

## **SUBCHAPTER J—INSOLVENCY, TERMINATION, AND OTHER RULES APPLICABLE TO MULTIEMPLOYER PLANS**

### **PART 4231—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS**

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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

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(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 trans-

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fer). 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

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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.

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(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

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(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

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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.

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(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

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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)).

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(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.

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### § 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

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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.

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### §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).

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(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

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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.

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(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 guaranteee 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.

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### § 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.

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- 4233.2 Definitions.
- 4233.3 Application filing requirements.
- 4233.4 Information to be filed.
- 4233.5 Plan information.
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- 4233.7 Actuarial and financial information.
- 4233.8 Participant census data.
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- 4233.11 Notice of application for partition.

4233.12 PBGC action on application for partition.

4233.13 Coordinated application process for partition and benefit suspension.

4233.14 Partition order.

4233.15 Nature and operation of successor plan.

4233.16 Coordination of benefits under original plan and successor plan.

4233.17 Continuing jurisdiction.

### APPENDIX A TO PART 4233—MODEL NOTICES

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;