

(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.

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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

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(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.

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§ 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 finan-

cial 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

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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 pre-existing 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.pbpc.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

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(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

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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) *Supplemented 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 as-

sistance instructions on PBGC's website at www.pbtc.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

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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 in-

formation 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

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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 appli-

cation 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

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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.pbpc.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

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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 adminis-

trative 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.pbtc.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.pbtc.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 ap-

plication 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.

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(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 para-

graphs (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 multi-employer 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.

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(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 ex-

cept 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

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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—

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(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:

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(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.

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(v) A copy of the proposed benefit or benefit increase amendment.

(vi) Most recent plan document or re-statement 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

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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 para-

graph (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 under § 4044.54 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 under §4044.54 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. The value of plan assets determined under this paragraph (g)(2)(viii) may not be less than zero.

(ix) *Calculation of SFA assets excluded—(A) In general.* Except for plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(A) is, as of the end of the determination year—

(1) 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), minus the amount paid to PBGC under § 4262.12(e), as of the end of the determination year;

(2) 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.

(B) *Plans required to pay make-up payments.* For plans required to pay make-up payments described in § 4262.15(b), the amount described in this paragraph (g)(2)(ix)(B) is, as of the end of the determination year—

(1) 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), minus the amount paid to PBGC under § 4262.12(e), and minus the amount of make-up payments paid by the plan to participants and beneficiaries under § 4262.15(b) whether the payments are made from SFA assets or non-SFA assets, as of the end of the determination year;

(2) 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 ($\$1,000,000 \times \frac{3}{6}$). 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 ($\$1,000,000 \times \frac{7}{8}$). 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 ($\$1,100,000 \times \frac{4}{9}$). 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 ($\$1,000,000 \times \frac{1}{1}$). If total assets (assuming no phased recognition of SFA) are \$100,000,000, unfunded vested benefits are based on assets of \$99,000,000.

(D) *Example 4.* In plan year 2022, Plan D received an SFA payment amount of \$50,000,000 (not including the amount paid to PBGC for repayment of traditional financial assistance) and a supplemented SFA payment amount of \$30,000,000. A total of \$20,000,000 in

lump-sum make-up payments were paid by Plan D in plan year 2022. An employer withdraws in 2023. At the end of the determination year (2022), the amount of SFA required to be excluded from assets equals \$60,000,000 ($\$50,000,000 + \$30,000,000 - \$20,000,000$). If, instead, the make-up payments were paid by Plan D in plan year 2023, the amount of SFA required to be excluded from assets at the end of the determination year (2022) would equal \$80,000,000. Under this scenario, Plan D's unfunded vested benefit liability would be the same at the end of the determination year because the additional \$20,000,000 of SFA required to be excluded from assets offsets the \$20,000,000 in SFA that the plan still holds for make-up payments but has not yet distributed as of the end of the determination year. Similarly, if the employer withdraws in 2024, the make-up payments were paid in 2023, and the phase-in fraction was 9/10th for 2023, the amount of SFA excluded from the assets at the end of the determination year (2023) would be \$54,000,000 ($9/10\text{th} \times \$60,000,000$), where the \$60,000,000 is calculated as the total \$80,000,000 in SFA paid to the plan minus the \$20,000,000 in make-up payments that were disbursed prior to the end of the determination year.

(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:

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(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 under § 4044.54 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.pbtc.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; 88 FR 76664, Nov. 7, 2023; 89 FR 48309, June 6, 2024]

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§ 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

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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.