspension of benefits.* A suspension of benefits has been approved with respect to the plan under section 305(e)(9) of ERISA as of March 11, 2021; or

(3) *Critical status plans.* The plan:

(i) Is certified to be in critical status within the meaning of section 305(b)(2) of ERISA for a specified year; and

(ii) The percentage calculated under paragraph (c)(2) of this section was less than 40 percent; and

(iii) The ratio of the total number of active participants at the end of the plan year required to be entered on the Form 5500 that was required to be filed for a specified year to the sum of inactive participants (retired or separated participants receiving benefits, other retired or separated participants entitled to future benefits, and deceased participants whose beneficiaries are receiving or are entitled to receive benefits) required to be entered on such Form 5500 was less than 2 to 3; or, the ratio of the total number of active participants at the beginning of the plan year required to be entered on Form 5500 Schedule MB that was required to be filed for a specified year to the sum of inactive participants (retired participants and beneficiaries receiving payment and terminated vested participants) required to be entered on such Form 5500 Schedule MB was less than 2 to 3.

(4) *Insolvent plans.* The plan became insolvent for purposes of section 418E of the Code after December 16, 2014, and has remained insolvent and has not terminated under section 4041A of ERISA as of March 11, 2021.

(b) *Specified year.* For purposes of this section, the term *specified year* means a plan year specified by the plan sponsor beginning in 2020, 2021, or 2022. The specified years for paragraphs (a)(3)(i) through (iii) of this section need not be the same.

(c) *Additional rules for critical status plans*—(1) *Elected status.* Election of critical status under section 305(b)(4) of ERISA does not satisfy the requirement for the certification of critical status by the plan's actuary under paragraph (a)(3)(i) of this section.

(2) *Percentage.* The percentage calculated as—

(i) The current value of net assets as of the first day of the plan year that was required to be entered on the Form 5500 Schedule MB that was required to be filed for a specified year; plus

(ii) The current value of withdrawal liability due to be received by the plan on an accrual basis, reflecting a reasonable allowance for amounts considered uncollectible, as of the first day of the plan year for the specified year in paragraph (c)(2)(i) of this section (if not already included in the current value of net assets in paragraph (c)(2)(i)); divided by

(iii) The current liability attributable to all benefits as of the first day of the plan year required to be entered on the Form 5500 Schedule MB specified in paragraph (c)(2)(i) of this section.

(d) *Actuarial assumptions.* Determinations of eligibility under paragraph (a)(1) or (3) of this section must be made in accordance with the provisions in this paragraph (d).

(1) *Certifications completed before January 1, 2021.* For certifications of plan status completed before January 1, 2021, PBGC will accept assumptions incorporated in the determination of whether a plan is in critical status or critical and declining status as described in section 305(b) of ERISA unless such assumptions are clearly erroneous.

(2) *Certifications completed after December 31, 2020.* For certifications of plan status completed after December 31, 2020, the determination of whether a plan is in critical status or critical and declining status for purposes of eligibility for special financial assistance must be made using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate assumption) are unreasonable.

(3) *Changes in assumptions.* If a plan determines that use of the assumptions under paragraph (d)(2) of this section is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the plan's interest rate assumption), as described in § 4262.5.

§ 4262.4 Amount of special financial assistance.

(a) *In general*—(1) *Plans other than MPRA plans.* Subject to paragraph (f) of this section and to the adjustment for the date of payment as described in § 4262.12, the amount of special financial assistance for a plan that is not a MPRA plan is the lowest whole dollar amount (not less than $0) for which, as of the last day of each plan year during the SFA coverage period, projected SFA assets and projected non-SFA assets are both greater than or equal to zero.

(2) *MPRA plans.* Subject to paragraph (f) of this section and to the adjustment for the date of payment as described in § 4262.12, the amount of special financial assistance for a MPRA plan is the greatest of the amount determined under paragraph (a)(1) of this section, the amount determined under paragraph (a)(2)(i) of this section, and the amount determined under paragraph (a)(2)(ii) of this section.

(i) The amount determined under this paragraph (a)(2)(i) is the lowest whole dollar amount (not less than $0) for which, as of the last day of each plan year during the SFA coverage period, projected SFA assets and projected non-SFA assets are both greater than or equal to zero, and, as of the last day of the SFA coverage period, the sum of projected SFA assets and projected non-SFA assets is greater than the amount of such sum as of the last day of the immediately preceding plan year.

(ii) The amount determined under this paragraph (a)(2)(ii) is the present value of benefits paid and expected to be paid by the plan during the SFA coverage period attributable to the reinstatement of benefits under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), calculated using the SFA interest rate under paragraph (e)(2) of this section.

(3) *MPRA plan definition.* For purposes of this section, *MPRA plan* means a plan that is eligible for special financial assistance under § 4262.3(a)(2).

(b) *Projected SFA assets.* The amount of projected SFA assets for a plan is determined by projecting special financial assistance forward annually until the projected SFA assets are exhausted, using the following annual cash flows:

(1) Benefits paid and expected to be paid by the plan during the SFA coverage period, including any reinstatement of benefits attributable to the elimination of reductions in a participant's or beneficiary's benefit due to a suspension of benefits under sections 305(e)(9) or 4245(a) of ERISA as required under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), assuming such reinstated benefits are paid beginning as of the SFA measurement date and excluding any benefit increases resulting from contribution increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document described in paragraph (c)(3) of this section;

(2) Administrative expenses paid and expected to be paid by the plan during the SFA coverage period, excluding the amount owed to PBGC under section 4261 of ERISA (which is added to the amount of special financial assistance in § 4262.12 determined as of the date special financial assistance is paid); and

(3) Investment returns expected to be earned by amounts attributable to special financial assistance calculated using the SFA interest rate described in paragraph (e)(2) of this section, excluding investment returns for the plan year in which the sum of annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets.

(c) *Projected non-SFA assets.* The amount of projected non-SFA assets for a plan is determined by projecting the fair market value of plan assets on the SFA measurement date forward annually, using the following annual cash flows:

(1) Benefits paid and expected to be paid by the plan during the SFA coverage period after the projected SFA assets described in paragraph (b) of this section are fully exhausted, including any reinstatement of benefits attributable to the elimination of reductions

in a participant's or beneficiary's benefit due to a suspension of benefits under sections 305(e)(9) or 4245(a) of ERISA as required under § 4262.15(a)(1), payment of previously suspended benefits under § 4262.15(a)(2), and any restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3), assuming such reinstated benefits are paid beginning as of the SFA measurement date and excluding any benefit increases resulting from contribution increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document described in paragraph (c)(3) of this section;

(2) Administrative expenses paid and expected to be paid by the plan during the SFA coverage period after the projected SFA assets described in paragraph (b) of this section are fully exhausted, excluding the amount owed to PBGC under section 4261 of ERISA (which is added to the amount of special financial assistance in § 4262.12 determined as of the date special financial assistance is paid);

(3) Employer contributions paid and expected to be paid to the plan during the SFA coverage period, excluding contribution rate increases agreed to on or after July 9, 2021, as demonstrated by the execution of a document increasing a plan's contribution rate. The document referred to in this paragraph (c)(3) is either—

(i) A collective bargaining agreement not rejected by the plan; or

(ii) A document reallocating contribution rates;

(4) Withdrawal liability payments made and expected to be made to the plan during the SFA coverage period taking into account a reasonable allowance for amounts considered uncollectible;

(5) Other payments made and expected to be made to the plan (excluding the amount of financial assistance under section 4261 of ERISA and special financial assistance to be received by the plan) during the SFA coverage period; and

(6) Investment returns expected to be earned by assets not attributable to special financial assistance calculated using the non-SFA interest rate described in paragraph (e)(1) of this section.

(d) *Deterministic basis.* The projections in paragraphs (b) and (c) of this section must be performed on a deterministic basis using assumptions as described in paragraph (e) of this section. For a plan other than a plan described in § 4262.4(g), the projections must be based on the participant census data used to prepare the plan's actuarial valuation report, either—

(1) For the plan year in which occurs the plan's SFA measurement date; or

(2) If there is no such report for that plan year, for the preceding plan year.

(e) *Actuarial assumptions.* The amount of special financial assistance must be determined in accordance with generally accepted actuarial principles and practices and the provisions in this paragraph (e).

(1) The non-SFA interest rate is the lesser of the rate in paragraph (e)(1)(i) or (ii) of this section.

(i) The interest rate in this paragraph (e)(1)(i) is the interest rate used for funding standard account purposes as projected in the plan's most recently completed certification of plan status before January 1, 2021.

(ii) The interest rate in this paragraph (e)(1)(ii) is the interest rate that is 200 basis points higher than the rate specified in section 303(h)(2)(C)(iii) of ERISA (disregarding modifications made under section 303(h)(2)(C)(iv)) for the month in which such rate is the lowest among the 4 calendar months ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the IRS as of the day that is the day before the date the plan's initial application is filed.

(2) The SFA interest rate is the lesser of the rate in paragraph (e)(2)(i) or (ii) of this section.

(i) The interest rate in this paragraph (e)(2)(i) is the interest rate in paragraph (e)(1)(i) of this section.

(ii) The interest rate in this paragraph (e)(2)(ii) is the interest rate that is 67 basis points higher than the average of the rates specified in section 303(h)(2)(C)(i), (ii), and (iii) of ERISA (disregarding modifications made under section 303(h)(2)(C)(iv)) for the month in which such average is the lowest among the 4 calendar months

ending with the month in which the plan's initial application for special financial assistance is filed, taking into account only rates that have been issued by the IRS as of the day that is the day before the date the plan's initial application is filed.

(3) The actuarial assumptions (other than the interest rate assumptions under paragraphs (e)(1) and (2) of this section) are those used for the plan's most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

(4) If a plan determines that use of the actuarial assumptions under paragraph (e)(3) of this section is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the interest rate assumptions under paragraphs (e)(1) and (2) of this section), as described in § 4262.5.

(f) *Certain events*—(1) *General rules.* (i) The special financial assistance of a plan that experiences one or more of the events described in paragraph (f)(2), (3), or (4) of this section during the period beginning on July 9, 2021, and ending on the SFA measurement date is limited to the amount of special financial assistance that would have applied to the plan on the SFA measurement date if the events had not occurred, as determined in a reasonable manner.

(ii) The special financial assistance of a plan that experiences a merger event during the period described in paragraph (f)(1)(i) of this section is limited to the sum of the amounts of special financial assistance that would have applied to the plans involved in the merger on the SFA measurement date if the merger had not occurred, as determined in a reasonable manner. If any of the plans involved in the merger also experiences one or more of the events described in paragraph (f)(2), (3), or (4) of this section during the period described in paragraph (f)(1)(i) of this section, the amount of special financial assistance for that plan on the SFA measurement date, determined as if the merger had not occurred, must be determined in accordance with paragraph (f)(1)(i) of this section.

(2) *Transfers.* The event described in this paragraph (f)(2) is a transfer of assets or liabilities (including a spinoff).

(3) *Benefit increases.* The event described in this paragraph (f)(3) is the execution of a plan amendment increasing accrued or projected benefits under a plan, other than a restoration of suspended benefits that satisfies the requirements of 26 CFR 1.432(e)(9)–1(e)(3).

(4) *Contribution reductions.* The event described in this paragraph (f)(4) is the execution of a document reducing a plan's contribution rate (including any reduction in benefit accruals adopted simultaneously or arising from a preexisting linkage between benefit accruals and contributions), but only if the plan does not demonstrate (in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov*) that the risk of loss to participants and beneficiaries is reduced (disregarding special financial assistance) by execution of the document. The document referred to in this paragraph (f)(4) is either—

(i) A collective bargaining agreement not rejected by the plan; or

(ii) A document reallocating contribution rates.

(5) *Effect of pre-event ineligibility.* In determining the amount of special financial assistance that would have applied to a plan if an event described in this paragraph (f) had not occurred, if the plan would have been ineligible for special financial assistance under § 4262.3 in the absence of the event, then the amount of special financial assistance is deemed to be $0 (zero).

(6) *Examples.* The following examples illustrate the provisions of paragraph (f) of this section.

(i) *Example 1.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $20X. Before the SFA measurement date, but on or after July 9, 2021, Plan A transferred a portion of its assets and liabilities to Plan B. If the transfer had not occurred, Plan A would, as of the SFA measurement date, be entitled to special financial assistance in the amount of $40X. Although an event described in paragraph

(f)(2) of this section occurred with respect to Plan A, Plan A's special financial assistance is unaffected by the limitation in paragraph (f)(1)(i) of this section and is $20X. Plan B also applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan B would be entitled to special financial assistance in the amount of $30X. If the transfer from Plan A had not occurred, Plan B would, as of the SFA measurement date, be ineligible for special financial assistance. As a result of the event described in paragraph (f)(2) of this section, the limitation in paragraph (f)(1)(i) of this section reduces Plan B's special financial assistance from $30X to $0.

(ii) *Example 2.* Plan C applies for special financial assistance. If the limitation in paragraph (f)(1)(ii) of this section did not apply, Plan C would be entitled to special financial assistance in the amount of $40X. Before the SFA measurement date, but on or after July 9, 2021, Plans A and B were merged into existing Plan C. If the mergers had not occurred, Plan A would not be eligible for special financial assistance, and Plan B and Plan C would be entitled, respectively, to $10X and $5X of special financial assistance as of the SFA measurement date. As a result of the merger event described in paragraph (f)(1)(ii) of this section, the limitation in paragraph (f)(1)(ii) of this section reduces Plan C's special financial assistance from $40X to $15X.

(iii) *Example 3.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $10X. Before the SFA measurement date, but on or after July 9, 2021, projected benefits under Plan A were increased. If the increase had not occurred, Plan A would, as of the SFA measurement date, be ineligible for special financial assistance. As a result of the event described in paragraph (f)(3) of this section, applying the limitation in paragraph (f)(1)(i) of this section and in accordance with paragraph (f)(5) of this section, Plan A is treated as being entitled to special financial assistance of $0.

(iv) *Example 4.* Plan A applies for special financial assistance. If the limitation in paragraph (f)(1)(i) of this section did not apply, Plan A would be entitled to special financial assistance in the amount of $10X. Before the SFA measurement date, but on or after July 9, 2021, Plan A's contribution rate was reduced. Plan A's benefit formula states that the monthly benefit accrual for a participant for a plan year is 2.0 percent of the contributions paid on behalf of the participant for that plan year. Since there is a pre-existing linkage between benefit accruals and contributions, the event described in paragraph (f)(4) of this section includes both the reduction in benefit accruals and the reduction in the contribution rate. If the contribution rate reduction and the reduction in benefit accruals had not occurred, Plan A would, as of the SFA measurement date, be entitled to special financial assistance of $8X. Plan A does not provide a demonstration that the risk of loss to participants and beneficiaries is reduced (disregarding special financial assistance) due to the reduction in contribution rate and the reduction in benefit accruals. As a result of the events described in paragraph (f)(4) of this section, the limitation in paragraph (f)(1)(i) of this section reduces Plan A's special financial assistance from $10X to $8X.

(g) *Filers under the interim provisions of this part.* If a plan's application for special financial assistance under the terms of this part as in effect before August 8, 2022 was filed before that date, the plan may choose to proceed in accordance with paragraph (g)(1), (2), (3), or (4) of this section (whichever applies).

(1) *Approved application.* If the plan's application for special financial assistance was approved as of August 8, 2022, the plan may—

(i) Supplement the plan's application as described in paragraphs (g)(6) and (8) of this section after special financial assistance is paid to or for the plan under the terms of this part as in effect before August 8, 2022; or

(ii) Not supplement the plan's application.

(2) *Pending application.* If the plan's application for special financial assistance was not approved, withdrawn, or

denied, and was pending, as of August 8, 2022, the plan may—

(i) Withdraw the plan's application in accordance with §4262.11(d) and file a revised application as described in paragraph (g)(5) of this section; or

(ii) Not withdraw the plan's application and have the application reviewed under the terms of this part as in effect before August 8, 2022 as described in paragraph (g)(7) of this section.

(3) *Withdrawn application.* If the plan's application for special financial assistance was not pending as of August 8, 2022, because the application was withdrawn, the plan may file a revised application as described in paragraph (g)(5) of this section.

(4) *Denied application.* If the plan's application for special financial assistance was not pending as of August 8, 2022, because the application was denied, the plan may file a revised application as described in paragraph (g)(5) of this section. Any revised application must address the reasons cited by PBGC for the denial.

(5) *Revised application.* Any revised application for special financial assistance filed by a plan under this paragraph (g) is processed in the same way as an initial application, and must demonstrate eligibility and the amount of the plan's special financial assistance determined under the provisions of this part as in effect on August 8, 2022, subject to adjustment as described in §4262.12(a), and use the following base data:

(i) The plan's SFA measurement date determined as the last day of the calendar quarter immediately preceding the date the plan's initial application for special financial assistance was filed;

(ii) The plan's participant census data determined under this part as in effect before August 8, 2022; and

(iii) The plan's non-SFA interest rate and SFA interest rate as determined under paragraphs (e)(1) and (2) of this section.

(6) S*upplemented application.* Any supplemented application filed by a plan under this paragraph (g) must be filed in accordance with paragraph (g)(8) of this section and must be limited to the changes and information specified in the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov*, about the determination of the amount of special financial assistance under this part as of August 8, 2022 (including the interest rates in paragraph (e) of this section), and the filer must agree to be bound by the provisions of this part governing such a determination, in which case, special financial assistance is subject to adjustment as described in §4262.12(c).

(7) *No supplement or withdrawal.* If special financial assistance has not been paid to or for the plan under the terms of this part as in effect before August 8, 2022, and the plan has not filed a supplemented application as described in paragraphs (g)(6) and (8) of this section, or withdrawn the plan's application in accordance with §4262.11(d), the application will be reviewed under the terms of this part as in effect before August 8, 2022. The amount of special financial assistance for the plan will be determined under the terms of this part as in effect before August 8, 2022 and be subject to adjustment as described in §4262.12(b).

(i) A plan that receives special financial assistance as described under this paragraph (g)(7) may subsequently file a supplemented application in accordance with paragraphs (g)(6) and (8) of this section.

(ii) If the plan's application is denied, the plan may file a revised application as described in paragraph (g)(5) of this section.

(8) *Supplemented application special rules.* (i) Except as provided in this paragraph (g)(8), the rules in §§4262.10 and 4262.11(a) and (b) and (f) and (g) for a revised application apply to a supplemented application.

(ii) A supplemented application must not change the plan's SFA measurement date, fair market value of assets, or participant census data, or include a proposed change in assumptions, except to propose a change to the plan's employer contribution assumption to exclude contribution rate increases agreed to on or after July 9, 2021, as permitted under paragraph (c)(3) of this section (in which case, the plan must exclude any benefit increases resulting

from such contribution increases as required under paragraphs (b)(1) and (c)(1) of this section).

(iii) A supplemented application may be withdrawn and resubmitted at any time before PBGC denies or approves the supplemented application. Any withdrawal of a plan's supplemented application must be by written notice to PBGC submitted by any person authorized to submit an application for the plan and in accordance with the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

(iv) If PBGC denies a plan's supplemented application, any new supplemented application filed by the plan must address the reasons cited by PBGC for the denial.

§ 4262.5 PBGC review of plan assumptions.

(a) *In general.* (1) As set forth in § 4262.3(d)(1), PBGC will accept the assumptions used by a plan to determine eligibility for special financial assistance under § 4262.3(d)(1) unless PBGC determines that such assumptions are clearly erroneous.

(2) PBGC will accept the assumptions used by a plan to determine eligibility for special financial assistance under § 4262.3(d)(2) or to determine the amount of special financial assistance under § 4262.4(e)(3) unless PBGC determines that an assumption is unreasonable.

(3) PBGC will accept a plan's changes in assumptions under paragraph (c) of this section except to the extent that PBGC determines that an assumption is individually unreasonable, or the proposed changed assumptions are unreasonable in the aggregate.

(b) *Reasonableness of assumptions.* (1) Each of the actuarial assumptions and methods used for the actuarial projections (excluding the interest rate assumptions under § 4262.4(e)(1) and (2)) must be reasonable in accordance with generally accepted actuarial principles and practices, taking into account the experience of the plan and reasonable expectations. The actuary's selection of assumptions about future covered employment and contribution levels (including contribution base units and contribution rates) may be based on information provided by the plan sponsor, which must act in good faith in providing the information.

(2) If a plan has a change in assumptions under paragraph (c) of this section, each of the actuarial assumptions and methods (other than the interest rate assumptions under § 4262.4(e)(1) and (2)) must be reasonable and the combination of those actuarial assumptions and methods (excluding the interest rate assumptions under § 4262.4(e)(1) and (2)) must also be reasonable.

(c) *Changes in assumptions.* If a plan determines that use of an assumption described in § 4262.3(d)(2) or § 4262.4(e)(3) is unreasonable, the plan's application may include a proposed change in the assumptions (excluding the plan's interest rate assumptions under § 4262.4(e)(1) and (2)).

(1) The application for special financial assistance must—

(i) Describe why the original assumption is no longer reasonable;

(ii) Propose to use a different assumption (the changed assumption); and

(iii) Demonstrate that the changed assumption is reasonable.

(2) PBGC will provide guidelines for changed assumptions on PBGC's website at *www.pbgc.gov*.

§ 4262.6 Information to be filed.

(a) *In general.* An application for special financial assistance must include the information specified in this section and §§ 4262.7 (plan information) and 4262.8 (actuarial and financial information); a copy of the executed plan amendment required under paragraph (e)(1) of this section; a copy of the proposed plan amendment required under paragraph (e)(2) of this section; and a completed checklist and other information as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov*. If any of the information required for an application for special financial assistance under this part is not accurately completed or not filed with the application, PBGC may require the plan sponsor to file additional information described under paragraph (d) of this section or PBGC may consider the application incomplete. If the correction of an error or omission requires a change to the

amount of special financial assistance requested, the application will be considered incomplete.

(b) *Required trustee signature.* An application for special financial assistance must—

(1) Be signed and dated by an authorized trustee, who is a current member of the board of trustees and who is authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor, with such signature accompanied by the printed name and title of the signer; and

(2) Include the following statements signed by an authorized trustee who is a current member of the board of trustees, with such signature accompanied by the printed name and title of the signer: ''Under penalty of perjury under the laws of the United States of America, I declare that I am an authorized trustee who is a current member of the board of trustees of the [*insert plan name*] and that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application; all statements of fact contained in the application are true, correct, and not misleading because of omission of any material fact; and all accompanying documents are what they purport to be.''

(c) *Actuarial calculations.* All calculations that are required in an application for special financial assistance under this part must include a certification by the plan's enrolled actuary.

(d) *Clarifying and additional information.* PBGC may require a plan sponsor to file additional information, including information to clarify or verify information provided in the plan's application. The plan sponsor must promptly file any such information with PBGC upon request.

(e) *Duty to amend plan and notify PBGC.* The plan sponsor of a plan applying for special financial assistance must—

(1) Amend the plan to include the following special financial assistance provision effective through the end of the last plan year ending in 2051: ''Beginning with the SFA measurement date selected by the plan in the plan's application for special financial assistance, notwithstanding anything to the contrary in this or any other governing document, the plan shall be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and 29 CFR part 4262. This amendment is contingent upon approval by PBGC of the plan's application for special financial assistance.''

(2) If the plan suspended benefits under section 305(e)(9) or 4245(a) of ERISA, amend the plan to include provisions substantially similar to the following to, in accordance with guidance issued by the Secretary of the Treasury under section 432(k) of the Code, {I} reinstate benefits, as required by § 4262.15(a)(1), and {II} make payments of previously suspended benefits, as required by § 4262.15(a)(2): ''Effective as of the first month in which special financial assistance is paid to the plan, the plan shall reinstate all benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA. The plan shall pay each participant and beneficiary that is in pay status as of the date special financial assistance is paid to the plan the aggregate amount of the participant's or beneficiary's benefits that were not paid because of the suspension, with no actuarial adjustment or interest. Such payment shall be made [*choose whichever applies:* 'in a lump sum no later than 3 months after the date the special financial assistance is paid to the plan, irrespective of whether the participant or beneficiary dies after the date special financial assistance is paid' *or* 'in equal monthly installments over a period of 5 years, commencing no later than 3 months after the date the special financial assistance is paid to the plan, with all installments to be paid irrespective of whether the participant or beneficiary survives to the end of the 5-year period'].''

(3) During any time in which an application is pending approval by PBGC, the plan sponsor must promptly notify PBGC in writing as soon as the plan sponsor becomes aware that any material fact or representation contained in or relating to the application, or in any supporting documents, is no longer accurate, or that any material fact or

representation was omitted from the application or supporting documents.

(f) *Disclosure of information.* Unless confidential under the Privacy Act, all information that is filed with PBGC for an application for special financial assistance under this part may be made publicly available, at PBGC's sole discretion, on PBGC's website at *www.pbgc.gov* or otherwise publicly disclosed. Except to the extent required by the Privacy Act, PBGC provides no assurance of confidentiality in any information or documentation included in an application for special financial assistance.

§ 4262.7 Plan information.

(a) *Basic information.* An application for special financial assistance must include all of the following information with respect to the plan and amount of special financial assistance requested:

(1) Name of the plan, Employer Identification Number (EIN), and three-digit Plan Number (PN).

(2) Name of the individual filing the application and role of the individual with respect to the plan.

(3) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(4) The total amount of special financial assistance requested under § 4262.4(a)(1) or (2).

(b) *Eligibility.* An application must identify the eligibility requirements in § 4262.3 that the plan satisfies to be eligible for special financial assistance. An application for a plan that is eligible under section 4262(b)(1)(C) of ERISA must include a demonstration to support that the plan meets the eligibility requirements.

(c) *Priority group identification.* An application must identify any priority group under § 4262.10(d)(2) that the plan is in. An application must include a demonstration to support the plan's inclusion in a priority group, unless the plan is insolvent under section 4245(a) of ERISA, has implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021, is in critical and declining status (as defined in section 305(b)(6) of ERISA) and had 350,000 or more participants, or is listed on PBGC's website at *www.pbgc.gov* as a plan in priority group 6, as defined under § 4262.10(d)(2)(vi).

(d) *Plans with a suspension of benefits.* If a plan previously suspended benefits under section 305(e)(9) or 4245(a) of ERISA, its application must include a description of how the plan will reinstate the benefits that were previously suspended and a proposed schedule showing aggregate amount and timing of payments (in accordance with § 4262.15) to participants and beneficiaries under the plan. The proposed schedule should be prepared assuming the effective date for reinstatement is the SFA measurement date and that payments for previously suspended benefits described in § 4262.15(a)(2) are paid or commence on the SFA measurement date. If the plan restored benefits under 26 CFR 1.432(e)(9)–1(e)(3) before the SFA measurement date, the proposed schedule should reflect the amount and timing of payments of restored benefits and the effect of the restoration on the benefits remaining to be reinstated.

(e) *Plan documentation.* An application must include all of the following plan documentation:

(1) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any), including a copy of the executed plan amendment required under § 4262.6(e)(1).

(2) If the plan suspended benefits under section 305(e)(9) or 4245(a) of ERISA, a copy of the proposed plan amendment(s) required under § 4262.6(e)(2) and a certification by the plan sponsor that the plan amendment(s) will be timely adopted. Such certification must be signed either by all members of the plan's board of trustees or by one or more trustees duly authorized to sign the certification on behalf of the entire board and to commit the board to timely adopting the amendment after the plan's application for special financial assistance is approved, with each signature accompanied by the printed name and title of the signer.

(3) Most recent trust agreement or restatement of the trust agreement and all subsequent adopted amendments (if any).

(4) Most recent IRS determination letter.

(5) Actuarial valuation reports completed for the 2018 plan year and each subsequent actuarial valuation report completed before the date the plan's initial application for special financial assistance is filed.

(6) Most recent rehabilitation plan (or funding improvement plan, if applicable), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan for the most recent plan year available. If the most recent rehabilitation plan does not include historical documentation of rehabilitation plan changes (if any) that occurred in calendar year 2020 and later, these details must be provided in a clearly identified supplemental document.

(7) Most recent Form 5500 and all schedules and attachments (including the audited financial statement).

(8) Plan actuary's certification of plan status required under section 305(b)(3) of ERISA completed for the 2018 plan year and each subsequent annual certification of plan status completed before the date the plan's initial application was filed, with documentation supporting each certification, which must include the projections and information required in the special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

(9) Most recent statement for each of the plan's cash and investment accounts.

(10) Most recent plan financial statement (audited, or unaudited if audited is not available).

(11) Bank account and other information necessary for electronic payment of funds.

(12) All written policies and procedures governing withdrawal liability determination, assessment, collection, settlement, and payment.

§ 4262.8 Actuarial and financial information.

(a) *Required information.* An application for special financial assistance must include all of the following actuarial and financial information:

(1) For each plan year from the 2018 plan year until the most recent plan year for which the Form 5500 is required to be filed by the date the plan's initial application for special financial assistance is filed, the projection of expected benefit payments as required to be attached to the Form 5500 Schedule MB if the response to the question at line 8b(1) of the Form 5500 Schedule MB is ''Yes''.

(2) For a plan that has 10,000 or more participants required to be entered on line 6f of the plan's most recently filed Form 5500 (as of the date the plan's initial application for special financial assistance is filed), a listing of the 15 largest contributing employers and the contribution amounts for each such contributing employer for the most recently completed plan year (before the date the plan's initial application for special financial assistance is filed).

(3) Historical plan financial information for the 2010 plan year through the plan year immediately preceding the date the plan's initial application was filed that separately identifies: Total contributions; total contribution base units; average contribution rates; number of active participants at the beginning of each plan year; and other sources of non-investment income, including, if applicable, withdrawal liability payments collected, contributions from reciprocity agreements, and other sources of contributions or income not already identified.

(4) Information used to determine the amount of the requested special financial assistance, including all of the following information—

(i) Non-SFA interest rate required under § 4262.4(e)(1), including supporting details on how it was determined, and SFA interest rate required under § 4262.4(e)(2), including supporting details on how it was determined.

(ii) Fair market value of plan assets determined as of the SFA measurement date; a certification from the plan sponsor with respect to the accuracy of this amount, including information that substantiates the asset value and any projections to the SFA measurement date (including details and supporting rationale); and a reconciliation of the fair market value of plan assets from the date of the most recent audited plan financial statement to the

SFA measurement date showing contributions, withdrawal liability payments, benefit payments, administrative expenses, and investment income.

(iii) For the calculation method used to determine the requested amount of special financial assistance, the plan year in which the sum of annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets.

(5) The amount of special financial assistance calculated under §4262.4(a)(1) and information used to determine such amount, based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under §4262.4(a)(1) determined as a lump sum as of the SFA measurement date.

(ii) For each plan year in the SFA coverage period: The projected amount of contributions, projected withdrawal liability payments reflecting a reasonable allowance for amounts considered uncollectible, and other payments expected to be made to the plan.

(iii) For each plan year in the SFA coverage period: Payments described in §4262.4(b)(1) attributable to the reinstatement of benefits under §4262.15 that were previously suspended through the SFA measurement date.

(iv) For each plan year in the SFA coverage period: Benefit payments described in §4262.4(b)(1) (including any benefits restored under 26 CFR 1.432(e)(9)–1(e)(3) and excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), separately for current retirees and beneficiaries in pay status, current terminated participants not yet in pay status, current active participants, and new entrants; and total benefit payments paid and expected to be paid from projected SFA assets separately from total benefit payments paid and expected to be paid from non-SFA assets after the projected SFA assets are fully exhausted.

(v) For each plan year in the SFA coverage period: Administrative expenses paid and expected to be paid (excluding the amount owed PBGC under section 4261 of ERISA), separately for PBGC premiums and all other administrative expenses; and total administrative expenses paid and expected to be paid from projected SFA assets separately from total administrative expenses paid and expected to be paid from non-SFA assets after the projected SFA assets are fully exhausted.

(vi) For each plan year in the SFA coverage period: The projected total participant count at the beginning of the year.

(vii) For each plan year in the SFA coverage period: The projected investment income earned by assets not attributable to special financial assistance based on the interest rate required under §4262.4(e)(1) and the projected fair market value of non-SFA assets at the end of each plan year.

(viii) For each plan year in the SFA coverage period: The projected investment income earned by amounts attributable to special financial assistance based on the interest rate required under §4262.4(e)(2) (excluding investment returns for the plan year in which the sum of the annual projected benefit payments and administrative expenses for the year exceeds the beginning-of-year projected SFA assets) and the projected fair market value of SFA assets at the end of each plan year.

(6) For MPRA plans, the amount of special financial assistance calculated under §4262.4(a)(2)(i) and information used to determine such amount, based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under §4262.4(a)(2)(i) determined as a lump sum as of the SFA measurement date.

(ii) All items identified in paragraphs (a)(5)(ii) through (viii) of this section that support the amount described in paragraph (a)(6)(i) of this section.

(7) For MPRA plans, if the amount calculated under §4262.4(a)(2)(ii) is the greatest amount calculated under §4262.4(a)(2), the amount of special financial assistance calculated under §4262.4(a)(2)(ii) and information used to determine the amount under §4262.4(a)(2)(ii), based on a deterministic projection, including all of the following information—

(i) Special financial assistance calculated under§ 4262.4(a)(2)(ii) determined as a lump sum as of the SFA measurement date.

(ii) For each plan year in the SFA coverage period: Benefit payments described in § 4262.4(b)(1) (excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), separately for current retirees and beneficiaries in pay status, current terminated participants not yet in pay status, current active participants, and new entrants; and total benefit payments paid or expected to be paid. For each participant group except new entrants: benefit payments after reinstatement (excluding the previously suspended benefits described in paragraph (a)(5)(iii) of this section), the reduced benefit payments under the approved benefit suspension, and the difference due to the reinstatement of benefits.

(iii) The present value, as of the SFA measurement date using the SFA interest rate required under § 4262.4(e)(2), of the amounts described in paragraph (a)(5)(iii) of this section.

(iv) The present value, as of the SFA measurement date using the SFA interest rate required under § 4262.4(e)(2), of the difference in benefit amounts due to the reinstatement of benefits, as described in paragraph (a)(7)(ii) of this section.

(8) Projected contributions and withdrawal liability payments, reflecting a reasonable allowance for amounts considered uncollectible, used to calculate the requested special financial assistance amount in § 4262.4, including total contributions, contribution base units, average contribution rate(s), reciprocal contributions (if applicable), additional contributions from the rehabilitation plan, and any other contributions, and number of active participants at the beginning of each plan year. For withdrawal liability, separate projections for withdrawn employers and for future assumed withdrawals.

(9) A description of the development of the assumed future contributions (including assumed contribution rates) and future withdrawal liability payments described in paragraph (a)(8) of this section.

(10) For a plan that has 350,000 or more participants reported on line 6f of its most recently filed Form 5500 (as of the date the plan's initial application for special financial assistance is filed), the participant census data utilized by the plan actuary in developing the cash flow projections included in the application.

(11) Documentation of a death audit to identify deceased participants that was completed no earlier than 1 year before the plan's SFA measurement date, including identification of the service provider conducting the audit and a copy of the results of the audit provided to the plan administrator by the service provider.

(b) *Information required for changed assumptions in initial and revised applications.* An application for a plan that proposes to change any assumption used in the plan's most recently completed certification of plan status before January 1, 2021, must include all of the following information:

(1) A table identifying which assumptions used in demonstrating the plan's eligibility for special financial assistance or in calculating the amount of special financial assistance differ from those assumptions used in the plan's most recently completed certification of plan status before January 1, 2021, and detailed narrative explanations (with supporting rationale and information) as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov* as to why any assumption used in the certification is no longer reasonable and why the changed assumption is reasonable.

(2) Deterministic cash flow projection (''Baseline'') in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov* that shows the amount of special financial assistance that would be determined if all underlying assumptions used in the projection were the same as those used in the actuarial certification of plan status last completed before January 1, 2021 (excluding the plan's non-SFA and SFA interest rates, which must be the same as the interest rates required under § 4262.4(e)(1) and (2)). For purposes of this paragraph (b)(2), certain changes

in assumptions as described in the special financial assistance instructions on PBGC's website at *www.pbgc.gov* should be reflected in the Baseline projection.

(3) In accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov*, a reconciliation of the change in the requested special financial assistance due to each changed assumption from the Baseline to the requested special financial assistance amount in § 4262.4, showing, for each assumption change from the Baseline, a deterministic projection calculated in the same manner as the requested amount in § 4262.4.

(c) *Information required for certain events.* An application for a plan with respect to which an event described in § 4262.4(f) occurs on or after July 9, 2021, must include the applicable information related to the event specified in special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

(d) *Information required for changed assumptions in supplemented applications.* Any supplemented application filed for a plan described in § 4262.4(g) must include the information specified in the supplemented special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

§ 4262.9 Application for a plan with a partition.

(a) *In general.* This section applies to a plan partitioned under section 4233 of ERISA that is eligible for special financial assistance under § 4262.3(a)(2). A partitioned plan is in priority group 2 for purposes of § 4262.10(d)(2).

(b) *Filing requirements.* A plan sponsor of a partitioned plan filing an application for special financial assistance must—

(1) File one application for the original plan and the successor plan.

(2) Include in the application—

(i) A statement that the plan was partitioned under section 4233 of ERISA;

(ii) A copy of the plan document and other executed amendments required under paragraph (c)(2) of this section; and

(iii) The information required in §§ 4262.6 through 4262.8.

(3) If a plan sponsor has already filed with PBGC any of the required information described in paragraph (b)(2)(iii) of this section, the plan sponsor is not required to file that information with its application for special financial assistance. For any such information not filed with the application, the plan sponsor must note on the checklist described under § 4262.6(a) when the information was filed.

(c) *Rescission of partition order.* Effective when special financial assistance is paid under § 4262.12, and in a manner consistent with the application procedure determined under paragraph (b) of this section—

(1) PBGC will rescind the partition order; and

(2) The plan sponsor must amend the plan to remove any provisions or amendments that were required to be adopted under the partition order.

§ 4262.10 Processing applications.

(a) *In general.* Any application for special financial assistance for an eligible multiemployer plan must be filed by the plan sponsor in accordance with the provisions of this part and the special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

(b) *Method of filing.* An application filed with PBGC under this part must be made electronically in accordance with the rules in part 4000 of this chapter. The time period for filing an application under this part must be computed under the rules in subpart D of part 4000 of this chapter.

(c) *Where to file.* (1) An application filed with PBGC under this part must be filed as described in § 4000.4 of this chapter.

(2) Section 432(k)(1)(D) of the Code requires an application in a priority group under paragraph (d)(2) of this section to be submitted to the Secretary of the Treasury. If the requirement in the preceding sentence applies to an application, PBGC will transmit the application to the Department of the Treasury on behalf of the plan.

(d) *When to file.* Any initial application for special financial assistance must be filed by December 31, 2025, and any revised application or supplemented application must be filed by December 31, 2026. Any application

other than a plan's initial application or a supplemented application is a revised application regardless of whether it differs from the initial application or supplemented application.

(1) *Processing system.* To accommodate expeditious processing of many special financial assistance applications in a limited time period:

(i) The number of applications accepted for filing will be limited in such manner that, in PBGC's estimation, each application can be processed within 120 days.

(ii) Plans specified in paragraph (d)(2) of this section will be given priority to file an application before plans not specified in paragraph (d)(2) of this section. Plans not specified in paragraph (d)(2) of this section may not file an application before March 11, 2023.

(iii) Notices on PBGC's website at *www.pbgc.gov* will apprise potential filers of the current priority group(s) for which applications are being accepted and whether PBGC is accepting applications for filing as well as other information about priority groups and filing.

(2) *Priority groups.* Until not later than March 11, 2023, the plan sponsor of an eligible multiemployer plan will be given priority to file an application if the plan is in one of the priority groups in paragraphs (d)(2)(i) through (vii) of this section, listed in order of higher priority group to lower priority group. A plan may not file an application earlier than the beginning date specified for the plan's priority group. When applications for plans in a priority group are accepted for filing, PBGC will continue to accept applications for plans in a higher priority group, subject to paragraph (d)(1) of this section.

(i) *Priority group 1.* A plan is in priority group 1 if the plan is insolvent or is projected to become insolvent under section 4245 of ERISA by March 11, 2022. A plan in priority group 1 may file an application beginning on July 9, 2021.

(ii) *Priority group 2.* A plan is in priority group 2 if the plan has implemented a suspension of benefits under section 305(e)(9) of ERISA as of March 11, 2021; or the plan is expected to be insolvent under section 4245 of ERISA within 1 year of the date the plan's application was filed. A plan in priority group 2 may file an application beginning on January 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov*.

(iii) *Priority group 3.* A plan is in priority group 3 if the plan is in critical and declining status (as defined in section 305(b)(6) of ERISA) and has 350,000 or more participants. A plan in priority group 3 may file an application beginning on April 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov*.

(iv) *Priority group 4.* A plan is in priority group 4 if the plan is projected to become insolvent under section 4245 of ERISA by March 11, 2023. A plan in priority group 4 may file an application beginning on July 1, 2022, or such earlier date specified on PBGC's website at *www.pbgc.gov*.

(v) *Priority group 5.* A plan is in priority group 5 if the plan is projected to become insolvent under section 4245 of ERISA by March 11, 2026. The date a plan in priority group 5 may file an application will be specified on PBGC's website at *www.pbgc.gov* at least 21 days in advance of such date, and such date will be no later than February 11, 2023.

(vi) *Priority group 6.* A plan is in priority group 6 if the plan is projected by PBGC to have a present value of financial assistance payments under section 4261 of ERISA that exceeds $1,000,000,000 if special financial assistance is not ordered. PBGC will list the plans in priority group 6 on its website at *www.pbgc.gov*. The date a plan in priority group 6 may file an application will be specified on PBGC's website at *www.pbgc.gov* at least 21 days in advance of such date, and such date will be no later than February 11, 2023.

(vii) *Additional priority groups.* PBGC may add additional priority groups based on other circumstances similar to those described for the groups listed in paragraphs (d)(2)(i) through (vi) of this section. If added, additional priority groups and the date PBGC will begin accepting applications for such additional priority groups will be posted in guidance on PBGC's website at *www.pbgc.gov*.

(e) *Filing date.* An application will be considered filed on the date it is submitted to PBGC if it is signed in accordance with § 4262.6(b) and meets the applicable requirements in paragraph (d) of this section, including that it can be accommodated in accordance with the processing system described in paragraph (d)(1) of this section or the emergency filing process described in paragraph (f) of this section. Otherwise, the application will not be considered filed and PBGC will notify the applicant that the application was not properly filed, and that the application must be filed in accordance with the processing system and instructions on PBGC's website at *www.pbgc.gov*. References in this part to a plan's initial application are to the plan's first application that is considered filed.

(f) *Emergency filing.* Beginning when PBGC accepts applications in priority group 2 described in paragraph (d)(2)(ii) of this section, and notwithstanding the processing system described in paragraph (d)(1) of this section, an application may be accepted for filing if—

(1) It is an application for a plan that either—

(i) Is insolvent or expected to be insolvent under section 4245 of ERISA within 1 year of the date the plan's application was filed; or

(ii) Has suspended benefits under section 305(e)(9) of ERISA as of March 11, 2021; and

(2) The filer notifies PBGC before submitting the application that the application qualifies as an emergency filing under this paragraph (f) in accordance with instructions on PBGC's website at *www.pbgc.gov*.

(g) *Lock-in applications.* (1) A lock-in application described in this paragraph (g), clearly and prominently identified as such, may be filed for a plan as its initial application (thus establishing the plan's base data as provided under § 4262.11(c)).

(2) A lock-in application must—

(i) Except as provided in paragraph (g)(2)(ii) of this section, be filed after March 11, 2023, and on or before December 31, 2025; or

(ii) Be filed by a plan described in paragraphs (d)(2)(v) through (vii) of this section in accordance with the processing system described in paragraphs (d)(1)(ii) and (iii) and (d)(2) of this section at a time when PBGC is not accepting applications for filing under paragraph (d)(1)(i) of this section.

(3) The lock-in application must—

(i) Provide the information in § 4262.7(a)(1) through (3) and in the instructions for lock-in applications on PBGC's website at *www.pbgc.gov;*

(ii) Be signed in accordance with § 4262.6(b); and

(iii) Be filed in accordance with paragraphs (a) through (c) of this section and the instructions for lock-in applications on PBGC's website at *www.pbgc.gov*.

(4) A lock-in application for a plan that satisfies the requirements of this paragraph (g) is considered filed as the plan's initial application and denied for incompleteness under § 4262.11(a)(2)(i).

(h) *Informal consultation.* Nothing in this section prohibits a plan sponsor from contacting PBGC informally to discuss a potential application for special financial assistance.

§ 4262.11 PBGC action on applications.

(a) *In general.* Within 120 days after the date an initial, revised, or supplemented application for special financial assistance is properly and timely filed, PBGC will—

(1) Approve the application and notify the plan sponsor of the payment of special financial assistance in accordance with § 4262.12; or

(2) Deny the application because—

(i) The application is incomplete, and notify the plan sponsor of the missing information; or

(ii) An assumption is unreasonable, a proposed change in assumption is individually unreasonable, or the proposed changed assumptions are unreasonable in the aggregate, and notify the plan sponsor of the reasons for the determination; or

(iii) The plan is not an eligible multiemployer plan, and notify the plan sponsor of the reasons the plan fails to be eligible for special financial assistance; or

(3) Fail to act on the application, in which case the application is deemed approved, and notify the plan sponsor of the payment of special financial assistance in accordance with § 4262.12.

(b) *Incomplete application.* PBGC will consider an application incomplete under paragraph (a)(2)(i) of this section unless the application accurately includes the information required to be filed under this part and the special financial assistance instructions on PBGC's website at *www.pbgc.gov*, including any additional information that PBGC requires under § 4262.6(d).

(c) *Application base data.* For an eligible plan other than a plan described in § 4262.4(g)—

(1) A plan's base data are—

(i) The plan's SFA measurement date as defined under § 4262.2;

(ii) The plan's participant census data as required to be used under § 4262.4(d); and

(iii) The plan's non-SFA interest rate and SFA interest rate as determined under § 4262.4(e)(1) and (2).

(2) A plan's base data are fixed by the date the eligible plan's initial application for special financial assistance is filed and must be used for any revised application for the plan. If the plan was not eligible for special financial assistance on such date, the plan's base data will be fixed by the date the plan files a revised application and demonstrates eligibility for special financial assistance.

(d) *Withdrawn applications.* (1) A plan's application for special financial assistance may be withdrawn at any time before PBGC denies or approves the application.

(2) Any withdrawal of a plan's application must be by written notice to PBGC submitted by any person authorized to submit an application for the plan and in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov*.

(3) An application submitted for a plan after the withdrawal of an application is a revised application.

(e) *Denied applications.* If PBGC denies a plan's application, an application submitted for a plan after the denial is a revised application. Any revised application must address the reasons cited by PBGC for the denial.

(f) *Revised applications.* A plan's revised application is processed in the same way as an initial application and must comply with the requirements in this part for an initial application except that it must use the base data required in paragraph (c) of this section for the initial application.

(g) *Final agency action.* PBGC's decision on an application for special financial assistance under this section is a final agency action under § 4003.22(b) of this chapter for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 4262.12 Payment of special financial assistance.

(a) *Amount of special financial assistance under this part.* The amount of special financial assistance to be paid by PBGC to or for a plan for which either an initial or a revised application for special financial assistance is filed on or after August 8, 2022, will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance, determined under § 4262.4 as of the SFA measurement date; plus

(2) Interest on the amount in paragraph (a)(1) of this section from the SFA measurement date to the SFA payment date at a rate equal to the interest rate required under § 4262.4(e)(2); plus

(3) The amount owed to PBGC under section 4261 of ERISA determined as of the SFA payment date; minus

(4) Financial assistance payments under section 4261 of ERISA received by the plan between the SFA measurement date and the SFA payment date, with interest on each such financial assistance payment from the date thereof to the SFA payment date calculated at a rate equal to the interest rate required under § 4262.4(e)(2).

(b) *Amount of special financial assistance under the interim provisions of this part.* The amount of special financial assistance to be paid by PBGC to or for a plan for which neither an initial nor a revised application for special financial assistance is filed on or after August 8, 2022 and there has not been any previous payment of special financial assistance, and where a plan's application has not been supplemented, will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial

assistance, determined under § 4262.4 (under the terms of this part as in effect before August 8, 2022) as of the SFA measurement date; plus

(2) Interest on the amount in paragraph (b)(1) of this section from the SFA measurement date to the SFA payment date at a rate equal to the interest rate required under § 4262.4(e)(1); plus

(3) The amount owed to PBGC under section 4261 of ERISA determined as of the SFA payment date; minus

(4) Financial assistance payments under section 4261 of ERISA received by the plan between the SFA measurement date and the SFA payment date, with interest on each such financial assistance payment from the date thereof to the SFA payment date calculated at a rate equal to the interest rate required under § 4262.4(e)(1).

(c) *Amount of additional special financial assistance under supplemented application.* The amount of additional special financial assistance to be paid by PBGC to or for a plan where the plan has received a prior payment of special financial assistance under the terms of this part as in effect before August 8, 2022 will be the total of—

(1) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance (including any supplemented application filed after the prior payment of special financial assistance), determined under § 4262.4 as of the SFA measurement date; minus

(2) The amount required as demonstrated by the plan sponsor on the application for such special financial assistance, determined under § 4262.4 (under the terms of this part as in effect before August 8, 2022) as of the SFA measurement date; plus

(3) Interest on the excess of the amount in paragraph (c)(1) of this section over the amount in paragraph (c)(2) of this section from the SFA measurement date to the payment date of the additional special financial assistance at a rate equal to the interest rate required under § 4262.4(e)(2).

(d) *Payment instructions.* The plan must include in its application payment instructions in accordance with the special financial assistance instructions on PBGC's website at *www.pbgc.gov*. PBGC may request additional information from the plan related to PBGC's payment of special financial assistance. Payment will be considered made by PBGC when, in accordance with the payment instructions in the application, PBGC no longer has ownership of the amount being paid. Any adjustment for delay will be borne by PBGC only to the extent that it arises while PBGC has ownership of the funds.

(e) *Repayment of traditional financial assistance.* If a plan described in paragraph (a) or (b) of this section has an obligation to repay financial assistance under section 4261 of ERISA, PBGC will—

(1) Issue a written demand for repayment of financial assistance when the application is approved; and

(2) Deduct the amount of financial assistance, including interest, that the plan owes PBGC from the special financial assistance before payment to the plan.

(f) *Date of payment of special financial assistance.* (1) Special financial assistance issued by PBGC will be paid as soon as practicable upon approval of the plan's special financial assistance application but not later than the earlier of—

(i) Ninety days after a plan's special financial assistance application is approved by PBGC or deemed approved under § 4262.11(a)(3); or

(ii) September 30, 2030.

(2) References in this section to the SFA payment date are to the date PBGC sends payment of special financial assistance, not the bank settlement date.

(g) *Manner of payment.* The payment of special financial assistance to a plan will be made by PBGC in a lump sum or substantially so and is not a loan subject to repayment obligations. Notwithstanding the preceding sentence, the following payment obligations apply:

(1) Special financial assistance is subject to recalculation or adjustment to correct a clerical or arithmetic error. PBGC will, and plans must, make payments as needed to reflect any such recalculation or adjustment in a timely manner.

(2) If PBGC determines that a payment for special financial assistance to a plan exceeded the amount to which the plan was entitled, any excess payment constitutes a debt to the Federal Government. If not paid within 90 calendar days after demand, PBGC may reduce the debt by any action permitted by Federal statute. Except where otherwise provided by statutes or regulations, PBGC will charge interest and other amounts permitted on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

§ 4262.13 Restrictions on special financial assistance.

(a) *In general.* A plan that receives special financial assistance must be administered in accordance with the restrictions in this section and in § 4262.14.

(b) *Restrictions and use of SFA.* Special financial assistance received, and any earnings thereon—

(1) May be used by the plan only to make benefit payments and pay administrative expenses;

(2) Must be segregated from other plan assets as described in § 4262.14(a);

(3) May be used before other plan assets are used to make benefit payments and pay administrative expenses; and

(4) Must be invested in investment grade bonds or other investments as permitted by PBGC in § 4262.14.

§ 4262.14 Permissible investments of special financial assistance.

(a) A plan that receives special financial assistance must segregate special financial assistance assets and earnings thereon (''amounts attributable to special financial assistance'') in an account that is separate from the plan's non-special financial assistance assets and that is invested consistent with the investment requirements of this section.

(b) Permissible investments for amounts attributable to special financial assistance are—

(1) Investments in return-seeking assets as described under paragraph (c) of this section, not to exceed 33 percent of amounts attributable to special financial assistance measured using fair market value as of—

(i) Each day the plan purchases return-seeking assets, other than through the automatic re-purchase of capital gains and reinvestment of dividends; and

(ii) At least one day during every rolling period of 12 consecutive months beginning from the date the plan receives special financial assistance.

(2) Investments in investment grade fixed income securities and cash as described in paragraph (d) of this section for all other amounts attributable to special financial assistance.

(c) For purposes of this section, *investments in return-seeking assets* are investments in—

(1) Common stock that is denominated in U.S. dollars and registered under section 12(b) of the Securities Exchange Act of 1934.

(2) Shares held in a permissible fund vehicle described in paragraph (g) of this section that abides by an investment policy that restricts investment predominantly to equity securities registered under section 12(b) of the Securities Exchange Act of 1934, U.S. Treasury securities with less than one year to maturity date, cash and cash equivalents described in paragraph (d)(5) of this section, and money market funds described in paragraph (d)(6) of this section.

(3) A debt security that has been resold in an offering pursuant to 17 CFR 230.144A (Rule 144A under the Securities Act of 1933), is investment grade as described under paragraph (f) of this section, and has not been issued by a foreign issuer as defined under 17 CFR 240.3b–4(b).

(4) A debt instrument, as described under paragraph (d) of this section, that is no longer investment grade if it was investment grade as described under paragraph (f) of this section when purchased by the plan for the portion of special financial assistance invested in investment grade fixed income securities.

(d) For purposes of this section, *investments in investment grade fixed income securities and cash* are investments in—

(1) A bond or other debt security that pays a fixed amount or fixed rate of interest, is denominated in U.S. dollars, sold in an offering registered under the Securities Act of 1933, and is investment grade as described under paragraph (f) of this section.

(2) Shares held in a permissible fund vehicle described under paragraph (g) of this section that abides by an investment policy that restricts investment predominantly to securities described in this paragraph (d) that are denominated in U.S. dollars and are investment grade as defined under paragraph (f) of this section.

(3) Securities issued, guaranteed or sponsored by the U.S. Government or its designated agencies as required to be entered as government securities on the Form 5500 Schedule H.

(4) Municipal securities defined in section 3(a)(29) of the Securities Exchange Act of 1934 that are investment grade as defined under paragraph (f) of this section.

(5) Noninterest-bearing cash and interest-bearing cash equivalents as required to be entered on the Form 5500 Schedule H.

(6) Money market funds regulated pursuant to 17 CFR 270.2a–7 (Rule 2a–7 under the Investment Company Act of 1940).

(e) Fixed income securities described under paragraph (d) of this section must be considered investment grade (as described under paragraph (f) of this section) by a fiduciary, within the meaning of section 3(21) of ERISA, who is or seeks the advice of an experienced investor (such as an Investment Adviser registered under section 203 of the Investment Advisers Act of 1940).

(f) *Investment grade* means securities for which the issuer (or obligor) has at least adequate capacity to meet the financial commitments under the security for the projected life of the asset or exposure. For purposes of this paragraph (f), *adequate capacity to meet financial commitments* means that the risk of default by the issuer (or obligor) is low and the full and timely repayment of principal and interest on the security is expected.

(g) *Permissible fund vehicle* means an investment company or collective trust, that is—

(1) An open-end investment company registered on Form N–1A under section 8 of the Investment Company Act of 1940; or

(2) A unit investment trust (as defined in section 4(2) of the Investment Company Act of 1940 and registered under section 8 of such Act) the shares of which are listed and traded on a national securities exchange, and that has been formed and operates under an exemptive order granted by the U.S. Securities and Exchange Commission; or

(3) A collective trust fund that is maintained by a bank or trust company and that has been formed and operates pursuant to an exemption under section 3(c)(11) of the Investment Company Act of 1940.

(h) Permissible investments must not be supplemented by, and permissible fund vehicles cannot include, derivatives or otherwise be leveraged in a way that could increase the risk of the permissible investment beyond the risk associated with the market value of the un-leveraged permissible investment. Any notional derivative exposure, other than exposure gained through a permissible fund vehicle described under paragraph (g) of this section, must be supported by liquid assets that are cash or cash equivalents denominated in U.S. dollars.

(i) This section is applicable to a plan that applies or has applied for special financial assistance under this part. Notwithstanding the preceding sentence, for a plan that received special financial assistance under this part in effect before August 8, 2022, this section will not apply unless and until the plan files a supplemented application under this part. Before the date that the plan files a supplemented application under this part, the rules under this section in effect before August 8, 2022 apply.

§ 4262.15 Reinstatement of benefits previously suspended.

(a) In accordance with guidance issued by the Secretary of the Treasury under section 432(k) of the Code, a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA must:

(1) Reinstate any benefits that were suspended for participants and beneficiaries effective as of the first month in which the special financial assistance is paid to the plan; and

(2) Make payments equal to the amounts of benefits previously suspended to any participants or beneficiaries who are in pay status as of the date that the special financial assistance is paid.

(b) A plan must make the payments in paragraph (a)(2) of this section either in:

(1) A single lump sum no later than 3 months after the date that the special financial assistance is paid to the plan; or

(2) Equal monthly installments over a period of 5 years, with the first installment paid no later than 3 months after the date that the special financial assistance is paid to the plan, with no installment payment adjusted for interest.

(c) The plan sponsor of a plan with benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA must issue a notice of reinstatement to participants and beneficiaries whose benefits were previously suspended and then reinstated in accordance with section 4262(k) of ERISA and section 432(k) of the Code. The requirements for the notice are in notice of reinstatement instructions available on PBGC's website at *www.pbgc.gov*.

§4262.16 Conditions for special financial assistance.

(a) *In general.* A plan that receives special financial assistance must be administered in accordance with the conditions in this section.

(b) *Benefit increases.* This paragraph (b) applies to benefits and benefit increases described in section 4022A(b)(1) of ERISA without regard to the time the benefit or benefit increase has been in effect. This paragraph (b) does not apply to the reinstatement of benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA (as provided under §4262.15) or a restoration of benefits under 26 CFR 1.432(e)(9)–1(e)(3).

(1) *Retrospective.* A benefit or benefit increase must not be adopted during the SFA coverage period if it is in whole or in part attributable to service accrued or other events occurring before the adoption date of the amendment.

(2) *Prospective.* A benefit or benefit increase must not be adopted during the SFA coverage period unless—

(i) The plan actuary certifies that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to; and

(ii) Those increased contributions were not included in the determination of the special financial assistance.

(3) *Request for exception.* No earlier than 10 years after the end of the plan year in which the plan receives payment of special financial assistance under §4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraphs (b)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of the proposed benefit or benefit increase, the plan will avoid insolvency. A request for PBGC approval of a proposed benefit or benefit increase must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (b)(3)(ii) of this section.

(v) A copy of the proposed benefit or benefit increase amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (b)(3), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed benefit or benefit increase on the plan's existing benefit formula and benefit amount, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed benefit or benefit increase, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed benefit or benefit increase. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed benefit or benefit increase. The statement must also specify the amount of the change in the minimum required contribution under section 431 of the Code attributable to the proposed benefit or benefit increase for the first full plan year in which it is in effect, including the change in normal cost, the change in actuarial accrued liability and the annual amortization amount associated with the change in actuarial accrued liability.

(xi) The statement in paragraph (b)(3)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments made and expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.*, active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(c) *Allocation of plan assets.* During the SFA coverage period, plan assets, including special financial assistance, must be invested in investment grade fixed income as described in § 4262.14(d) sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses, taking into account the limitations on derivatives and leverage in § 4262.14(h).

(d) *Contribution decreases.* (1) During the SFA coverage period, the contributions to a plan that receives special financial assistance required for each

contribution base unit must not be less than, and the definition of the contribution base units used must not be different from, those set forth in collective bargaining agreements or plan documents (including contribution increases to the end of the collective bargaining agreements) in effect on March 11, 2021, unless the plan sponsor determines that the change lessens the risk of loss to plan participants and beneficiaries and, if the contribution reduction affects over $10 million of annual contributions and over 10 percent of all employer contributions, PBGC also determines that the change lessens the risk of loss to plan participants and beneficiaries.

(2) A request for PBGC approval of a proposed contribution change that affects over $10 million of annual contributions and over 10 percent of all employer contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Name, address, email, and telephone number of the contributing employer for which the proposed contribution change is being submitted, and the employer's authorized representatives, if any.

(iv) Names and addresses of each controlled group member of the contributing employer identified in paragraph (d)(2)(ii) of this section, along with a chart depicting the structure of the controlled group by entity and its ownership with ownership percentage.

(v) Audited financial statements (income statement, balance sheet, cashflow statement, and notes) for the contributing employer and the controlled group including the contributing employer, if available, for the most recent 4 years, or, if audited financial statements were not prepared, unaudited financial statements, a statement explaining why audited statements are not available, and tax returns with all schedules for the most recent 4 years available. The financial statement submissions must:

(A) Identify the cash contributions to the multiemployer plan for which the contributing employer is seeking contribution relief;

(B) Identify all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments interest rate, collateral, significant covenants, and whether the loan is in default;

(C) Identify and explain any material changes in financial position since the date of the last financial statement;

(D) To the extent that the contributing employer has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 3 years covered by the financial statement for only that portion of the business that is currently expected to continue; and

(E) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

(vi) Projected financial statements (income statement, balance sheet, cash flow statement) for the current year and the following 4 years as well as the key assumptions underlying those projections and a justification for the reasonableness for each of those key assumptions. The projections must include:

(A) All business or operating plans prepared by or for management, including all explanatory text and schedules;

(B) All financial submissions, if any, made within the prior 3 years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business;

(C) All recent financial analyses done by an outside party with a certification by the employer's chief executive officer that the information on which each

analysis is based is accurate and complete; and

(D) Any other relevant information.

(vii) Description of events leading to the current financial distress.

(viii) Description of financial and operational restructuring actions taken to address financial distress, including cost cutting measures, employee count or compensation reductions, creditor concessions obtained, and any other restructuring efforts undertaken; also, indicate whether any new profit-sharing or other retirement plan has been or will be established or if benefits under any such existing plan will be increased.

(ix) Any additional information PBGC determines it needs to review a request for approval of a proposed contribution change.

(e) *Allocating contributions and other practices*—(1) *In general.* During the SFA coverage period, a decrease in the proportion of income or an increase in the proportion of expenses allocated to a plan that receives special financial assistance pursuant to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which the income or expenses are divided or to be divided between a plan that receives special financial assistance and one or more other employee benefit plans is prohibited. The prohibition in the preceding sentence does not apply to a good faith allocation of:

(i) Contributions pursuant to a reciprocity agreement;

(ii) Costs of securing shared space, goods, or services, where such allocation does not constitute a prohibited transaction under ERISA or is exempt from such prohibited transaction provisions pursuant to section 408(b)(2) or 408(c)(2) of ERISA, or pursuant to a specific prohibited transaction exemption issued by the Department of Labor under section 408(a) of ERISA;

(iii) The actual cost of services provided to the plan by an unrelated third party; or

(iv) Contributions where the contributions to a plan that receives special financial assistance required for each base unit are not reduced, except as otherwise permitted by paragraph (d) of this section.

(2) *Request for exception.* No earlier than 5 years after the end of the plan year in which the plan receives payment of special financial assistance under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraph (e) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of any proposed reallocation of contributions, the plan will avoid insolvency, that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law which goes into effect after March 11, 2021, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, that is allocable to the pension plan, and that the reallocation relating to any change in Federal law is for no more than 5 years. A continuation of the reallocation of contributions relating to any change in Federal law after the initial reallocation beyond 5 years must satisfy the requirement for a contribution decrease under paragraph (d) of this section. A subsequent change in Federal law causing a significant increase in health benefit costs is a separate event for purposes of applying this exception, except that a plan may reallocate contributions under this exception from the conditions under paragraph (e) of this section for no more than 10 years cumulatively for all reallocation requests during the SFA coverage period. A request for PBGC approval of a proposed reallocation of contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN

has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (e)(2)(ii) of this section.

(v) A copy of the proposed reallocation of contributions amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (e)(2), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed reallocation of contributions on the plan's existing contributions, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed reallocation of contributions, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed reallocation of contributions. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed reallocation of contributions.

(xi) The statement in paragraph (e)(2)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.*, active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) A demonstration that the reallocation is needed due to a significant increase in health benefit costs due to a change in Federal law, that the reallocation is no more than a 10 percent reduction in the amount of the contribution rate negotiated on or before March 11, 2021, going to the pension plan, and that the reallocation is for no more than 5 years for a reallocation request relating to any single change in Federal law and no more than 10 years cumulatively for all reallocation requests during the plan's SFA coverage period.

(xiv) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments

to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(f) *Transfer or merger.* During the SFA coverage period, a plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval. Notwithstanding anything to the contrary in 29 CFR part 4231, the plans involved in the transaction must request approval from PBGC.

(1) *In general.* PBGC will approve a proposed transfer of assets or liabilities (including a spinoff) or merger if PBGC determines that the transaction complies with section 4231(a)–(d) of ERISA and that the transaction, or the larger transaction of which the transfer or merger is a part, does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction.

(2) *Request for approval.* A request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger must be submitted by the plan sponsor or its duly authorized representative and must contain the information that must be submitted with a notice of merger or transfer and a request for a compliance determination under subpart A of part 4231 of this chapter and all of the following information for each of the plans involved in the transaction:

(i) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(ii) A copy of the actuarial valuation performed for each of the 2 plan years before the most recent actuarial valuation filed in accordance with § 4231.9(f) of this chapter.

(iii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(iv) A detailed narrative description demonstrating that the transaction does not unreasonably increase PBGC's risk of loss with respect to any plan involved in the transaction. The narrative must be supported by a detailed determination certified by the enrolled actuary of the present value of financial assistance under section 4261 of ERISA which is calculated using the guaranteed benefits and administrative expenses presented in the cash flow projections under paragraph (f)(2)(v) of this section, discounted using interest rates published under section 4044 of ERISA. The certification must include supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the projected date of insolvency.

(v) The statement in paragraph (f)(2)(iv) of this section must include an exhibit showing the annual cash flow projections for each plan before and after the transaction, through the year that each plan pays its last dollar of benefit (but not to exceed 100 years). The cash flow projection should use an open group valuation until the plan reaches insolvency. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.*, active, retiree, terminated vested) for the projection period.

(D) Guaranteed benefits payable post insolvency by participant type (*e.g.*, active, retiree, terminated vested).

(E) Administrative expenses for the projection period.

(F) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(G) Fair market value of assets as of the end of the year.

(vi) If the plan requests that PBGC approve that a waiver of the conditions in paragraph (b)(1) of this section (retrospective benefits), paragraph (d) of this section (contribution decreases), and the condition in paragraph (e) of this section relating to allocating contributions and other income applies to the merged plan, a demonstration that the requirements for a waiver in paragraph (f)(4) of this section are met.

(vii) A detailed narrative description with supporting documentation demonstrating that the transaction is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans involved in the transaction. The narrative description and supporting documentation must consider the projected month and year of plan insolvency for each of the plans before and after the transaction.

(viii) Any additional information PBGC determines it needs to review a request for approval of a proposed transfer of assets or liabilities (including a spinoff) or merger.

(3) *Application of conditions with respect to an approved transfer or merger.* If PBGC approves a transfer of assets and liabilities (that is not a merger) from a plan that receives special financial assistance to another plan (the transferee plan) under this paragraph (f), the restrictions and conditions that apply to the plan that receives special financial assistance will also apply to the transferee plan as determined by PBGC as a condition of the approval. If PBGC approves a merger under this paragraph (f), the restrictions and conditions that apply to a plan that receives special financial assistance will apply after the merger as follows:

(i) The restrictions in §§4262.13(b) and 4262.14 and the conditions in this paragraph (f) (transfer or merger), paragraph (h) of this section (withdrawal liability settlement), paragraph (i) of this section (annual compliance statement), and paragraph (j) of this section (audit) apply to the merged plan.

(ii) The conditions in paragraph (b)(2) of this section (prospective benefit increase), paragraph (c) of this section (allocation of plan assets), and paragraph (e) of this section relating to allocating expenses do not apply to the merged plan.

(iii) In the absence of a waiver described in paragraph (f)(4) of this section, the condition in paragraph (b)(1) of this section (retrospective benefit increase) continues to apply to participants in the plan that received special financial assistance before the merger, the condition in paragraph (d) of this section (contribution decreases) continues to apply to employers who had an obligation to contribute to the plan that received special financial assistance before the merger, and the condition in paragraph (e) of this section relating to allocating contributions and other income continues to apply to contributions or income relative to the plan that received special financial assistance before the date of the merger.

(iv) For the condition described in paragraph (g)(1) of this section (withdrawal liability interest assumption), the merged plan must use the interest assumptions in appendix B to part 4044 of this chapter to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal liability for employers that participated in that plan.

(v) For the condition described in paragraph (g)(2) of this section (withdrawal liability amount of special financial assistance required to be phased in), the merged plan must apply the special financial assistance phase-in condition to determine the unfunded vested benefits that arose under the plan that received special financial assistance before the date of the merger for purposes of allocating unfunded vested benefits under subpart D of part 4211 of this chapter and determining withdrawal liability for employers that participated in that plan.

(4) *Waiver of conditions with respect to an approved merger.* A plan may request a waiver of the condition in paragraph (b)(1) of this section (retrospective benefit increase), paragraph (d) of this section (contribution decreases), and the

condition in paragraph (e) of this section relating to allocating contributions and other income for the merged plan in the plan's request for PBGC's approval of a merger pursuant to paragraph (f)(1) of this section. If any of the plans involved in the merger engage in multiple transactions in any 1-year period, the transactions will be considered in the aggregate. The plan's application must demonstrate the following requirements for a waiver—

(i) The total current value of assets of the plans that received special financial assistance before the merger must be 25 percent or less of the total current value of assets of the merged plan, calculated using the current value of assets most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(ii) The total current liability of the plans that received special financial assistance before the merger must be 25 percent or less of the total current liability of the merged plan, calculated using the current liability most recently required before the merger to be entered by the plans on the Form 5500 Schedule MB.

(iii) In the most recent certification of plan status for any plan that did not receive special financial assistance before the merger, the plan actuary must have certified that the plan is not in endangered or critical status (including critical and declining status) and is not projected to be in critical status within 5 years from the date of the plan's request for approval, and the plan must not be described in section 432(b)(5) of the Code.

(g) *Withdrawal liability determination*—(1) *Interest assumptions.* A plan must use the interest assumptions in appendix B to part 4044 of this chapter in determining the unfunded vested benefits of the plan under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), and in determining the amortization schedule under section 4219(c)(1)(A) of ERISA, beginning with the first plan year in which the plan receives payment of special financial assistance under § 4262.12 and until the later of—

(i) The end of the tenth plan year after the first plan year in which the plan receives payment of special financial assistance under § 4262.12; or

(ii) The end of the plan year described in paragraph (g)(1)(iii) of this section (if the special financial assistance most recently paid to the plan as of the end of that plan year is calculated under this part as in effect before August 8, 2022); otherwise the end of the plan year described in paragraph (g)(1)(iv) of this section.

(iii) The plan year described in this paragraph (g)(1)(iii) is the plan year by which the plan is projected to exhaust any SFA assets as determined under the methodology of § 4262.4(b), applying the interest rate under § 4262.4(e)(2) to the special financial assistance as determined as of the SFA measurement date as determined under this part as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment is after the plan year that includes the plan's SFA measurement date.

(iv) The end of the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under § 4262.4(b). However, if the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date, the plan year by which the plan is projected to exhaust any SFA assets is deferred by the number of years by which the first plan year in which the plan receives payment of special financial assistance is after the plan year that includes the plan's SFA measurement date.

(2) *Phase-in of SFA*—(i) *In general.* In determining unfunded vested benefits under section 4213(c) of ERISA (for the purpose of determining withdrawal liability), the procedures in this paragraph (g)(2) must be followed.

(ii) *Phase-in period.* The procedures in this paragraph (g)(2) apply to the determination of unfunded vested benefits as of the end of any determination year

that is not earlier than the payment year or later than the exhaustion year.

(iii) *Determination year.* For purposes of this paragraph (g)(2), the determination year is the plan year as of the end of which unfunded vested benefits are being valued.

(iv) *Payment year.* For purposes of this paragraph (g)(2), the payment year is the first plan year in which the plan receives special financial assistance.

(v) *Determination of exhaustion year.* For purposes of this paragraph (g)(2), if the special financial assistance most recently paid to the plan as of the last day of the determination year is calculated under this part as amended effective August 8, 2022, then the exhaustion year is the plan year described in paragraph (g)(2)(vi) of this section; otherwise, the exhaustion year is the plan year described in paragraph (g)(2)(vii) of this section.

(vi) *Exhaustion year.* The plan year described in this paragraph (g)(2)(vi) is the plan year by which, according to the plan's projection, the plan is projected to exhaust any SFA assets, as determined under §4262.4(b). However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(vii) *Exhaustion year before any SFA paid under this part.* The plan year described in this paragraph (g)(2)(vii) is the plan year by which the plan is projected to exhaust any SFA assets, determined under the methodology of §4262.4(b), applying the interest rate under §4262.4(e)(2) to the special financial assistance as determined as of the SFA measurement date as determined under this part as in effect before August 8, 2022. However, if the first plan year in which the plan receives payment of SFA is after the plan year that includes the plan's SFA measurement date, the exhaustion year is deferred by the number of years by which the payment year is after the plan year that includes the plan's SFA measurement date.

(viii) *SFA assets excluded.* The value of the plan assets taken into account as of the end of each determination year is the value of the assets that would otherwise be taken into account in the absence of this provision reduced by the amount described in paragraph (g)(2)(ix) of this section.

(ix) *Calculation of SFA assets excluded.* The amount described in this paragraph (g)(2)(ix) is the total amount of special financial assistance paid to the plan under §4262.12 (as determined under §4262.12(a) or (b), or under §4262.12(b) and (c) for plans paid under a supplemented application, as applicable) as of the end of the determination year multiplied by a fraction, the numerator of which is the number of years determined under paragraph (g)(2)(x) of this section as of the end of the determination year and the denominator of which is the number of years determined under paragraph (g)(2)(xi) of this section as of the end of the determination year.

(x) *Numerator.* The number of years determined under this paragraph (g)(2)(x) is the number of plan years in the period beginning with the determination year and ending with the exhaustion year.

(xi) *Denominator.* The number of years determined under this paragraph (g)(2)(xi) is the number of plan years in the period beginning with the payment year and ending with the exhaustion year.

(xii) *Plan year.* For purposes of this paragraph (g)(2), any reference to a plan year means a complete plan year.

(xiii) *No receivable.* Special financial assistance assets must be excluded from the determination of unfunded vested benefits until the date that special financial assistance is paid to the plan under §4262.12, and no receivable shall be set up as of any earlier date in anticipation of the plan receiving such payment.

(xiv) *Reporting.* For any withdrawal liability assessed during the phase-in period, the amount described under paragraph (g)(2)(ix) of this section must be reported in the plan's annual statement of compliance (as required under paragraph (i) of this section) for the plan year in which the liability is assessed.

(xv) *Applicability.* This paragraph (g)(2) applies to a plan in determining

withdrawal liability for withdrawals occurring after the plan year in which the plan receives payment of special financial assistance under this part. Notwithstanding the preceding sentence, for a plan that received special financial assistance under this part in effect before August 8, 2022, this paragraph (g)(2) will not apply unless the plan files a supplemented application under this part. If the plan files a supplemented application, this paragraph (g)(2) applies to the plan in determining withdrawal liability for withdrawals occurring on or after the date the plan files the supplemented application.

(xvi) *Examples.* The following examples illustrate the provisions of paragraph (g)(2) of this section.

(A) *Example 1.* Plan A, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2023 and received a special financial assistance payment of $1,000,000 in 2024. In the plan's application, Plan A is projected to exhaust its special financial assistance assets during plan year 2028. Accordingly, the payment year is 2024 and the exhaustion year is 2029 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer P withdraws from Plan A in 2028. For Employer P: {1} the determination year is 2027; {2} the numerator of the phase-in fraction is 3 (2027 to 2029); {3} the denominator of the phase-in fraction is 6 (2024 to 2029); and {4} the phased in amount is $500,000 ($1,000,000 × 3/6). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,500,000.

(B) *Example 2.* Plan B, a calendar-year plan, filed an application for special financial assistance under the terms of the interim provisions of this part with an SFA measurement date in plan year 2022 and received a special financial assistance payment of $1,000,000 in 2022. According to the methodology under paragraph (g)(2) of this section and the information submitted in the plan's application under the interim provisions of this part, Plan B is projected to exhaust its special financial assistance assets during plan year 2028. However, Plan B files a supplemented application under this part in 2023 and receives an additional special financial assistance payment of $100,000 in 2024. In Plan B's supplemented application, the plan is projected to exhaust its special financial assistance assets during plan year 2030. Employer R withdraws from Plan B in 2024, which is after Plan B filed a supplemented application. For Employer R: {1} the payment year is 2022; {2} the determination year is 2023; {3} the exhaustion year is 2028; {4} the numerator of the phase-in fraction is 6 (2023 to 2028); {5} the denominator of the phase-in fraction is 7 (2022 to 2028); and {6} the phased in amount is $857,143 ($1,000,000 × 6/7). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,142,857. Employer S withdraws from Plan B in 2028. For Employer S: {1} the payment year is 2022; {2} the determination year is 2027; {3} the exhaustion year is 2030; {4} the numerator of the phase-in fraction is 4 (2027 to 2030); {5} the denominator of the phase-in fraction is 9 (2022 to 2030); and {6} the phased in amount is $488,889 ($1,100,000 × 4/9). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,511,111. If, instead of withdrawing in 2024, Employer R withdrew from Plan B in 2023 before Plan B filed its supplemented application, the phase-in condition would not apply and unfunded vested benefits would be based on total assets of $100,000,000.

(C) *Example 3.* Plan C, a calendar-year plan, filed an application for special financial assistance under this part with an SFA measurement date in plan year 2024 and received a special financial assistance payment of $1,000,000 in 2025. According to the plan's application, Plan C is projected to exhaust its SFA assets during plan year 2024. Accordingly, the payment year is 2025 and the exhaustion year is 2025 (the projected SFA exhaustion year in the application plus 1 year for the difference between the plan year that includes the SFA measurement date and the payment year). Employer T withdraws from Plan C in 2026. For Employer T: {1} the

determination year is 2025; {2} the numerator of the phase-in fraction is 1 (2025 to 2025); {3} the denominator of the phase-in fraction is 1 (2025 to 2025); and {4} the phased in amount is $1,000,000 ($1,000,000 × 1/1). If total assets (assuming no phased recognition of SFA) are $100,000,000, unfunded vested benefits are based on assets of $99,000,000.

(3) *Request for exception.* The plan sponsor of a plan eligible for special financial assistance may request approval from PBGC for an exception from the conditions under paragraphs (g)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that the exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals. The plan sponsor must also demonstrate to the satisfaction of PBGC that the exception does not increase the amount of the plan's special financial assistance or unreasonably increase PBGC's risk of loss. A request for PBGC approval of an exception must be submitted by the plan sponsor, or its duly authorized representative, either before an initial application or before a revised application for special financial assistance is filed by the plan, and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any) and most recent Declaration of Trust.

(iv) Administrative manuals and other documents governing the plan's assessment or administration of withdrawal liability.

(v) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (g)(3), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(vi) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(vii) A statement of whether the plan sponsor is requesting an exception from the condition under paragraph (g)(1) or (2) of this section or both and a demonstration of how the proposed exception lessens the risk of loss to plan participants and beneficiaries and does not increase expected employer withdrawals. The statement must also include a demonstration that the exception does not increase the amount of the plan's special financial assistance or unreasonably increase PBGC's risk of loss.

(viii) A list of employers contributing greater than 5 percent of plan contributions in a plan year.

(ix) A certification by the plan's actuary that the amount of special financial assistance that will be requested in the plan's application for special financial assistance will be determined assuming the exception will be approved.

(x) A detailed statement certified by an enrolled actuary of the effect of the proposed exception, and a demonstration for 30 years that the estimated withdrawal liability payments and contributions with the proposed exception exceed the estimated withdrawal liability payments and contributions without the proposed exception. The demonstration must show an aggregate of all withdrawal liability payments and an aggregate of all contributions for each year in the 30-year period and include representative examples of employer withdrawal liability payments

and contributions. An individual employer's withdrawal liability assessment reflecting the proposed exception must be no less than what would be assessed without the proposed exception.

(xi) Any additional information PBGC determines it needs to review a request for approval of a proposed exception.

(h) *Withdrawal liability settlement.* (1) During the SFA coverage period, a plan must obtain PBGC approval for a proposed settlement of withdrawal liability if the amount of the liability settled is greater than $50 million calculated as the lesser of—

(i) The allocation of unfunded vested benefits to the employer under section 4211 of ERISA; or

(ii) The present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions in appendix B to part 4044 of this chapter.

(2) PBGC will approve a proposed settlement of withdrawal liability if it determines—

(i) Implementation of the settlement is in the best interests of participants and beneficiaries; and

(ii) The settlement does not create an unreasonable risk of loss to PBGC.

(3) A request for approval of a proposed settlement of withdrawal liability must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A copy of the proposed settlement agreement.

(iv) A description of the facts leading up to the proposed settlement, including—

(A) The date the employer withdrew from the plan;

(B) The calculation of the withdrawal liability amount, including payment dates and amounts listed in the schedule for liability payments provided to the withdrawn employer in accordance with section 4291(b)(1)(A) of ERISA;

(C) The amount(s) and date(s) of withdrawal liability payments made; and

(D) How the proposed settlement amount was determined (discount rate used, financial condition of the employer, and other factors, as applicable).

(v) Most recent 3 years of audited financial statements and a 5-year cash flow projection for the employer with which the plan proposes to settle.

(vi) A copy of the most recent actuarial valuation report of the plan.

(vii) A statement certifying the trustees have determined that the proposed settlement is in the best interest of the plan and the plan's participants and beneficiaries.

(viii) Any additional information PBGC determines it needs to review a request for approval of a proposed withdrawal liability settlement.

(i) *Reporting.* In accordance with the statement of compliance instructions on PBGC's website at *www.pbgc.gov*, a plan sponsor must file with PBGC for each plan year, beginning with the plan year in which the plan received payment of special financial assistance and through the last plan year ending in 2051, a statement of compliance with the terms and conditions of the special financial assistance under this part and section 4262 of ERISA as follows—

(1) Except as provided in paragraph (i)(2) of this section, a plan's statement of compliance for each plan year must be filed no later than 90 days after the end of the plan year.

(2) If six months or fewer remain in the plan year after the month that includes the date the plan first received payment of special financial assistance, the first statement of compliance must cover the period from the date the plan received payment of special financial assistance through the last day of the plan year following the plan year in which the plan received payment of special financial assistance, and must be filed no later than 90 days after the end of such plan year.

(3) Each statement of compliance must be signed and dated by a trustee

who is a current member of the board of trustees and authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor.

(j) *Audit.* As authorized under section 4003 of ERISA, PBGC may conduct periodic audits of a plan that receives special financial assistance to review compliance with the terms and conditions of the special financial assistance under this part and section 4262 of ERISA.

(k) *Filing rules.* The filing rules in this paragraph (k) apply to a request for PBGC approval under paragraph (b), (d), (f), or (h) of this section and a statement of compliance under paragraph (i) of this section.

(1) *Method of filing.* A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be made electronically in accordance with the rules in part 4000 of this chapter. The time period for filing a request or statement of compliance must be computed under the rules in subpart D of part 4000 of this chapter.

(2) *Where to file.* A filing described under paragraph (b), (d), (f), (h), or (i) of this section must be submitted as described in § 4000.4 of this chapter.

[87 FR 41006, July 8, 2022, as amended at 88 FR 4905, Jan. 26, 2023]

§ 4262.17 Other provisions.

(a) Special financial assistance is not capped by the guarantee under section 4022A of ERISA.

(b) A plan that receives special financial assistance must continue to pay premiums due under section 4007 of ERISA for participants and beneficiaries in the plan.

(c) A plan that receives special financial assistance is deemed to be in critical status within the meaning of section 305(b)(2) of ERISA until the last day of the last plan year ending in 2051.

(d) A plan that receives special financial assistance and subsequently becomes insolvent under section 4245 of ERISA will be subject to the rules and guarantee for insolvent plans in effect when the plan becomes insolvent.

(e) A plan that receives special financial assistance is not eligible to apply for a suspension of benefits under section 305(e)(9) of ERISA.

(f) A plan that receives special financial assistance and meets the eligibility requirements for partition of the plan under section 4233(b) of ERISA may apply for partition.

(g) If any provision in this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding will be one of utter invalidity or unenforceability, in which event the provision will be severable from this part.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

Subpart A—General Provisions

Subpart B—Valuation of Plan Benefits and Plan Assets

Subpart C—Benefit Reductions

Subpart D—Benefit Suspensions

AUTHORITY: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), 1431, and 1441.

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4281.1 Purpose and scope.

(a) *General*—(1) *Purpose*. When a multiemployer plan terminates by mass withdrawal under section 4041A(a)(2) of ERISA, the plan's assets and benefits must be valued annually under section 4281(b) of ERISA, and plan benefits may have to be reduced or suspended to the extent provided in section 4281 (c) or (d). This part implements the provisions of section 4281 and provides rules for applying for financial assistance from the PBGC under section 4261 of ERISA. The plan valuation rules in this part also apply to the determination of reallocation liability under section 4219(c)(1)(D) of ERISA and subpart B of part 4219 of this chapter for multiemployer plans that undergo mass withdrawal (with or without termination).

(2) *Scope*. This part applies to multiemployer plans covered by title IV of ERISA that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA). Subpart B of this part also applies to covered multiemployer plans that have undergone mass withdrawal without terminating.

(b) *Subpart B*. Subpart B establishes rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, for plans required to perform annual valuations under section 4281(b) of ERISA or allocate unfunded vested benefits under section 4219(c)(1)(D) of ERISA.

(c) *Subpart C*. Subpart C sets forth procedures under which the plan sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of ERISA and §4041A.24(b) of this chapter. Subpart C applies to a plan for which the annual valuation required by §4041A.24(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets (including claims for withdrawal liability) if, at the end of the plan year for which that valuation was done, the plan provided any benefits subject to reduction. Benefit reductions required to be made under subpart C shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

(d) *Subpart D*. Subpart D sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of ERISA and §4041A.25 (c) and (d) of this chapter. Subpart D applies to a plan that has been amended under section 4281(c) of ERISA and subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

§ 4281.2 Definitions.

The following terms are defined in §4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year. In addition, for purposes of this part:

Actuarial valuation means a report submitted to a plan of a valuation of plan assets and liabilities that is performed in accordance with subpart B of this part.

Available resources means available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

Insolvent means unable to pay benefits when due during the plan year.

Pro rata means that the required benefit reduction or payment must be allocated among affected participants in the same proportion that each such participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

Valuation date means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

[61 FR 34118, July 1, 1996, as amended at 84 FR 18725, May 2, 2019]

§ 4281.3 Filing and issuance rules.

(a) *Method of filing.* Filing with PBGC under this part must be made by a method permitted under the rules in subpart A of part 4000 of this chapter.

(b) *Method of issuance.* The notices under this part must be issued to participants and beneficiaries by the methods provided in § 4281.32(c) for notices of benefit reductions, § 4281.43(c) for notices of insolvency, and § 4281.45(d) for notices of insolvency benefit level.

(c) *Filing and issuance dates.* The date that a filing is sent and the date that an issuance is provided are determined under the rules in subpart C of part 4000 of this chapter.

(d) *Where to file.* Filings with PBGC under this part must be made as described in § 4000.4 of this chapter.

(e) *Computation of time.* The time period for filing or issuance under this part must be computed under the rules in subpart D of part 4000 of this chapter.

[84 FR 18725, May 2, 2019]

§ 4281.4 Collection of information.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0032.

Subpart B—Valuation of Plan Benefits and Plan Assets

§ 4281.11 Valuation dates.

(a) *Annual actuarial valuation of mass-withdrawal-terminated plans.* The valuation dates for the annual actuarial valuation required under section 4281(b) of ERISA are the last day of the plan year in which the plan terminates and the last day of each plan year thereafter for which an actuarial valuation is required to be performed under § 4041A.24 of this chapter.

(b) *Valuations related to mass withdrawal reallocation liability.* The valuation date for determining the value of unfunded vested benefits (for purposes of allocation) under section 4219(c)(1)(D) of ERISA is—

(1) If the plan terminates by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) If substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

[61 FR 34118, July 1, 1996, as amended at 84 FR 18725, May 2, 2019]

§ 4281.12 Benefits to be valued.

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit that, under the terms of the plan or applicable law, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election—

(1) By assuming that the starting date of each benefit is the earliest date, not preceding the valuation date, that could be elected; or

(2) By using any other assumption that the plan sponsor demonstrates to the satisfaction of the PBGC is more reasonable under the circumstances.

§ 4281.13 Benefit valuation methods—in general.

Except as otherwise provided in § 4281.16 (regarding plans that are closing out), the plan sponsor must value benefits as of the valuation date by—

(a) Using the interest assumptions described in Table I of appendix B to part 4044 of this chapter;

(b) Using the mortality assumptions under § 4044.53 of this chapter;

(c) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(d) Applying valuation formulas that accord with generally accepted actuarial principles and practices; and

(e) Adjusting the values to reflect the loading for expenses in accordance with appendix C to part 4044 of this chapter (substituting the term ''benefits'' for the term ''benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16))'').

[61 FR 34118, July 1, 1996, as amended at 63 FR 38307, July 16, 1998; 84 FR 18726, May 2, 2019]

§§ 4281.14–4281.15 [Reserved]

§ 4281.16 Benefit valuation methods—plans closing out.

(a) *Applicability.* For purposes of the annual valuation required by section 4281(b) of ERISA, the plan sponsor shall value the plan's benefits in accordance with paragraph (b) of this section if,—

(1) *Plans closed out before valuation.* Before the time when the valuation is performed, the plan has satisfied in full all liabilities for payment of nonforfeitable benefits, in a manner consistent with the terms of the plan and applicable law, by the purchase of one or more nonparticipating irrevocable commitments from one or more insurers, with respect to all benefits payable as annuities, and by the payment of single-sum cash distributions, with respect to benefits not payable as annuities; or

(2) *Plans to be closed out after valuation.* As of the time when the valuation is performed, the plan sponsor reasonably expects that the plan will close out before the next annual valuation date and the plan sponsor has a currently exercisable bid or bids to provide the irrevocable commitment(s) described in paragraph (a)(1) of this section and the total cost of the irrevocable commitment(s) under the bid, plus the total amount of the single-sum cash distributions described in paragraph (a)(1), does not exceed the value of the plan's assets, exclusive of outstanding claims for withdrawal liability, as determined under this subpart.

(b) *Valuation rule.* The present value of nonforfeitable benefits under this section is the total amount of single-sum cash distributions made or to be made plus the cost of the irrevocable commitment(s) purchased or to be purchased in order to satisfy in full all liabilities of the plan for nonforfeitable benefits.

§ 4281.17 Asset valuation methods—in general.

(a) *General rule.* The plan sponsor shall value plan assets as of the valuation date, using the valuation methods prescribed by this section and § 4281.18 (regarding outstanding claims for withdrawal liability), and deducting

administrative liabilities in accordance with paragraph (c) of this section.

(b) *Assets other than withdrawal liability claims.* The plan sponsor shall value any plan asset (other than an outstanding claim for withdrawal liability) by such method or methods as the plan sponsor reasonably believes most accurately determine fair market value.

(c) *Adjustment for administrative liabilities.* In determining the total value of plan assets, the plan sponsor shall subtract all plan liabilities, other than liabilities to pay benefits. For this purpose, any obligation to repay financial assistance received from the PBGC under section 4261 of ERISA is a plan liability other than a liability to pay benefits. The obligation to repay financial assistance shall be valued by determining the value of the scheduled payments in the same manner as prescribed in §4281.18(a) for valuing claims for withdrawal liability.

§4281.18 Outstanding claims for withdrawal liability.

(a) *Value of claim.* The plan sponsor shall value an outstanding claim for withdrawal liability owed by an employer described in paragraph (b) of this section in accordance with paragraphs (a)(1) and (a)(2) of this section:

(1) If the schedule of withdrawal liability payments provides for one or more series of equal payments, the plan sponsor shall value each series of payments as an annuity certain in accordance with the provisions of §4281.13.

(2) If the schedule of withdrawal liability payments provides for one or more payments that are not part of a series of equal payments as described in paragraph (a)(1) of this section, the plan sponsor shall value each such unequal payment as a lump-sum payment in accordance with the provisions of §4281.13.

(b) *Employers neither liquidated nor in insolvency proceedings.* The plan sponsor shall value an outstanding claim for withdrawal liability under paragraph (a) of this section if, as of the valuation date—

(1) The employer has not been completely liquidated or dissolved; and

(2) The employer is not the subject of any case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws; except that the claim for withdrawal liability of an employer that is the subject of a proceeding described in this paragraph (b)(2) shall be valued under paragraph (a) of this section if the plan sponsor determines that the employer is reasonably expected to be able to pay its withdrawal liability in full and on time.

(c) *Claims against other employers.* The plan sponsor shall value at zero any outstanding claim for withdrawal liability owed by an employer that does not meet the conditions set forth in paragraph (b) of this section.

Subpart C—Benefit Reductions

§4281.31 Plan amendment.

The plan sponsor of a plan described in §4281.31 shall amend the plan to eliminate those benefits subject to reduction in excess of the value of benefits that can be provided by plan assets. Such reductions shall be effected by a pro rata reduction of all benefits subject to reduction or by elimination or pro rata reduction of any category of benefit. Benefit reductions required by this section shall apply only prospectively. An amendment required under this section shall take effect no later than six months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

§4281.32 Notices of benefit reductions.

(a) *Requirement of notices.* A plan sponsor of a multiemployer plan under which a plan amendment reducing benefits is adopted pursuant to section 4281(c) of ERISA shall so notify the PBGC and plan participants and beneficiaries whose benefits are reduced by the amendment. The notices shall be delivered in the manner and within the time prescribed, and shall contain the information described, in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of ERISA.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than the earlier of—

(1) 45 days after the amendment reducing benefits is adopted; or

(2) The date of the first reduced benefit payment.

(c) *Method of issuance to participants and beneficiaries.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of benefit reduction to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify participants and beneficiaries, other than participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted, 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.

(d) *Contents of notice to the PBGC.* A notice of benefit reduction required to be filed with the PBGC pursuant to paragraph (a) of this section 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 case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subpart B, of this chapter.

(5) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representative, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

[61 FR 34118, July 1, 1996, as amended at 68 FR 61457, Oct. 28, 2003; 84 FR 18726, May 2, 2019]

§ 4281.33 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits before adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in §4281.32 (d)(1) through (d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor or its duly authorized representative, that the amendment has been adopted in accordance with this section.

Subpart D—Benefit Suspensions

§ 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

§ 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to 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 Notice of insolvency.

(a) *Requirement of notice.* The plan sponsor of a plan that determines that the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year must file with PBGC a notice of insolvency containing the information described in § 4281.44(a) and issue to plan participants and beneficiaries a notice of insolvency containing the information described in § 4281.44(b). Once notices of insolvency with respect to a plan have been provided as required, no notice of insolvency need be provided with respect to the plan for any subsequent year. A notice of insolvency may be combined with a notice of insolvency benefit level under § 4281.45 for the same plan year.

(b) *When to provide notice.* (1) Except as provided in paragraph (b)(2) of this section, the plan sponsor must file or issue the notices of insolvency under paragraph (a) of this section by the later of—

(i) Ninety (90) days before the beginning of the insolvency year; or

(ii) Thirty (30) days after the date the insolvency determination is made.

(2) The plan sponsor may deliver the notices of insolvency under paragraph (a) of this section to participants and beneficiaries in pay status concurrently with the first benefit payment made after the date the insolvency determination is made.

(c) *Method of issuance to participants and beneficiaries.* The issuance of the notice of insolvency to participants and beneficiaries must be made by one of the following methods—

(1) A method permitted under the rules in subpart B of part 4000 of this chapter.

(2) For participants and beneficiaries, other than those in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, and other than alternate payees, the plan sponsor may post the notice at participants' work sites or publish the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Except with respect to an alternate payee, notice to a participant is deemed notice to that participant's beneficiary or beneficiaries.

[84 FR 18726, May 2, 2019]

§ 4281.44 Contents of notice of insolvency.

(a) *Notice to PBGC.* A notice of insolvency required under § 4281.43(a) to be filed with PBGC must contain the information and certification specified in the notice of insolvency instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notice to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries must contain all of 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 is expected to be insolvent.

(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by PBGC under section 4022A of ERISA.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

[84 FR 18726, May 2, 2019]

§ 4281.45 Notice of insolvency benefit level.

(a) *Requirement of notice.* The plan sponsor of an insolvent plan must file with PBGC a notice of insolvency benefit level containing the information described in § 4281.46(a) and issue to plan payees (which, for purposes of this section, means participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year) a notice of insolvency benefit level containing the information described in § 4281.46(b) in each of the following circumstances—

(1) Except as provided in paragraph (a)(2) of this section, for the initial insolvency year and for any insolvency year following the initial insolvency year, if there is a change in insolvency benefit level that affects plan payees generally, provide the notices of insolvency benefit level to PBGC and to plan payees.

(2) For any insolvency year following the initial insolvency year, if there is a change in the insolvency benefit level that affects only one plan payee or a class of plan payees but not plan payees generally (treating commencement of a person's benefits for this purpose as a change in the insolvency benefit level for that person), provide the notices of insolvency benefit level to PBGC and to each affected plan payee.

(b) *Combined notices.* The plan sponsor may combine a notice of insolvency benefit level under this section and a notice of insolvency under § 4281.43 for the same plan year.

(c) *When to provide notice.* (1) Except as provided in paragraph (c)(2) of this section, the plan sponsor must provide the notices under this section by the later of—

(i) Ninety (90) days before the beginning of the insolvency year; or

(ii) Thirty (30) days after the date the insolvency determination is made.

(2) The plan sponsor may deliver the notices required under this section to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given concurrently with the first benefit payment made after the date the insolvency determination is made.

(d) *Method of issuance to participants and beneficiaries.* The issuance of the notice of insolvency benefit level to participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given must be made by a method permitted under the rules in subpart B of part 4000 of this chapter.

[84 FR 18726, May 2, 2019]

§ 4281.46 Contents of notice of insolvency benefit level.

(a) *Notice to PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with PBGC must contain the information and certification specified in the notice of insolvency benefit level instructions on PBGC's website (*www.pbgc.gov*).

(b) *Notice to participants and beneficiaries 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 must contain all of 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 PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

[84 FR 18726, May 2, 2019]

§ 4281.47 Application for financial assistance.

(a) *General.* If the plan sponsor of a plan determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor must apply to PBGC for financial assistance pursuant to section 4261 of ERISA. The application must be filed within the time specified under paragraph (b) of this section and must contain the information under paragraph (c) of this section.

(b) *When, how, and where to apply*—(1) *Initial application.* Except as provided in the next sentence, a plan sponsor must apply for financial assistance no later than 90 days before the first day of the month for which the plan sponsor has determined the resource benefit level will be below the level of guaranteed benefits. If a plan sponsor cannot practicably apply for financial assistance by the date in the preceding sentence, the application must be made as soon as practicable after the plan sponsor has made the determination in the preceding sentence.

(2) *Recurring application.* A plan sponsor must apply for financial assistance as soon as practicable after the plan sponsor determines that the plan will be unable to pay guaranteed benefits when due for a month.

(3) *How and where to apply.* Application to PBGC for financial assistance must be made in accordance with the rules in subpart A of part 4000 of this chapter. See § 4000.4 of this chapter for information on where to apply.

(c) *Contents of application*—(1) *Initial application.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits must file an application that includes the information specified in the instructions for an application for initial financial assistance on PBGC's website (*www.pbgc.gov*).

(2) *Recurring application.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month must file an application that includes the information specified in the instructions for an application for recurring financial assistance on PBGC's website (*www.pbgc.gov*).

(3) *Additional information.* PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of ERISA.

[61 FR 34118, July 1, 1996, as amended at 84 FR 18727, May 2, 2019]

SUBCHAPTER K—MULTIEMPLOYER ENFORCEMENT PROVISIONS

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

Sec.

AUTHORITY: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1452.

SOURCE: 62 FR 36995, July 10, 1997, unless otherwise noted.

§ 4302.1 Purpose and scope.

This part specifies the maximum daily amount of penalties for which a person may be liable to the PBGC under ERISA section 4302 for certain failures to provide multiemployer plan notices, as such amount has been adjusted to account for inflation pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

§ 4302.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA, multiemployer plan, and PBGC.

§ 4302.3 Penalty amount.

The maximum daily amount of the penalty under section 4302 of ERISA shall be $345.

[62 FR 36995, July 10, 1997, as amended at 81 FR 29767, May 13, 2016; 82 FR 8814, Jan. 31, 2017; 83 FR 1556, Jan. 12, 2018; 83 FR 67074, Dec. 28, 2018; 85 FR 2305, Jan. 15, 2020; 86 FR 2542, Jan. 13, 2021; 87 FR 2341, Jan. 14, 2022; 88 FR 1992, Jan. 12, 2023]

SUBCHAPTER L—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

PART 4901—DISCLOSURE AND PUBLIC INSPECTION OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

Subpart A—General

Subpart B—Procedure for Formal Requests

Subpart C—Restrictions on Disclosure

Subpart D—Fees

AUTHORITY: 5 U.S.C. 552, 29 U.S.C. 1302(b)(3), E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 61 FR 34123, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4901.1 Purpose and scope.

This part contains PBGC's general rules implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, types of records subject to prohibitions or restrictions on disclosure, and procedures whereby members of the public may access and inspect PBGC records.

[87 FR 43994, July 25, 2022]

§ 4901.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part—

Agency, *person*, *rule*, *rulemaking*, *order*, and *adjudication* have the meanings attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term agency as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Record has the meaning attributed to it by section 552(f)(2) of FOIA.

Working day means any weekday excepting Federal holidays.

[61 FR 34123, July 1, 1996, as amended at 74 FR 27081, June 8, 2009; 87 FR 43994, July 25, 2022]

§ 4901.3 Electronic reading room.

PBGC will maintain an electronic reading room on its website, *www.pbgc.gov*, where persons may inspect in an electronic format all records made available for such purposes under this part.

[82 FR 26991, June 13, 2017; as amended at 87 FR 43994, July 25, 2022]

§ 4901.4 Information maintained in electronic reading room.

PBGC will make available for public inspection in an electronic format without formal request—

(a) *Information published in the* FEDERAL REGISTER. FEDERAL REGISTER documents published by PBGC, and FEDERAL REGISTER indexes;

(b) *Information in PBGC publications.* Informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program;

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof;

(d) *Other agency proceedings, policies, staff manuals and instructions, and records.* Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case PBGC will explain in writing the justification for the deletion)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by PBGC;

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by PBGC and which have not been published in the FEDERAL REGISTER;

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by PBGC that affect any member of the public;

(4) *Frequently requested records.* Records that have been released under section 552(a)(3) of FOIA and have been the subject of three or more disclosure requests; and

(5) *Other records.* Records that have been released under section 552(a)(3) of FOIA and that PBGC determines, because of the nature of the records' subject matter, have become or are likely to become the subject of subsequent disclosure requests for substantially the same records; and

(e) *Indexes to certain records.* Current indexes (updated at least quarterly) identifying materials described in section 552(a)(2) of FOIA and paragraph (d) of this section.

[61 FR 34123, July 1, 1996, as amended at 82 FR 26991, June 13, 2017; 87 FR 43994, July 25, 2022]

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the Disclosure Officer will make any document (or portion thereof) from the records of PBGC in the custody of any official of PBGC available for inspection unless PBGC reasonably foresees that disclosure would harm an interest protected by an exemption under the provisions of section 552(b) of FOIA and subpart C of this part or disclosure is otherwise prohibited by law. The procedures in subpart B of this part must be used for records that are not made available in PBGC's electronic reading room under § 4901.4 and may be used for records that are available in the electronic reading room. Records are not records of PBGC and are not required to be furnished under FOIA, if they could only be produced by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in existence.

(b) *Discretionary disclosure.* Unless prohibited from disclosure by § 4901.21(a), the Disclosure Officer may make any document (or portion thereof) from the records of PBGC available for inspection if the Disclosure Officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of PBGC.

[87 FR 43995, July 25, 2022]

§ 4901.6 Filing rules; computation of time.

(a) *Place, method, and date of filing.* (1) For rules about where to file a submission under this part with PBGC, see § 4000.4 of this chapter.

(2) For rules about permissible methods of filing with PBGC under this part, see § 4000.3 of this chapter.

(3) For rules about the date that a submission under this part was filed with PBGC, see subpart C of part 4000 of this chapter.

(b) *Computation of time.* For rules about any time period under this part, see subpart D of part 4000 of this chapter.

[87 FR 43995, July 25, 2022]

Subpart B—Procedure for Formal Requests

§ 4901.11 Submission of requests for access to records.

(a) *In general.* A request to inspect any record subject to this subpart must be submitted in writing to the Disclosure Officer, Pension Benefit Guaranty Corporation, by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov*. To facilitate processing, ''FOIA request'' should appear prominently on the request.

(b) *Assistance with requests.* A person who intends to submit or has submitted a request to inspect any record subject to this subpart may at any time seek assistance from a FOIA Public Liaison listed on PBGC's website, *www.pbgc.gov*. PBGC's FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

[87 FR 43995, July 25, 2022]

§ 4901.12 Description of information requested.

(a) *In general.* Each disclosure request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* (1) If the description is insufficient to enable a professional employee familiar with the subject area of the disclosure request to locate the record with a reasonable amount of effort, the Disclosure Officer will notify the requester and, to the extent possible, indicate the additional information required. PBGC will make every reasonable effort to assist a requester in the identification and location of the record or records sought. PBGC will not withhold records merely because of difficulty in finding them.

(2) A requester who is attempting to modify or reformulate a disclosure request may discuss the request with a FOIA Public Liaison, who is available to assist the requester in reasonably describing the records sought. If the requester fails to reasonably describe the records sought, PBGC's response to the request may be delayed or denied.

(3) Any amended disclosure request must meet the requirements for a request under paragraph (a) of this section.

(c) *Requests for categories of records.* Disclosure requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of this section and section 552(a)(3) of FOIA if PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the Disclosure Officer will promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43995, July 25, 2022]

§ 4901.13 Receipt by agency of request.

The Disclosure Officer will note the date and time of receipt on each disclosure request for access to records. A disclosure request is deemed received and the period within which PBGC acts on the request, as set forth in § 4901.14, begins on the next working day following receipt, except that a disclosure request is deemed received only if and when PBGC receives all of the following:

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if PBGC determines that such charges may be substantial and so notifies the requester. Consent must be in the form of a statement that charges under subpart D of this part will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in an initial disclosure request.

[87 FR 43995, July 25, 2022]

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 20 working days after receipt of a disclosure request (subject to extension under § 4901.16), the Disclosure Officer will take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section. Following receipt, PBGC may ask the requester for information once and toll the 20-day period until PBGC receives such information.

(b) *Request granted.* If the Disclosure Officer determines that the disclosure request will be granted, PBGC will so advise the requester and will promptly make the records available to the requester. PBGC will accommodate any specification of the preferred form or format for the sought record as stated in the request, if the record is readily reproducible in the preferred form or format.

(c) *Request denied.* If the Disclosure Officer determines that the disclosure request will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial, including, if applicable, a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld.

(d) *Records not located.* If the Disclosure Officer determines that, despite a reasonably calculated search to uncover all relevant documents, the requested records could not be located, PBGC will issue a ''no-records'' response, and so advise the requester in writing.

(e) *Information for requester.* Written responses issued under paragraph (c) or (d) of this section will include the name and title of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

[87 FR 43995, July 25, 2022]

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* A requester may appeal any adverse determination by the Disclosure Officer of a request under FOIA, including a denial of a request for access to records, expedited action, or fee waiver. The requester may file a written appeal within 90 days from the date of the denial or, in the case of a partial denial, 90 days from the date the requester receives the disclosed material. The appeal must include the grounds for appeal and any supporting statements or arguments. The requester must address the appeal to the General Counsel, Pension Benefit Guaranty Corporation, and must submit the appeal by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov*. To facilitate processing, the words ''FOIA appeal'' should appear prominently on the appeal.

(b) *Receipt and consideration of appeal.* The General Counsel will note the date and time of receipt on each appeal and notify the requester thereof. Within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel will issue a decision on the appeal.

(1) The General Counsel will determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat the pending action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel will either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted will promptly be made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in section 552(a)(4) of FOIA. The General Counsel's decision will be the final action of PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals will be collected in one file available in PBGC's electronic reading room under § 4901.4(d)(1) and indexed under § 4901.4(e).

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 82 FR 26992, June 13, 2017; 87 FR 43996, July 25, 2022]

§ 4901.16 Extensions of time.

In unusual circumstances (as described in section 552(a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The Disclosure Officer will notify the requester in writing within the original time period of the unusual circumstances and the date when a response is expected to be sent. When the extension for a disclosure request exceeds 10 working days, the notice will provide the requester with an opportunity to modify the disclosure request or arrange an alternative time period for processing the original or modified request. This notice will also alert the requester of the availability of a PBGC FOIA Public Liaison for assistance and the Office of Government Information Services for dispute resolution services. The maximum extension for responding to an appeal is 10 working days minus the amount of any extension on the request to which the appeal relates.

[87 FR 43996, July 25, 2022]

§ 4901.17 Expedited action on requests and appeals.

(a) *In general.* Upon a request submitted in accordance with paragraph (b) of this section, PBGC will expedite a disclosure request under § 4901.11 or an appeal under § 4901.15 if PBGC determines that the requester has demonstrated one of the following:

(1) The disclosure request or appeal involves circumstances in which the lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights.

(2) The requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

(b) *Timing and method of request.* A request for PBGC to expedite a disclosure request or an appeal may be made at any time and must be made by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov*.

(c) *Action on request.* (1) PBGC will notify the requester within 10 calendar days of receipt of a request for expedited action whether PBGC will expedite a disclosure request or an appeal.

(2) *Request granted.* If PBGC determines that the request for expedited action will be granted, PBGC will take action on the disclosure request or the appeal as soon as practicable.

(3) *Request denied.* If PBGC determines that the request for expedited action will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial. The writing will also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a

PBGC FOIA Public Liaison or the Office of Government Information Services. PBGC will act on any appeal of that decision expeditiously.

[87 FR 43996, July 25, 2022]

§ 4901.18 Exhaustion of administrative remedies.

If the Disclosure Officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies will be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow PBGC additional time to act as provided in FOIA, processing of the disclosure request or appeal will continue and PBGC will so advise the requester.

[87 FR 43997, July 25, 2022]

Subpart C—Restrictions on Disclosure

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* PBGC will not disclose records to the extent prohibited by section 552(b)(1) or (3) of FOIA, sections 4010 and 4043 of ERISA, or other statutes.

(b) *Records disclosure of which may be refused.* Unless prohibited from disclosure by paragraph (a) of this section, PBGC need not but may, as provided in § 4901.5(b), disclose records exempted from FOIA, which include as of August 24, 2022 records under:

(1) Section 552(b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Section 552(b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Section 552(b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Section 552(b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Section 552(b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Section 552(b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Section 552(b)(9) of FOIA, dealing in general with information about wells.

[87 FR 43997, July 25, 2022]

§ 4901.22 Partial disclosure.

If an otherwise disclosable record contains some material that is protected from disclosure, the record will not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle will be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43997, July 25, 2022]

§ 4901.23 Record of concern to agency other than PBGC.

When reviewing a record in response to a disclosure request, PBGC will determine whether another agency is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, PBGC will proceed in one of the following ways:

(a) *Consultation with another agency.* When the record contains information of interest to another agency, PBGC will make a release determination only if its interest in the record is the primary interest and only after PBGC consults with that agency.

(b) *Referral to another agency.* (1) When an agency other than PBGC has primary interest in the record, then PBGC will refer the responsibility for responding to the disclosure request regarding that record to that agency.

(2) Whenever PBGC refers any part of the responsibility for responding to a disclosure request to another agency, PBGC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA office.

[87 FR 43997, July 25, 2022]

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that PBGC has reason to believe contains such information, unless one of the following applies:

(1) Access to the information is denied.

(2) The information has been published or officially made available to the public.

(3) Disclosure of the information is required by law other than FOIA.

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter must, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph (b) will expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided.

(c) *Notification to submitter of disclosure request.* When disclosure of information subject to this section may be made, the Disclosure Officer or (where disclosure may be made in response to an appeal) the General Counsel will promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this paragraph (c), the requester will be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure must specify all grounds relied upon for opposing disclosure of any portion(s) of the information under section 552(b) of FOIA and, with respect to the exemption in section 552(b)(4), demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted must be certified or otherwise supported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph (d) will be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the Disclosure Officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the Disclosure Officer (or General Counsel) will give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification will, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy will be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The Disclosure Officer or the General Counsel will promptly notify the submitter if a requester brings suit seeking to compel disclosure.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43997, July 25, 2022]

Subpart D—Fees

§ 4901.31 Charges for services.

(a) *In general.* Pursuant to the provisions of section 552 of FOIA, as amended, PBGC will assess charges to cover

the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself. Except as provided in paragraph (e) of this section, no charge for searching (or in the case of a requester described under section 552(a)(4)(A)(ii)(II) of FOIA, for duplication) will be assessed if PBGC has failed to comply with any time limit under section 552(a)(6) of FOIA.

(1) *Direct costs* means those expenditures which PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a disclosure request under FOIA and this part. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a disclosure request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required. Searches may be done manually or by computer using existing programming. Search is distinguishable from ''review'' which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a disclosure request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to redact them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a disclosure request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, audio-visual materials, or electronic records, among others.

(b) *Categories of requesters.* For purposes of assessing fees, requesters who seek access to records under FOIA and this part are divided into three categories: commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* (i) When records are requested for commercial use, PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under section 552(b) of FOIA and this part.

(ii) A ''commercial use'' request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. PBGC's decision to place a requester in the commercial use category will be made on a case-by-case basis dependent upon on the requester's intended use of the information. PBGC will notify requesters of their placement in this category.

(2) *Non-commercial scientific or educational institutions, or news media requesters.* (i) When records are requested by a non-commercial scientific or educational institution or a news media requester, PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(ii) A non-commercial scientific institution is an institution that is not operated for a ''commercial use'' as that term is defined in paragraph (b)(1)(ii) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) An educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution.

PBGC may seek verification from the requester that the request is in furtherance of scholarly research and PBGC will advise requesters of their placement in this category.

(iv)(A) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not intended to be all-inclusive. A ''freelance'' journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered as a representative of the news media.

(B) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media will not be considered to be a request that is for a commercial use.

(3) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b)(1) or (2) of this section, PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first 2 hours of search time. Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in PBGC's systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record sought is not found.

(c) *Aggregation of requests.* If PBGC reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, PBGC will aggregate any such requests and charge accordingly. In no case will PBGC aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which any fee listed in §4901.32 may be waived or reduced are set forth in §4901.34.

(e) *Unusual or exceptional circumstances.* Notwithstanding paragraph (a) of this section, if PBGC fails to comply with a time limit under section 552(a)(6) of FOIA, PBGC may nevertheless assess a charge for search and review services (or in the case of a requester described under section 552(a)(4)(A)(ii)(II), for duplication) if one of the following circumstances applies:

(1) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC needs more than 10 additional days to process the disclosure request, and more than 5,000 pages are necessary to respond to the request, provided that:

(i) PBGC has provided timely written notice of this determination to the requester; and

(ii) PBGC has discussed with the requester, or made three or more good-faith attempts to do so, via written mail, electronic mail, or telephone how the requester could effectively limit the scope of the request.

(2) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC has provided timely written notice to the requester of the unusual circumstances extending the time limit by 10 additional days, and PBGC processes the disclosure request within that time.

(3) A court has determined that exceptional circumstances exist (as defined in section 552(a)(6)(C) of FOIA) and has issued an order excusing PBGC's failure to comply with the time limit.

[61 FR 34123, July 1, 1996, as amended at 82 FR 26992, June 13, 2017; 87 FR 43997, July 25, 2022]

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search time and review time.* For ordinary search services and review services, PBGC charges $54.00 per hour. PBGC charges fees in quarter hour increments.

(2) *Retrieving records stored by NARA.* For disclosure requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), PBGC charges additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* $0.15 for each page of record copies furnished.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the person desiring reproduction may request a special rate quotation from PBGC.

(3) *Indexes.* Pursuant to section 552(a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43999, July 25, 2022]

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this section must be made by check, money order, or other PBGC permitted method, and in accordance with the FOIA instructions on PBGC's website, *www.pbgc.gov*.

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a disclosure request may be required as follows:

(1) Where PBGC estimates or determines that charges allowable under the rules in this subpart, are likely to exceed $250, PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), PBGC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

(c) *Late payment interest charges.* PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 87 FR 43999, July 25, 2022]

§ 4901.34 Waiver or reduction of charges.

(a) The Disclosure Officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. A fee waiver or reduction request must set forth full and complete information upon which the request is based.

(b) If the Disclosure Officer determines that the request for fee waiver or reduction will be denied, the requester will be so advised in writing with a brief statement of the reasons for the denial. The writing will include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43999, July 25, 2022]

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

AUTHORITY: 5 U.S.C. 552a, 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34128, July 1, 1996, unless otherwise noted.

§ 4902.1 Purpose and Scope.

(a) *Procedures.* Sections 4902.3 through 4902.7 establish procedures under which—

(1) An individual may—

(i) Determine whether PBGC maintains any system of records that contains a record pertaining to the individual;

(ii) Obtain access to the individual's record upon request;

(iii) Make a request to amend the individual's record; and

(iv) Appeal a denial of a request to amend the individual's record; and

(2) PBGC will make an initial determination of a request to amend an individual's record.

(b) *Fees.* Section 4902.8 prescribes the fees for making copies of an individual's record.

(c) *Privacy Act provisions.* Section 4902.9 summarizes the Privacy Act (5 U.S.C. 552a) provisions for which PBGC claims an exemption for certain systems of records.

(d) *Exemptions.* Sections 4902.10 through 4902.12 set forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act, and the reasons for the exemptions.

[74 FR 27081, June 8, 2009, as amended at 84 FR 32619, July 9, 2019]

§ 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

System of records means a group of any records under the control of any

agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Working day means any weekday excepting Federal holidays.

[61 FR 34128, July 1, 1996, as amended at 74 FR 27081, June 8, 2009]

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the purpose of learning whether a system of records maintained by the PBGC contains any record pertaining to the requestor or obtaining access to such a record. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day. Current information on how to make a request, including the Disclosure Officer's mailing address and location, can be obtained on PBGC's Web site, *http://www.pbgc.gov*.

(b) Each request submitted pursuant to paragraph (a) of this section shall include the name of the system of records to which the request pertains and the requester's full name, home address and date of birth, and shall prominently state the words, ''Privacy Act Request.'' If this information is insufficient to enable the PBGC to identify the record in question, or to determine the identity of the requester (to ensure the privacy of the subject of the record), the disclosure officer shall request such further identifying data as the disclosure officer deems necessary to locate the record or to determine the identity of the requester.

(c) Unless the request is only for notification of the existence of a record and such notification is required under the Freedom of Information Act (5 U.S.C. 552), the requester shall be required to provide verification of his or her identity to the PBGC as set forth in paragraph (c)(1) or (2) of this section, as appropriate.

(1) If the request is made by mail, the requester shall submit a notarized statement establishing his or her identity.

(2) If the request is made in person, the requester shall show identification satisfactory to the disclosure officer, such as a driver's license, employee identification, annuitant identification or Medicare card.

(d) The disclosure officer shall respond to the request in writing within 10 working days after receipt of the request or of such additional information as may be required under paragraph (b) of this section. If a request for access to a record is granted, the response shall state when the record will be made available.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 74 FR 27081, June 8, 2009]

§ 4902.4 Disclosure of record to an individual.

(a) When the disclosure officer grants a request for access to records under § 4902.3, such records shall be made available when the requester is advised of the determination or as promptly thereafter as possible. At the requester's option, the record will be made available for the requester's inspection and copying at the PBGC, between the hours of 9 a.m. and 4 p.m. on any working day, or a copy of the record will be mailed to the requester. Current information on where the records may be inspected and copied can be obtained on PBGC's Web site, *http://www.pbgc.gov*.

(b) If the requester desires to be accompanied by another individual during the inspection and/or copying of the record, the requester shall, either when the record is made available or at any earlier time, submit to the disclosure officer a signed statement identifying such other individual and authorizing such other individual to be present during the inspection and/or copying of the record.

[61 FR 34128, July 1, 1996, as amended at 74 FR 27082, June 8, 2009]

§ 4902.5 Procedures for requesting amendment of a record.

(a) Any individual about whom the PBGC maintains a record contained in a system of records may request that the record be amended. Such a request shall be submitted in the same manner described in § 4902.3(a).

(b) Each request submitted under paragraph (a) of this section shall include the information described in § 4902.3(b) and a statement specifying the changes to be made in the record and the justification therefor. The disclosure officer may request further identifying data as described in § 4902.3(b).

(c) An individual who desires assistance in the preparation of a request for amendment of a record shall submit such request for assistance in writing to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to such request as promptly as possible.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003]

§ 4902.6 Action on request for amendment of a record.

(a) Within 20 working days after receipt by the PBGC of a request for amendment of a record under § 4902.5, unless for good cause shown the Director of the PBGC extends such 20-day period, the disclosure officer shall notify the requester in writing whether and to what extent the request shall be granted. To the extent that the request is granted, the disclosure officer shall cause the requested amendment to be made promptly.

(b) When a request for amendment of a record is denied in whole or in part, the denial shall include a statement of the reasons therefor, the procedures for appealing such denial, and a notice that the requester has a right to assistance in preparing an appeal of the denial.

(c) An individual who desires assistance in preparing an appeal of a denial under this section shall submit a request to the Deputy General Counsel, Pension Benefit Guaranty Corporation. The Deputy General Counsel shall respond to the request as promptly as possible, but in no event more than 30 days after receipt.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61359, Oct. 28, 2003; 74 FR 27082, June 8, 2009]

§ 4902.7 Appeal of a denial of a request for amendment of a record.

(a) An appeal from a denial of a request for amendment of a record under § 4902.6 shall be submitted, within 45 days of receipt of the denial, to the General Counsel, Pension Benefit Guaranty Corporation, unless the record subject to such request is one maintained by the Office of the General Counsel, in which event the appeal shall be submitted to the Director or Director's designee, Pension Benefit Guaranty Corporation. The appeal shall state in detail the basis on which it is made and shall clearly state ''Privacy Act Request'' on the first page. In addition, the submission shall clearly state ''Privacy Act Request'' on the envelope (for mail, hand delivery, or commercial delivery), in the subject line (for e-mail), or on the cover sheet (for fax).

(b) Within 30 working days after the receipt of the appeal, unless for good cause shown the Director of the PBGC extends such 30-day period, the General Counsel or, where appropriate, the Director or Director's designee, shall issue a decision in writing granting or denying the appeal in whole or in part. To the extent that the appeal is granted, the General Counsel or, where appropriate, the Director or Director's designee, shall cause the requested amendment to be made promptly. To the extent that the appeal is denied, the decision shall include the reasons for the denial and a notice of the requester's right to submit a brief statement setting forth reasons for disputing the denial of appeal, to seek judicial review of the denial pursuant to 5 U.S.C. 552a(g)(1)(A), and to obtain further information concerning the provisions for judicial review under that section.

(c) An individual whose appeal has been denied in whole or in part may submit a brief summary statement setting forth reasons for disputing such denial. Such statement shall be submitted within 30 days of receipt of the denial of the appeal to the Disclosure Officer. Any such statement shall be made available by the PBGC to anyone to whom the record is subsequently furnished and may also be accompanied, at the discretion of the PBGC,

by a brief statement summarizing the PBGC's reasons for refusing to amend the record. The PBGC shall also provide copies of the individual's statement of dispute to all prior recipients of the record with respect to whom an accounting of the disclosure of the record was maintained pursuant to 5 U.S.C. 552a(c)(1).

(d) To request further information concerning the provisions for judicial review, an individual shall submit such request in writing to the Deputy General Counsel, who shall respond to such request as promptly as possible.

[61 FR 34128, July 1, 1996, as amended at 68 FR 61359, Oct. 28, 2003; 74 FR 27082, June 8, 2009; 74 FR 30212, June 25, 2009]

§ 4902.8 Fees.

When an individual requests a copy of his or her record under § 4902.4, charges for the copying shall be made according to the following fee schedule:

(a) *Standard copying fee.* There shall be a charge of $0.15 per page of record copies furnished. Where the copying fee is less than $1.50, it shall not be assessed.

(b) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of $50, the individual desiring reproduction may request a special rate quotation from the PBGC.

(c) *Manual copying by requester.* No charge will be made for manual copying by the requester of any document made available for inspection under § 4902.4. The PBGC shall provide facilities for such copying without charge between the hours of 9 a.m. and 4 p.m. on any working day.

§ 4902.9 Privacy Act provisions for which PBGC claims an exemption.

Subsections 552a(j) and (k) of title 5, U.S.C., authorize PBGC to exempt systems of records meeting certain criteria from various other subsections of section 552a. This section contains a summary of the Privacy Act provisions for which PBGC claims an exemption for the systems of records discussed in this part pursuant to, and to the extent permitted by, subsections 552a(j) and (k):

(a) Subsection (c)(3) of 5 U.S.C. 552a requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(b) Subsection (c)(4) of 5 U.S.C. 552a requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with subsection (d) of the Privacy Act.

(c) Subsections (d)(1) through (4) of 5 U.S.C. 552a require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(d) Subsection (e)(1) of 5 U.S.C. 552a requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(e) Subsection (e)(2) of 5 U.S.C. 552a requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(f) Subsection (e)(3) of 5 U.S.C. 552a requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, whether disclosure is mandatory or voluntary, the principal purpose(s) for which the information will be used, the routine uses that may be made of the information, and the effects of not providing the information.

(g) Subsection (e)(4)(G) and (H) of 5 U.S.C. 552a requires an agency to publish a FEDERAL REGISTER notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(h) Subsection (e)(5) of 5 U.S.C. 552a requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(i) Subsection (e)(8) of 5 U.S.C. 552a requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(j) Subsection (f) of 5 U.S.C. 552a requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(k) Subsection (g) of 5 U.S.C. 552a provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of the Privacy Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

[74 FR 27082, June 8, 2009]

§ 4902.10 Specific exemption: Personnel Security Investigation Records.

(a) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), PBGC hereby exempts the system of records entitled ''PBGC–12, Personnel Security Investigation Records—PBGC'' from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27, 1975, under an implied promise of confidentiality.

(b) *Reasons for Exemption.* The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment or for work for PBGC as a contractor or as an employee of a contractor, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to PBGC in confidence.

[74 FR 27082, June 8, 2009]

§ 4902.11 Specific exemptions: Office of Inspector General Investigative File System.

(a) *Criminal Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(j)(2), PBGC hereby exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a (c)(3), (c)(4), (d)(1) through (4), (e)(1) through (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f), and (g) because the system contains information pertaining to the enforcement of criminal laws.

(2) *Reasons for exemption.* The reasons for asserting this exemption are:

(i) Disclosure to the individual named in the record pursuant to subsections (c)(3), (c)(4), or (d)(1) through (4) could seriously impede or compromise the investigation by alerting the target(s), subjecting a potential witness or witnesses to intimidation or improper influence, and leading to destruction of evidence.

(ii) Application of subsection (e)(1) is impractical because the relevance of specific information might be established only after considerable analysis and as the investigation progresses. Effective law enforcement requires the Office of Inspector General to keep information that may not be relevant to a specific Office of Inspector General investigation, but which may provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General and/or other agencies.

(iii) Application of subsection (e)(2) would be counterproductive to performance of a criminal investigation because it would alert the individual to the existence of an investigation.

(iv) Application of subsection (e)(3) could discourage the free flow of information in a criminal law enforcement inquiry.

(v) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, PBGC has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(vi) Although the Office of Inspector General endeavors to maintain accurate records, application of subsection (e)(5) is impractical because maintaining only those records that are accurate, relevant, timely, and complete and that assure fairness in determination is contrary to established investigative techniques. Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses.

(vii) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(viii) The provisions of subsection (g) do not apply to this system if an exemption otherwise applies.

(b) *Other Law Enforcement*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), PBGC hereby exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (a)(2) of this section, that is, because the system contains investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(2) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of the Office of Inspector General operations. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges (see, e.g., 5 U.S.C. 552(b)(5)), and which could interfere with other important law enforcement concerns (see, e.g., 5 U.S.C. 552(b)(7)).

(c) *Federal Civilian or Contract Employment*—(1) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(5), PBGC hereby exempts the system of records entitled ''PBGC–17, Office of Inspector General Investigative File System—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) and (H), and (f) because the system contains investigatory material compiled for the purpose of determining eligibility or qualifications for federal civilian or contract employment.

(2) *Reason for exemption.* The reason for asserting this exemption is to protect from disclosure the identity of a confidential source when an express promise of confidentiality has been given to obtain information from sources who would otherwise be unwilling to provide necessary information.

[74 FR 27082, June 8, 2009]

§ 4902.12 Specific exemptions: Insider Threat and Data Loss Prevention.

(a) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), PBGC hereby exempts the system of records entitled ''PBGC–26, PBGC Insider Threat and Data Loss Prevention—PBGC'' from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

(b) *Reasons for exemption.* The reasons for asserting the exemption in this section are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of PBGC's ability to investigate insider threat activities and the improper exfiltration of personally identifiable information. Disclosure could invade the privacy of other individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to privileges, see, *e.g.*, 5 U.S.C. 552(b)(5), and which could interfere

with other important law enforcement concerns, see, *e.g.*, 5 U.S.C. 552(b)(7).

[84 FR 32619, July 9, 2019, as amended at 85 FR 63447, Oct. 8, 2020]

§ 4902.13 Filing rules; computation of time.

(a) *Filing rules*—(1) *Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

[68 FR 61359, Oct. 28, 2003. Redesignated at 74 FR 27082, June 8, 2009. Redesignated at 84 FR 32619, July 9, 2019]

PART 4903—DEBT COLLECTION

Subpart A—General Provisions

Sec.

Subpart B—Procedures to Collect Debts Owed to PBGC

Subpart C—Procedures for Offset of PBGC Payments to Collect Debts Owed to Other Federal Agencies

AUTHORITY: 5 U.S.C. 5514; 29 U.S.C. 1302(b); 31 U.S.C. 3701–3719, 3720A; 5 CFR part 550, subpart K; 31 CFR part 285; 31 CFR parts 900–904.

SOURCE: 75 FR 68205, Nov. 5, 2010, unless otherwise noted.

Subpart A—General Provisions

§ 4903.1 What definitions apply to this part?

The following terms are defined in § 4001.2 of this chapter: Code, PBGC, and Person. In addition, for purposes of this part:

Administrative offset or offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term

''administrative offset'' can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms ''centralized administrative offset'' and ''centralized offset'' refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or Federal agency means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States government, including government-owned corporations, by a person. As used in this part, the term ''debt'' can include a debt owed to PBGC, but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of PBGC or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, Commissioned Corps of the Public Health Service, the National Guard, and the reserve forces of the uniformed services.

FCCS means the Federal Claims Collection Standards, 31 CFR parts 900–904.

Financial Management Service (FMS) means the Treasury Department bureau that is responsible for the centralized collection of delinquent debts through the offset of Federal payments and other means.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, PBGC may be both the creditor agency and payment agency.

Salary offset means a type of administrative offset to collect a debt under Section 5514 of Title 5 of the United States Code and 5 CFR part 550, subpart K by deduction(s) at one or more officially established pay intervals from the current pay account of an employee with or without his or her consent.

Tax debt means a debt arising under the Code.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a Federal agency pursuant to Treasury regulations.

§ 4903.2 What do these regulations cover?

(a) *Scope.* This part provides procedures for the collection of debts owed to PBGC, other than those subject to recoupment (29 CFR 4022, subpart E). This part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment, for which PBGC is the payment agency, is received by PBGC from another agency (for example, when a PBGC employee owes a student loan debt to the United States Department of Education).

(b) *Applicability.*

(1) This part applies to PBGC when collecting a debt owed to PBGC; to persons who owe debts to PBGC; to persons controlled by or controlling persons who owe debts to a Federal agency, and to Federal agencies requesting offset of a payment issued by PBGC as a payment agency (including salary payments to PBGC employees).

(2) This part does not apply to debts owed to PBGC being collected through recoupment under subpart E of part 4022 of this chapter. Benefits paid by PBGC generally will not be offset, subject to limited exceptions (e.g., in certain fiduciary breach situations).

(3) This part does not apply to tax debts, to any debt based in whole or in part on conduct in violation of the antitrust laws, nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to PBGC for handling.

(4) Nothing in this part precludes the use of other statutory or regulatory authority to collect or dispose of any debt. *See*, for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes PBGC to recover travel advances by offset of up to 100 percent of a Federal employee's accrued pay. *See, also*, 5 U.S.C. 4108, governing the collection of training expenses.

(5) To the extent that provisions of laws, other regulations, and PBGC enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and PBGC enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under ERISA, rather than the provisions of this part.

(c) *Additional policies and procedures.* PBGC may, but is not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable law, policies, and procedures.

(1) PBGC does not intend this regulation to prohibit PBGC from demanding the return of specific property or the payment of its value.

(2) The failure of PBGC to comply with any provision in this regulation will not serve as a defense to the existence of the debt.

(d) *Duplication not required.* Nothing in this part requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* PBGC and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available and appropriate collection remedies. To provide PBGC with flexibility in determining which remedies will be most efficient in collecting the particular debt, these remedies are not listed in any prescribed order.

§ 4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of FCCS. This part also supplements the FCCS by prescribing procedures consistent with FCCS, as necessary and appropriate for PBGC operations.

§ 4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

(a) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. *See* § 4000.4 of this chapter for information on where to file.

(b) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(c) *Computation of time.* PBGC applies the rules of subpart D of part 4000 of this chapter to compute any time period under this part.

Subpart B—Procedures To Collect Debts Owed to PBGC

§ 4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?

(a) *Notice requirements.* PBGC will collect debts owed to PBGC. PBGC will

promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt owed to PBGC. The notice(s) will be sent to the debtor at the most current address of the debtor in PBGC's records. Generally, before starting the collection actions described in §§ 4903.6 and 4903.10 through 4903.18 of this part, PBGC will send no more than two written notices to the debtor. The notice will explain why the debt is owed to PBGC, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the debt, how a debtor may dispute the debt, the collection remedies available to PBGC if the debtor refuses or otherwise fails to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (see § 4903.6 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) PBGC's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to PBGC (*see* § 4903.7 of this part);

(5) The name, address, and telephone number of a contact person or office within PBGC;

(6) PBGC's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) *Offset.* Offset the debtor's receipt of Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), Federal retirement (*i.e.,* CSRS or FERS), vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 4903.11 through 4903.13 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (*see* § 4903.16 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (*see* § 4903.15 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (*see* § 4903.14 of this part);

(v) *Litigation.* Whether PBGC will initiate litigation under 29 U.S.C. 1302 to collect the debt or refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* § 4903.17 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (*see* § 4903.10 of this part);

(7) That debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* § 4903.10 of this part);

(8) How the debtor may inspect and copy non-privileged records related to the debt;

(9) How the debtor may request a review of PBGC's determination that the debtor owes a debt to PBGC and present evidence that the debt is not delinquent or legally enforceable (*see* §§ 4903.11(c) and 4903.12(c) of this part);

(10) How a debtor who is an individual may request a hearing if PBGC intends to garnish the debtor's private sector (*i.e.,* non-Federal) wages (see § 4903.14(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is an individual and a Federal employee subject to Federal salary offset may request a hearing (*see* § 4903.13(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th day following receipt of the notice, will stay the commencement of salary offset, but not other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That PBGC will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practicable date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the debt, if applicable. *See*, for example, §§ 4903.6 and 4903.13(f) of this part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under statutory or regulatory authority under which the debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other Federal funds (*see* 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 4903.18(a) of this part); and

(16) That the debtor should advise PBGC of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* PBGC may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if PBGC, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* PBGC should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?

(a) *Assessment and notice.* PBGC will assess interest, penalties and administrative costs on PBGC debts in accordance with the provisions of 31 U.S.C. 3717, 31 CFR 901.9 and other applicable requirements. Administrative costs, including the costs of processing and handling a delinquent debt, will be determined by PBGC. PBGC will explain in the notice to the debtor how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, regulation, or contract, PBGC will not charge interest if the amount due on the debt is paid within 30 days of the date from which the interest accrues. *See* 31 U.S.C. 3717(d). To the extent permitted by law, PBGC may waive interest, penalties, and administrative costs, or any portion thereof, in appropriate circumstances consistent with the FCCS.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period

when collection has been suspended for any reason (for example, when the debtor has requested a hearing). PBGC may suspend accrual of any or all of these charges in appropriate circumstances consistent with the FCCS.

§ 4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?

If a debtor is financially unable to pay the debt in a lump sum, PBGC may accept payment of a debt in regular installments, in accordance with the provisions of 31 CFR 901.8.

§ 4903.8 When will PBGC compromise a debt owed to PBGC?

If PBGC cannot collect the full amount of a debt owed to PBGC, PBGC may compromise the debt in accordance with the provisions of 31 CFR part 902.

§ 4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?

If, after pursuing all appropriate means of collection, PBGC determines that a debt owed to PBGC is uncollectible, PBGC may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903. Termination of debt collection activity by PBGC does not discharge the indebtedness.

§ 4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?

(a) PBGC will transfer a debt owed to PBGC that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as ''cross-servicing.'' *See* 31 U.S.C. 3711(g) and 31 CFR 285.12. PBGC may transfer debts owed to PBGC that are delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred PBGC debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt owed to PBGC and the collection action to be taken. See 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the debt owed to PBGC to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus, and/or administrative wage garnishment.

(b) At least 60 days prior to transferring a debt owed to PBGC to the Financial Management Service, PBGC will send notice to the debtor as required by § 4903.5 of this part. PBGC will certify to the Financial Management Service that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, PBGC will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by administrative and tax refund offset. *See* 31 CFR 285.12(g). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?

(a) *Centralized administrative offset through the Treasury Offset Program.* (1)

In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of Federal payments. *See* § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). PBGC may refer to the Treasury Offset Program for offset any debt owed to PBGC that has been delinquent for 180 days or less.

(2) At least 60 days prior to referring a debt owed to PBGC to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service, that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with the requirements in this part.

(b) *Non-centralized administrative offset for debts owed to PBGC.* (1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, PBGC may collect past-due, legally enforceable debts owed to PBGC through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, PBGC may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset under this paragraph (b), PBGC will certify that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 4903.5 of this part will explain to the debtor how to request an administrative review of PBGC's determination that the debtor owes a debt to PBGC and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt owed to PBGC, the debtor may seek a review of the terms of repayment. In most cases, PBGC will provide administrative review based upon the written record, including documentation provided by the debtor. PBGC may provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt owed to PBGC, and PBGC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing. PBGC will carefully document all significant matters discussed at the hearing. PBGC may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), PBGC may offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 4903.5 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. PBGC will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of tax refunds and other Federal payments. *See* § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C.

6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least 60 days prior to referring a debt owed to the Treasury Offset Program, PBGC will send notice to the debtor in accordance with the requirements of §4903.5 of this part. PBGC will certify to the Financial Management Service's Treasury Offset Program that the debt is past due and legally enforceable in the amount submitted, and that the PBGC has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, PBGC will certify its compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in §4903.5 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in §4903.11(c) of this part. PBGC may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?

(a) *Federal salary offset.* (1) Salary offset is used to collect debts owed to the United States or PBGC by Federal employees. If a Federal employee owes PBGC a debt, PBGC may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than PBGC may collect debt from the salary of a PBGC employee, see §§4903.21 and 4903.22, subpart C, of this part.

(2) Nothing in this part requires PBGC to collect a debt in accordance with the provisions of this section if Federal law allows other means to collect. *See*, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) PBGC may use the administrative wage garnishment procedure described in §4903.14 of this part to collect from an individual's non-Federal wages a debt owed to PBGC.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in §4903.10(a) of this part, PBGC will refer debts owed to PBGC to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, PBGC will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. *See* 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for debts owed to PBGC.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, PBGC may collect delinquent debts owed to PBGC through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, PBGC may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed to PBGC by a Federal employee. Thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, PBGC will send notice to the debtor in accordance with the requirements of §4903.5 of this part. When referring a debt owed to PBGC for offset, PBGC will certify to the payment agency that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, PBGC will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* PBGC is not required to provide prior notice to an employee when the following adjustments are made by PBGC to a PBGC employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to

clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Administrative review*—(1) *Request for administrative review.* A Federal employee who has received a notice that his or her debt will be collected by means of salary offset may request administrative review concerning the existence or amount of the debt owed to PBGC. The Federal employee also may request administrative review concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for administrative review in writing to the office designated in the notice described in §4903.5. *See* §4903.5(a)(11). The request must be received by the designated office on or before the 15th day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. *See* 31 CFR 901.3(a)(7).

(2) *Failure to submit timely request for administrative review.* If the employee fails to submit a request for administrative review within the time period described in paragraph (e)(1) of this section, salary offset may be initiated. However, PBGC may accept a late request for administrative review if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Reviewing official.* PBGC must obtain the services of a reviewing official who is not under the supervision or control of the Director of the PBGC. PBGC may enter into interagency support agreements with other agencies to provide reviewing officials.

(4) *Notice of administrative review.* After the employee requests administrative review, the designated reviewing official will inform the employee of the form of the review to be provided. For oral hearings, the notice will set forth the date, time and location of the hearing. For determinations based on review of written records, the notice will notify the employee of the date by which he or she should submit written arguments to the designated reviewing official. The reviewing official will give the employee reasonable time to submit documentation in support of the employee's position. The reviewing official will schedule a new hearing date if requested by both parties. The reviewing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The reviewing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone. The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the reviewing official, including but not limited to:

(i) Informal conferences (in person or electronically) with the reviewing official, in which the employee and agency representative will be given a reasonable opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the reviewing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Determination based on review of written record.* If the reviewing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the

employee in support of his or her position. *See* 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for administrative review, the employee will have waived the right to administrative review, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt owed to PBGC as described in the notice of intent to offset. If PBGC's representative fails to appear at an oral hearing, the reviewing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* PBGC will have the initial burden to prove the existence and amount of the debt owed to PBGC. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no such debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The reviewing official will maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings. See 31 CFR 901.3(a)(7).

(10) *Date of decision.* The reviewing official will issue a written opinion stating the official's decision, based upon documentary evidence and information developed during the administrative review, as soon as practicable after the review, but not later than 60 days after the date on which the request for review was received by PBGC. If the employee (or the parties jointly) requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the review was postponed. When a decision is not timely rendered, PBGC will waive interest and penalties applied to the debt owed to PBGC for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision will include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt owed to PBGC;

(ii) The reviewing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The reviewing official's decision will be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 32 U.S.C. 716, or other statutory authority. PBGC may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such debts, in accordance with those authorities, 5 CFR 550.1102(b)(2).

(g) *Salary offset process*—(1) *Determination of disposable pay.* PBGC will implement salary offset when requested to do so by PBGC, as described in paragraph (c) of this section, or another agency, as described in § 4903.21 of this part. If the debtor is not employed by PBGC, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset or after a decision has been issued following a request for a hearing.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, subject to the requirements of 15 U.S.C. 1673, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in a lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay

from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt owed to PBGC.

(h) *Payment agency's responsibilities.* (1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which PBGC has requested salary offset, the payment agency must certify the total amount of its collection and notify PBGC and the employee of the amounts collected. If the payment agency knows that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt to PBGC, the amount of the debt, and that PBGC has complied with the provisions of this section. PBGC must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, PBGC may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, PBGC will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) When an employee transfers to another agency, PBGC should resume collection with the employee's new payment agency in order to continue salary offset.

§ 4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?

(a) PBGC is authorized to collect debts owed to PBGC from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). PBGC may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (*see* § 4903.7 of this part). Thirty (30) days prior to initiating an administrative wage garnishment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part, including the requirements of § 4903.5(a)(10) of this part. For debts referred to the Financial Management Service under § 4903.10 of this part, PBGC may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 4903.5(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. PBGC will determine whether the matter requires an oral hearing or if a determination based upon review of the written record is sufficient. PBGC will provide the debtor with a reasonable opportunity for an oral hearing when it determines that the issues in dispute cannot be resolved by a review of the documentary evidence. *See* 31 CFR 285.11(f)(1)–(4). Even if a debtor's hearing request is not timely, PBGC may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which PBGC collects debts owed to

PBGC from the salaries of Federal employees (*see* § 4903.13 of this part).

§ 4903.15 How will PBGC report debts owed to PBGC to credit bureaus?

PBGC will report delinquent debts owed to PBGC to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, ''Policies for Federal Credit Programs and Non-tax Receivables.'' At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC may authorize the Financial Management Service to report to credit bureaus those delinquent debts owed to the PBGC that have been transferred to the Financial Management Service under § 4903.10 of this part.

§ 4903.16 How will PBGC refer debts owed to PBGC to private collection agencies?

PBGC will transfer delinquent debts owed to PBGC to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 4903.10 of this part.

§ 4903.17 When will PBGC refer debts owed to PBGC to the Department of Justice?

PBGC may initiate litigation pursuant to 29 U.S.C. 1302 with delinquent debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. Alternatively, PBGC may refer debts owed to PBGC having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See §§ 4903.8 and 4903.9 of this part; 31 CFR 902.1, 903.1, and part 904. PBGC may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the Financial Management Service under § 4903.10 of this part.

§ 4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, PBGC will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. PBGC may issue standards under which it may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. PBGC may extend credit after the delinquency has been resolved. *See* 31 CFR 285.13.

(b) This section does not apply to loans provided to multi-employer pension plans pursuant to 29 U.S.C. 1431, 29 CFR 4261.1 and 4281.47.

(c) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. PBGC may promulgate regulations to allow for waivers of this ineligibility. *See* 28 U.S.C. 3201(e).

§ 4903.19 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a debt to PBGC may, at any time, request a special review by PBGC of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (e.g., costs incurred for food, housing, clothing, transportation, and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses;

(7) Exceptional expenses, if any; and

(8) Any additional materials and information that PBGC may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to PBGC, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. PBGC will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. PBGC will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, PBGC will notify the appropriate Federal agency or other persons about the new terms.

§ 4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?

PBGC will promptly refund to a debtor any amount collected on a debt owed to PBGC when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law.

Subpart C—Procedures for Offset of PBGC Payments To Collect Debts Owed to Other Federal Agencies

§ 4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?

(a) *Offset of PBGC payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by PBGC and other Federal agencies, a process known as ''centralized offset.'' When centralized offset is not available or appropriate, any Federal agency may ask PBGC (when acting as a ''payment agency'') to collect a debt owed to such agency by offsetting funds payable to a debtor by PBGC, including salary payments issued to PBGC employees. This section and § 4903.21 of this subpart C apply when a Federal agency asks PBGC to offset a payment issued by PBGC to a person who owes a debt to the United States.

(2) This subpart C does not apply to debts owed to PBGC. *See* §§ 4903.11 through 4903.13 of this part for offset procedures applicable to debts owed to PBGC.

(3) This subpart C does not apply to the collection of non-PBGC debts through tax refund offset. See 31 CFR 285.2 for tax refund offset procedures.

(4) Benefits paid by PBGC generally will not be offset, subject to limited exceptions (e.g., in certain fiduciary breach situations).

(b) *Administrative offset (including salary offset); certification.* PBGC will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset

under this section must be sent to PBGC, ATTN: Chief Financial Officer, 445 12th Street SW, Washington, DC 20024–2101.

(d) *Incomplete certification.* PBGC will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by PBGC.

(e) *Review.* PBGC is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When PBGC will not comply with offset request.* PBGC will comply with the offset request of another agency unless PBGC determines, in consultation with that agency, that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, PBGC may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to PBGC.* For purposes of this section, debts owed to PBGC generally take precedence over debts owed to other agencies. PBGC may determine whether to pay debts owed to other agencies before paying a debt owed to PBGC. PBGC will determine the order in which the debts will be collected based on the best interests of the United States.

[75 FR 68205, Nov. 5, 2010, as amended at 87 FR 57825, Sept. 22, 2022]

§ 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to a PBGC employee.* When PBGC receives proper certification of a debt owed by one of its employees, PBGC will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions. PBGC will begin deductions from the employee's pay at the next officially established pay interval.

(b) *Amount of deductions from a PBGC employee's salary.* The amount deducted under § 4903.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor's disposable pay so long as that amount does not exceed limitations imposed by 15 U.S.C. 1673. Deductions will continue until PBGC knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 4903.13(g) (salary offset process).

(c) *When the debtor is no longer employed by PBGC*—(1) *Offset of final and subsequent payments.* If a PBGC employee retires or resigns or if his or her employment ends before collection of the debt is complete, PBGC will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by PBGC. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from PBGC before the debt is paid in full, PBGC will certify to the creditor agency the total amount of its collection. If PBGC knows that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, PBGC will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency*—(1) *Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, PBGC will notify the creditor agency and will certify the total amount of its collection on the debt. PBGC will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* PBGC will provide a hearing official upon the creditor agency's request with respect to a PBGC employee. *See* 5 CFR 550.1107(a).

PART 4905—APPEARANCES IN CERTAIN PROCEEDINGS

Sec.

AUTHORITY: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

SOURCE: 61 FR 34133, July 1, 1996, unless otherwise noted.

§ 4905.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules and procedures to be followed when a PBGC employee or former employee is requested or served with compulsory process to appear as a witness or produce documents in a proceeding in which the PBGC is not a party, if such appearance arises out of, or is related to, his or her employment with the PBGC. It provides a centralized decisionmaking mechanism for responding to such requests and compulsory process.

(b) *Scope.* (1) This part applies when, in a judicial, administrative, legislative, or other proceeding, a PBGC employee or former employee is requested or served with compulsory process to provide testimony concerning information acquired in the course of performing official duties or because of official status and/or to produce material acquired in the course of performing official duties or contained in PBGC files.

(2) This part does not apply to:

(i) Proceedings in which the PBGC is a party;

(ii) Congressional requests or subpoenas for testimony or documents; or

(iii) Appearances by PBGC employees in proceedings that do not arise out of, or relate to, their employment with PBGC (e.g., outside activities that are engaged in consistent with applicable standards of ethical conduct).

§ 4905.2 Definitions.

For purposes of this part:

Appearance means testimony or production of documents or other material, including an affidavit, deposition, interrogatory, declaration, or other required written submission.

Compulsory process means any subpoena, order, or other demand of a court or other authority (e.g., an administrative agency or a state or local legislative body) for the appearance of a PBGC employee or former employee.

Employee means any officer or employee of the PBGC, including a special government employee.

Proceeding means any proceeding before any federal, state, or local court; federal, state, or local agency; state or local legislature; or other authority responsible for administering regulatory requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

Special government employee means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

§ 4905.3 General.

No PBGC employee or former employee may appear in any proceeding to which this part applies to testify and/or produce documents or other material unless authorized under this part.

§ 4905.4 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this part applies, he or she will promptly notify the General Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

(i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;

(ii) Whether the appearance would unnecessarily interfere with the employee's official duties;

(iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and

(iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom of Information Act, as amended, in accordance with part 4901 of this chapter, except to the extent that the Privacy Act of 1974, as amended, and part 4902 of this chapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this part applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this part of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

§ 4905.5 Requests for authenticated copies of PBGC records.

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this part or part 4901 of this chapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with part 4901, subpart D, of this chapter.

§ 4905.6 Penalty.

A PBGC employee who testifies or produces documents or other material in violation of a provision of this part of the regulations shall be subject to disciplinary action.

PART 4906 [RESERVED]

PART 4907—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

AUTHORITY: 29 U.S.C. 794, 1302(b)(3).

SOURCE: 61 FR 34134, July 1, 1996, unless otherwise noted.

§ 4907.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 4907.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 4907.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) Qualified handicapped person is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 4907.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 4907.104–4907.109 [Reserved]

§ 4907.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 4907.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 4907.112–4907.129 [Reserved]

§ 4907.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 4907.131–4907.139 [Reserved]

§ 4907.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally-conducted programs or activities.

§§ 4907.141–4907.148 [Reserved]

§ 4907.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 4907.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 4907.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 4907.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 4907.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because

of § 4907.150 (a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 4907.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 4907.152–4907.159 [Reserved]

§ 4907.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In