PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4006, 4041, 4050

RIN 1212–AA82

Termination of Single Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: In order to extend deadlines and otherwise to simplify the standard termination process, the Pension Benefit Guaranty Corporation is proposing amendments to its termination regulation. The amendments also require that plan administrators provide participants and beneficiaries with information on state guaranty association coverage.

DATES: Comments must be received on or before May 13, 1997.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005-4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

A single-employer plan covered by the PBGC's insurance program may be voluntarily terminated only in a standard or distress termination. The rules governing voluntary terminations are in section 4041 of the Employee Retirement Income Security Act of 1974 and part 4041 of the PBGC's regulations.

Once the decision is made to terminate a plan in a standard termination, the plan administrator must meet specific statutory and regulatory requirements. These requirements have caused difficulty for some plan administrators and participants. For example, a plan administrator who misses a deadline must restart the termination process, resulting in additional cost for the plan administrator and delayed distributions for participants.

The PBGC proposes to amend its regulations in order to extend certain deadlines and otherwise to simplify the termination process. The proposal was developed after conducting focus groups with plan practitioners and takes into account participant concerns and the PBGC's experience.

The amendment lessens the likelihood of errors, thereby reducing burdens on plan administrators and expediting distributions to participants. The amendment also implements a General Accounting Office recommendation that plan administrators provide information on state guaranty association coverage to participants, and makes a limited number of conforming changes to the distress termination and premium regulations, along with some conforming and simplifying changes to the missing participants regulations.

The major changes in the amendment are discussed below.

Standard Termination Process

Notice of intent to terminate: The amendment expands the notice to include information on state guaranty association coverage. The amendment also clarifies the language in the notice on freezing of benefit accruals to better coordinate with section 204(h) of ERISA. The PBGC's standard termination forms and instructions package will include a model notice of intent to terminate, along with state guaranty association coverage information.

Notice of plan benefits: The amendment simplifies and clarifies the information requirements.

Standard termination notice: The amendment extends the deadline for filing the standard termination notice with the PBGC from 120 days to 180 days after the proposed termination date. Upon review of the standard termination notice, the PBGC may require the submission of additional information relevant to the termination proceeding (e.g., where there is a question whether the plan is sufficient for all benefit liabilities). Such information will normally be due within 30 days after the date of the PBGC's request. The PBGC may shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

Close-out of plan: The amendment extends the close-out period for plan administrators that timely apply for an IRS determination letter from 60 to 120 days after receipt of a favorable letter, and eliminates the requirement that plan administrators notify the PBGC of the need for the extension.

In the case of benefits that must be provided in annuity form, the distribution must be made by purchasing irrevocable commitments from an insurer. In order to have a valid standard termination under Title IV of ERISA, the plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA (see Department of Labor Interpretive Bulletin 95–1, 60 FR 12328 (March 6, 1995)). The PBGC intends, as part of its standard termination audit program, to audit insurer selections for compliance with these standards and to take appropriate corrective action.

Post-distribution certification: The amendment provides that the PBGC will not assess a penalty if the post-distribution certification, which ERISA requires be filed within 30 days after the final distribution, is filed within 90 days after the distribution deadline. As discussed elsewhere in today's Federal Register, the PBGC is implementing this penalty policy immediately.

Extension of deadlines: The PBGC may in its discretion grant case-by-case extensions in narrow circumstances. The PBGC will grant an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC will consider the length of the delay and whether ordinary business care and prudence in attempting to meet the deadline is exercised.

PBGC discretion not to nullify: The amendment also incorporates section 778(a) of the Retirement Protection Act of 1994, which gives the PBGC discretion not to nullify defective standard terminations in certain circumstances if it determines that nullification ''would be inconsistent with the interests of participants and beneficiaries.''

Distress Termination Process

A plan that is sufficient for at least guaranteed benefits closes out under procedures that parallel those used in a standard termination. The amendment makes conforming changes to the distress termination procedures, primarily with respect to the rules that apply after the PBGC issues a distribution notice authorizing a plan to close out in the private sector. The time limits governing the initial processing of a distress termination are not changed. The PBGC may address other distress termination issues in a separate rulemaking.

General Provisions

Filing rules: The amendment changes the date of filing a notice with the PBGC from the date of receipt to the date of mailing with the United States Postal Service (as evidenced by a postmark) or deposit with a commercial delivery service (provided the notice is received by the PBGC within two regular business days). The amendment also allows electronic filing with the PBGC and, in certain circumstances, electronic issuance to third parties.

Maintenance of plan records. The amendment clarifies that, while the plan administrator and each contributing sponsor of a terminating plan are subject to the requirement to maintain records used to compute benefits, if any one of them complies with that requirement, the others need not comply.

Post-termination amendments: The amendment provides that, except to the extent necessary to meet a qualification requirement under section 401 of the Code, a plan amendment adopted or effective after a plan's termination date is disregarded with respect to a participant or beneficiary to the extent the amendment (1) decreases the amount or value of the participant's or beneficiary's benefits (*e.g.*, by adopting less favorable assumptions for calculating a lump sum distribution or by eliminating an ancillary benefit such as a Social Security supplement under section 204(b)(1)(G) of ERISA), or (2) eliminates or restricts an optional form of benefit for the participant or beneficiary.

Missing Participants: The amendment provides that the diligent search procedures for a missing participant whose designated benefit is paid to the PBGC also apply for a missing participant for whom the plan administrator purchases an annuity. The amendment requires plan administrators who purchase an annuity for a missing participant to provide the PBGC with the amount of the participant's normal retirement benefit (to the extent that information is known). This information will facilitate the PBGC's ability to respond to participant inquiries and to target its search efforts.

The amendment eliminates detailed rules that apply in the unusual circumstance of an individual located or discovered to be missing late in the distribution process. The PBGC can more effectively deal with such situations by granting discretionary extensions as appropriate on a case-by-case basis in order to ensure that adequate time is available.

The amendment also provides penalty relief for the late filing of certain information about missing participants comparable to that provided for late post-distribution certifications.

Effective Date

While the changes will generally apply to new terminations initiated on or after the effective date of the final rule, the PBGC intends to allow plan administrators to apply certain portions of the final rule to terminations in process.

Paperwork Reduction Act

The information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995, with a request for a three-year approval. As part of this request, the PBGC has made clarifying and other changes (related to the proposed rule) to its implementing forms and instructions under its regulations on termination of single-employer plans and missing participants. Copies of the PBGC's request may be obtained free of charge by writing to the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, or by visiting that office between the hours of 9 a.m. and 4 p.m.

The PBGC needs the information required to be submitted to ensure that a voluntary termination is completed in accordance with statutory and regulatory requirements and to facilitate the payment of benefits to missing participants. Participants need the information required to be disclosed so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination.

Much of the work associated with terminating a plan is performed for purposes other than meeting the collection of information requirements in the PBGC's termination and missing participants regulations. The PBGC estimates that 3,640 plan administrators will be subject to these requirements each year, and that the total annual burden of complying with these requirements is 4,983 hours and $3,139,560.

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The PBGC already allows electronic submission of participant and beneficiary data in a distress termination and has been actively considering whether to allow other information to be provided electronically. In certain circumstances, this proposed rule allows electronic filing with the PBGC and electronic issuance of notices to third parties. The PBGC welcomes comments on electronic filing and issuance requirements, particularly on how to ensure that notices issued electronically to third parties are actually received by the persons entitled to receive them.

The PBGC also invites comments on whether, given the PBGC's limited role in standard terminations, the burden of the standard termination filing process could be further reduced.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. While this rule simplifies procedures and extends deadlines, the actions required to terminate a plan are essentially unchanged. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

List of Subjects

29 CFR Part 4001

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4041

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4050

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4001, 4006, 4041, and 4050 of 29 CFR chapter LX as follows.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

1. The authority citation for Part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

§§ 4041.46 and 4041.48 [Removed]

2. Section 4041.46 is removed.

§ 4041.47 and §§ 4041.41 Through 4041.45 [Redesignated as §§ 4041.49 and 4041.43 through 4041.47]

3. § 4041.47 is redesignated as § 4041.49; and §§ 4041.41 through 4041.45 are redesignated as §§ 4041.43 through 4041.47.

§ 4041.3 [Amended and Redesignated as § 4041.41]

4. In § 4041.3, the section heading is amended by removing the words ''a standard termination or''; paragraphs (a) and (b) are removed; paragraphs (c) through (g) are redesignated as paragraphs (a) through (e); and as so amended, § 4041.3 is redesignated as § 4041.41. (Redesignated § 4041.41 is the first section under Subpart C.)

§ 4041.4 [Amended and Redesignated]

5. In 4041.4, paragraphs (b), (d) and (e) are removed; paragraphs (c) and (f) through (h) are redesignated as paragraphs (b) through (e); and as so amended, § 4041.4 is redesignated as § 4041.42.

Subparts A and B [Amended]

6. Subparts A and B of Part 4041 are revised to read as follows:

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

4041.1 Purpose and scope.
4041.2 Definitions.
4041.3 Computation of time; filing and issuance rules.
4041.4 Disaster relief.
4041.5 Maintenance of plan records.
4041.6 Effect of failure to provide required information.
4041.7 Collective bargaining agreement challenges.
4041.8 Post-termination amendments.

Subpart B—Standard Termination Process

4041.21 Requirements for a standard termination.
4041.22 Administration of plan during termination process.
4041.23 Notice of intent to terminate.
4041.24 Notices of plan benefits.
4041.25 Standard termination notice.
4041.26 PBGC review of standard termination notice.
4041.27 Notice of annuity information.
4041.28 Closeout of plan.
4041.29 Post-distribution certification.
4041.30 Requests for deadline extensions.
4041.31 Notice of noncompliance.

Subpart A—General Provisions.

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer plan in a standard or distress termination under section 4041 of ERISA, the exclusive means of voluntarily terminating a plan.

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, EIN, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan administrator, plan year, PN, single-employer plan, standard termination, termination date, and title IV benefit. In addition, for purposes of this part:

Distress termination notice means the notice filed with the PBGC pursuant to § 4041.45.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.47(c) upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Majority owner means an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of section 414 (b) and (c) of the Code) of—

(1) An unincorporated trade or business;

(2) The capital interest or the profits interest in a partnership; or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to § 4041.31 advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by § 4041.24.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Plan benefits means the benefits to which a participant is, or may become, entitled under the plan's provisions in effect as of the termination date, based on the participant's benefit under the plan as of that date. Each participant's ''plan benefits'' equals that participant's ''benefit liabilities,'' and the sum of all ''plan benefits'' equals the plan's ''benefit liabilities.''

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard or distress termination notice.

Residual assets means the plan assets remaining after all benefit liabilities and other liabilities (*e.g.*, PBGC premiums) of the plan have been satisfied.

Standard termination notice means the notice filed with the PBGC pursuant to § 4041.25.

State guaranty association means an association of insurers created by a State, the District of Columbia, or the Commonwealth of Puerto Rico to pay benefits and to continue coverage, within statutory limits, under life and health insurance policies and annuity contracts when an insurer fails.

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* In computing any period of time under this part, the day of the event from which the period begins is not counted. The last day of the period is included. If the last day falls on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next regular business day. A proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

(b) *Filing with the PBGC.*

(1) *Method of filing.* Any document to be filed under this part shall be delivered to the PBGC in accordance with the applicable PBGC termination forms and instructions package.

(2) *Date of filing.* Any information required or permitted to be filed with the PBGC shall be deemed filed—

(i) On the date of the United States postmark, if the postmark was made by the United States Postal Service and the document was mailed postage prepaid to the PBGC;

(ii) On the date it is deposited for delivery to the PBGC with a commercial delivery service, provided it is received by the PBGC within two regular business days; or

(iii) Except as provided in paragraphs (b)(2)(i) or (b)(2)(ii), on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(c) *Issuance to other parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of §§ 4041.23(c) or 4041.24(f) is treated as an affected party.

(1) *Permissible methods of issuance.* The plan administrator shall issue any notice to an affected party individually—

(i) By hand delivery;

(ii) By first-class mail or commercial delivery service to the affected party's last known address; or

(iii) By electronic means reasonably calculated to ensure actual receipt by the affected party.

(2) *Date of issuance.* Any notice is deemed issued to an affected party on the date on which it is—

(i) Handed to the affected party;

(ii) Deposited with the mail or a commercial delivery service (as evidenced by a postmark or written receipt); or

(iii) Transmitted electronically to the affected party.

(3) *Omission of affected parties.* The failure to issue any notice to an affected party (other than any employee organization) within the specified time period will not cause the notice to be untimely if—

(i) *After-discovered affected parties.* The plan administrator could not reasonably have been expected to know of the affected party, and issues the notice promptly after discovering the affected party; or

(ii) *De minimis administrative errors.* The failure was due to administrative error involving only a *de minimis* percentage of affected parties, and the plan administrator issues the notice to each such affected party promptly after discovering the error.

(4) *Form of notices to affected parties.* All notices to affected parties shall be readable and written in a manner calculated to be understood by the average plan participant.

(5) *Foreign languages.* The plan administrator of a plan that (as of the proposed termination date) covers the numbers or percentages in § 2520.104b-10(e) of this title of participants literate only in the same non-English language shall, for any notice to affected parties—

(i) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or

(ii) Provide the notice in that common non-English language to those affected parties literate only in that language.

§ 4041.4 Disaster relief.

When the President of the United States declares that, under the Disaster Relief Act (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days any due date under this part.

§ 4041.5 Maintenance of plan records.

(a) *Retention requirement.*

(1) *Persons subject to requirement.* Each contributing sponsor and the plan administrator of a plan terminating in a standard termination, or in a distress termination that closes out in accordance with § 4041.50, shall maintain all records used to compute benefits with respect to each individual who is a plan participant or a beneficiary of a deceased participant as of the termination date. If a contributing sponsor or the plan administrator complies with part or all of the requirements of this paragraph (a), the other(s) need not comply with respect to such information.

(2) *Retention period.* The records described in paragraph (a)(1) shall be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(b) *Availability of records.* The contributing sponsor or plan administrator shall make records related to the termination available to the PBGC upon request for inspection and photocopying, and shall submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein.

§ 4041.6 Effect of failure to provide required information.

If a plan administrator fails to provide any information required under this part within the specified time limit, the PBGC may assess a penalty under section 4071 of ERISA of up to $1,000 a day for each day that the failure continues. The PBGC may also pursue any other equitable or legal remedies available to it under the law, including, if appropriate, the issuance of a notice of noncompliance under § 4041.31.

§ 4041.7 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination.*

(1) *Notice of formal challenge.*

(i) If the PBGC is advised, before its review period under § 4041.26(a) ends, or before issuance of a notice of inability to determine sufficiency or a distribution notice under § 4041.47 (b) or (c), that a formal challenge to the termination has been initiated as described in paragraph (c), the PBGC shall suspend the termination proceeding and so advise the plan administrator in writing.

(ii) If the PBGC is advised of a challenge described in paragraph (a)(1)(i) of this section after the time specified therein, the PBGC may suspend the termination proceeding and shall so advise the plan administrator in writing.

(2) *Standard terminations.* During any period of suspension in a standard termination—

(i) The running of all time periods specified in ERISA or this part relevant to the termination shall be suspended; and

(ii) The plan administrator shall comply with the prohibitions in § 4041.22.

(3) *Distress terminations.* During any period of suspension in a distress termination—

(i) The issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice shall be stayed or, if any such notice was previously issued, its effectiveness shall be stayed;

(ii) The plan administrator shall comply with the prohibitions in § 4041.42; and

(iii) The plan administrator shall file a distress termination notice with the PBGC pursuant to § 4041.45.

(b) *Existing collective bargaining agreement.* For purposes of this section, an existing collective bargaining agreement means a collective bargaining agreement that has not been made inoperative by a judicial ruling and, by its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it. When a collective bargaining agreement no longer meets these conditions, it ceases to be an ''existing collective bargaining agreement,'' whether or not any or all of its terms may continue to apply by operation of law.

(c) *Formal challenge to termination.* A formal challenge to a plan termination asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement is initiated when—

(1) Any procedure specified in the collective bargaining agreement for resolving disputes under the agreement commences; or

(2) Any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law commences.

(d) *Resolution of challenge.* Immediately upon the final resolution of the challenge, the plan administrator shall notify the PBGC in writing of the outcome of the challenge, provide the PBGC with a copy of any award or order, and, if the validity of the proposed termination has been upheld, advise the PBGC whether the proposed termination is to proceed. The final resolution ends the suspension period under paragraph (a) of this section.

(1) *Challenge sustained.* If the final resolution is that the proposed termination violates an existing collective bargaining agreement, the PBGC shall dismiss the termination proceeding, all actions taken to effect the plan termination shall be null and void, and the plan shall be an ongoing plan. In this event, in a distress termination, § 4041.42(d) shall apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the final resolution is that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator has notified the PBGC that the termination is to proceed, the PBGC shall reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and—

(i) The termination proceeding shall continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension shall be effective;

(iii) Any time periods that were suspended shall resume running from the date of the PBGC's notice of the reactivation of the proceeding;

(iv) Any time periods that had fewer than 15 days remaining shall be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify; and

(v) In a distress termination, the PBGC shall proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 4041.45(c).

(e) *Final resolution of challenge.* A formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(f) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.8 Post-termination amendments.

Except to the extent necessary to meet a qualification requirement under section 401 of the Code, a plan amendment that is adopted or effective after a plan's termination date shall be disregarded with respect to a participant or beneficiary to the extent the amendment—

(a) Decreases the amount or value of the participant's or beneficiary's benefits (*e.g.*, by adopting less favorable assumptions for calculating a lump sum distribution or by eliminating an ancillary benefit such as a Social Security supplement under section 204(b)(1)(G) of ERISA); or

(b) Eliminates or restricts an optional form of benefit for the participant or beneficiary.

Subpart B—Standard Termination Process

§ 4041.21 Requirements for a standard termination.

(a) *Notice and distribution requirements.* A standard termination is valid if the plan administrator—

(1) Issues a notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(2) Issues notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(3) Files a standard termination notice with the PBGC in accordance with § 4041.25;

(4) Distributes the plan's assets in satisfaction of all of the plan's benefit liabilities in accordance with § 4041.28(a); and

(5) In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), provides the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2).

(b) *Plan sufficiency.*

(1) *Commitment to make plan sufficient.* A contributing sponsor of a plan or any other member of the plan's controlled group may make a commitment to contribute any additional sums necessary to enable the plan to satisfy benefit liabilities in accordance with § 4041.28(a). A commitment shall be valid only if—

(i) It is made to the plan;

(ii) It is in writing, signed by the contributing sponsor or controlled group member(s); and

(iii) In any case in which the person making the commitment is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.41(c) (1) or (c)(2), the commitment is approved by the court before which the liquidation or reorganization proceeding is pending or a person not in bankruptcy unconditionally guarantees to meet the commitment at or before the time distribution of assets is required.

(2) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forego receipt of his or her benefit to the extent necessary to enable the plan to satisfy all other benefit liabilities in accordance with § 4041.28(a). Any such alternative treatment of the majority owner's benefit is valid only if—

(i) The election is in writing;

(ii) In any case in which section 205(g) of ERISA requires spousal consent to the majority owner's receipt of his or her benefit in a form other than a qualified joint and survivor annuity, the spouse of the majority owner

consents in accordance with such section; and

(iii) The majority owner's election is not inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.22 Administration of plan during pendency of termination process.

(a) *In general.* A plan administrator may distribute plan assets in connection with the termination of the plan only in accordance with the provisions of this part. From the first day the plan administrator issues a notice of intent to terminate to the last day of the PBGC's review period under § 4041.26(a), the plan administrator shall continue to carry out the normal operations of the plan. During that time period, except as provided in paragraph (b), the plan administrator shall not—

(1) Purchase irrevocable commitments to provide any plan benefits; or

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than an annuity.

(b) *Exception.* The plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments or in a form other than an annuity if—

(1) The participant has separated from active employment;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for benefit liabilities.

§ 4041.23 Notice of intent to terminate.

(a) *Notice requirement.*

(1) *In general.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator shall issue a notice of intent to terminate to each person (other than the PBGC) that is, as of the proposed termination date, an affected party. (The PBGC's standard termination forms and instructions package includes a model notice of intent to terminate.)

(2) *Early issuance of NOIT.* The PBGC may consider a notice of intent to terminate to be timely under paragraph (a)(1) if the notice was early by a *de minimis* number of days and the PBGC finds that the early issuance was the result of administrative error.

(b) *Contents of notice.* The notice of intent to terminate shall include—

(1) *Identifying information.* The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(2) *Intent to terminate plan.* A statement that the plan administrator intends to terminate the plan in a standard termination as of a specified proposed termination date and will notify the affected party if the proposed termination date is changed to a later date or if the termination does not occur;

(3) *Sufficiency requirement.* A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all benefit liabilities under the plan;

(4) *Cessation of accruals.* A statement (as applicable) informing affected parties that—

(i) Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;

(ii) A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of the proposed termination date or a specified date before the proposed termination date, whether or not the plan is terminated; or

(iii) Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of a specified date before the notice of intent to terminate was issued;

(5) *Annuity information.* If required under § 4041.27, the annuity information described therein;

(6) *Benefit information.* A statement that each affected party entitled to plan benefits will receive a written notification regarding his or her benefits;

(7) *Continuation of monthly benefits.* For those persons who are (as of the proposed termination date) in pay status, a statement that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination; and

(8) *Extinguishment of guarantee.* A statement that after plan assets have been distributed in full satisfaction of all pension benefits under the plan with respect to a participant or a beneficiary of a deceased participant, either by the purchase of irrevocable commitments (annuity contracts) or by an alternative form of distribution provided for under the plan, the PBGC no longer guarantees that participant's or beneficiary's plan benefits.

(c) *Spin-off/termination transactions.* In the case of a transaction in which a single defined benefit plan is split into two or more plans and there is a reversion of residual assets to an employer upon the termination of one or more but fewer than all of the resulting plans (a ''spin-off/termination transaction''), the plan administrator shall, within the time period specified in paragraph (a), provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date) covered by an ongoing plan with a notice describing the transaction.

§ 4041.24 Notices of plan benefits.

(a) *Notice requirement.* The plan administrator shall, no later than the time the plan administrator files the standard termination notice with the PBGC, issue a notice of plan benefits to each person (other than the PBGC and any employee organization) who is, as of the proposed termination date, an affected party.

(b) *Contents of notice.* The plan administrator shall include in each notice of plan benefits—

(1) The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of an individual who may be contacted to answer questions concerning a benefit;

(2) The proposed termination date given in the notice of intent to terminate and any extended proposed termination date under § 4041.25(b);

(3) If the amount of the plan benefits set forth in the notice is an estimate, a statement that the amount is an estimate and that benefits paid may be greater than or less than the estimate;

(4) Except in the case of an affected party in pay status for more than one year as of the proposed termination date—

(i) The personal data used to calculate the affected party's plan benefits; and

(ii) A statement requesting that the affected party review the personal data and notify the plan administrator of any incorrect data; and

(5) The information in paragraph (c), (d), or (e), as applicable.

(c) *Benefits of persons in pay status.* For an affected party in pay status as of the proposed termination date, the plan administrator shall include in the notice of plan benefits—

(1) The amount and form of the participant's or beneficiary's plan benefits payable as of the proposed termination date;

(2) The amount and form of benefit, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary; and

(3) The amount and date of any increase or decrease in the benefit scheduled to occur (or that has already occurred) after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision.

(d) *Benefits of persons with valid elections or de minimis benefits.* For an affected party who is not in pay status as of the proposed termination date, but who has, as of that date, validly elected a form and starting date, or with respect to whom the plan administrator has determined that a nonconsensual lump sum distribution will be made, the plan administrator shall include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The information in paragraphs (c)(2) and (c)(3);

(3) If the plan benefits will be paid in any form other than a lump sum and the age at which, or form in which, the plan benefits will be paid differs from the normal retirement benefit—

(i) The age or form stated in the plan; and

(ii) The age or form adjustment factors; and

(4) If the plan benefits will be paid in a lump sum—

(i) An explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;

(ii) The interest rate used to convert to the lump sum benefit and a reference to the pertinent plan provisions;

(iii) An explanation of how the interest rate is used to calculate the lump sum;

(iv) A statement that the use of a higher interest rate results in a smaller lump sum amount; and

(v) A statement that the applicable interest rate may change before the distribution date.

(e) *Benefits of all other persons not in pay status.* For any other affected party not described in paragraph (c) or (d), the plan administrator shall include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable at normal retirement age in any form permitted under the plan;

(2) Any alternative benefit forms, including those payable to a beneficiary upon the person's death either before or after benefits commence;

(3) If the person is or may become entitled to a benefit that would be payable before normal retirement age, the amount and form of benefit that would be payable at the earliest benefit commencement date (or, if more than one such form is payable at the earliest benefit commencement date, any one of those forms) and whether the benefit commencing on such date would be subject to future reduction; and

(4) If the plan benefits may be paid in a lump sum, the information in paragraph (d)(4).

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), the plan administrator shall, no later than the time the plan administrator files the standard termination notice for any terminating plan, provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date) covered by an ongoing plan with a notice of plan benefits containing the information in paragraphs (b) through (e).

§ 4041.25 Standard termination notice.

(a) *Notice requirement.* The plan administrator shall file with the PBGC a standard termination notice, consisting of the PBGC Form 500, completed in accordance with the instructions thereto, on or before the 180th day after the proposed termination date.

(b) *Change of proposed termination date.* The plan administrator may, in the standard termination notice, select a proposed termination date that is later than the date specified in the notice of intent to terminate, provided it is not later than 90 days after the earliest date on which a notice of intent to terminate was issued to any affected party.

(c) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii), the plan administrator shall submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the time the standard termination notice is filed.

§ 4041.26 PBGC review of standard termination notice.

(a) *Review period.*

(1) *In general.* The PBGC shall notify the plan administrator in writing of the date on which it received a complete standard termination notice at the address provided in the PBGC's standard termination forms and instructions package. If the PBGC does not issue a notice of noncompliance during its 60-day review period following such date, the plan administrator shall proceed to close out the plan in accordance with § 4041.28.

(2) *Extension of review period.* The PBGC and the plan administrator may, before the expiration of the PBGC review period in paragraph (a)(1), agree in writing to extend that period.

(b) *If standard termination notice is incomplete.*

(1) *For purposes of timely filing.* If the standard termination notice is incomplete, the PBGC may, based on the nature and extent of the omission, provide the plan administrator an opportunity to complete the notice. In such a case, the standard termination notice shall be deemed to have been complete as of the date when originally filed for purposes of § 4041.25(a), provided the plan administrator provides the missing information by the later of—

(i) The 180th day after the proposed termination date; or

(ii) The 30th day after the date of the PBGC notice that the filing was incomplete.

(2) *For purposes of PBGC review period.* If the standard termination notice is completed under paragraph (b)(1), the PBGC shall determine whether the notice shall be deemed to have been complete as of the date when originally filed for purposes of determining when the PBGC's review period begins under § 4041.26(a)(1).

(c) *Additional information.*

(1) *Deadline for providing additional information.* The PBGC may in any case require the submission of additional information relevant to the termination proceeding. Any such additional information becomes part of the standard termination notice and shall be submitted within 30 days after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(2) *Effect on termination proceeding.* A request for additional information shall suspend the running of the PBGC's 60-day review period. The review period shall begin running again on the day the required information is received and continue for the greater of—

(i) The number of days remaining in the review period; or

(ii) Five regular business days.

§ 4041.27 Notice of annuity information.

(a) *Notice requirement.*

(1) *In general.* The plan administrator shall provide notices in accordance with this section to each affected party other than—

(i) An affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum; and

(ii) The PBGC.

(2) *Spin-off/termination transactions.* The plan administrator shall provide the information in paragraph (d) to a person entitled to notice under §§ 4041.23(c) or 4041.24(f), at the same time and in the same manner as required for an affected party other than the PBGC.

(b) *Content of notice.* The plan administrator shall include, as part of the notice of intent to terminate—

(1) *Identity of insurers.* The name and address of the insurer or insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts);

(2) *Change in identity of insurers.* A statement that if the plan administrator later decides to select a different insurer, affected parties will receive a supplemental notice no later than 45 days before the distribution date; and

(3) *State guaranty association coverage information.* The information on state guaranty association coverage of annuities described in paragraphs (a)(3)(i) and (ii) of this section:

(i) The following notice:

Under your pension plan, your benefits may be paid in the form of an annuity purchased from a licensed insurance company. If we purchase an annuity for you to provide all your pension benefits under the plan, the insurance company will be responsible for paying your benefits.

All states, the District of Columbia, and the Commonwealth of Puerto Rico have established ''guaranty associations'' to protect policyholders in the event of an insurance company's financial failure. All insurance companies licensed to sell insurance in a state are required to be members of that state's guaranty association. If a member insurance company fails, the association collects money from the other member insurance companies to continue coverage up to statutory limits, as specified by law, for its policyholders.

State guaranty association coverage of your annuity means that the guaranty association may pay part or all of your annuity if the insurance company responsible for the annuity cannot pay. How much of your annuity the fund would pay, if any, may depend on factors such as the amount of your annuity, the state in which you reside at the time the insurance company fails to pay, and the state in which the insurance company is located. Since state laws vary, you will need to see what the law in your state says at the relevant time.

State guaranty association coverage is limited by statute in total dollar amount. In most states, the maximum amount of annuity coverage is stated in terms of the present value of the annuity. The maximum amount and how it is stated varies from state to state and may change over time.

This notice is intended to help you understand the general nature of state guaranty association protection of the annuity you may receive. It is only a summary. Listings of state guaranty associations and their addresses and telephone numbers, and of their general coverage limits are attached.

(ii) Listings of the addresses and telephone numbers of the state guaranty association offices in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico, and of the dollar coverage limitations applicable to each state, along with the date as of which the listings were prepared. The plan administrator shall use listings that are at least as current as those included as sample listings in the standard termination forms and instructions package applicable to the plan termination proceeding.

(c) *Where insurer(s) not known.*

(1) *Extension of deadline for notice.* If the identity-of-insurer information in paragraph (b)(1) is not known at the time the plan administrator is required to provide it to an affected party as part of a notice of intent to terminate, the plan administrator shall instead provide it in a supplemental notice under paragraph (d).

(2) *Alternative NOIT information.* A plan administrator that qualifies for the extension in paragraph (c)(1) with respect to a notice of intent to terminate shall include therein (in lieu of the information in paragraph (b)) a statement that—

(i) Irrevocable commitments (annuity contracts) may be purchased from an insurer to provide some or all of the benefits under the plan;

(ii) The insurer or insurers have not yet been identified; and

(iii) Affected parties will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts).

(d) *Supplemental notice.* The plan administrator shall provide a supplemental notice to an affected party in accordance with this paragraph (d) if the plan administrator did not previously notify the affected party of the identity of insurer(s) or, after having previously notified the affected party of the identity of insurer(s), decides to select a different insurer. A failure to provide a required supplemental notice to an affected party shall be deemed to be a failure to comply with the notice of intent to terminate requirements.

(1) *Deadline for supplemental notice.* The deadline for issuing the supplemental notice is 45 days before the affected party's distribution date (or, in the case of an employee organization, 45 days before the earliest distribution date for any affected party that it represents).

(2) *Content of supplemental notice.* The supplemental notice shall include—

(i) The identity-of-insurer information in paragraph (b)(1);

(ii) The information regarding change of identity of insurer(s) in paragraph (b)(2); and

(iii) Unless the state guaranty association coverage information in paragraph (b)(3) was previously provided to the affected party, such information and the extinguishment-of-guarantee information in § 4041.23(b)(8).

§ 4041.28 Closeout of plan.

(a) *Distribution deadline.*

(1) *In general.* Unless a notice of noncompliance is issued under § 4041.31(a), the plan administrator shall complete the distribution of plan assets in accordance with paragraph (c) by the later of—

(i) 180 days after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a); or

(ii) If the plan administrator meets the requirements of § 4041.25(c), 120 days after receipt of a favorable determination from the IRS.

(2) *Revocation of notice of noncompliance.* If the PBGC revokes a notice of noncompliance issued under § 4041.31(a), the distribution deadline is extended until the 180th day after the date of the revocation.

(b) *Assets insufficient to satisfy benefit liabilities.* If the plan administrator determines that plan assets are not sufficient to satisfy all benefit liabilities at the time of any distribution (with assets determined net of other liabilities, including PBGC premiums), the plan administrator shall not make any further distribution of assets to effect the plan's termination and shall promptly notify the PBGC.

(c) *Method of distribution.*

(1) *In general.* The plan administrator shall, in accordance with all applicable requirements under the Code and ERISA, distribute plan assets in satisfaction of all benefit liabilities (determined as of the termination date). In the case of benefit liabilities that must be provided in annuity form, the distribution shall be made by purchasing irrevocable commitments from an insurer selected in accordance with the fiduciary standards of Title I of ERISA.

(2) *Participating annuity contracts.* In the case of a plan in which any residual assets are to be distributed to participants, a participating annuity contract may be purchased to satisfy the requirement that annuities be provided by the purchase of irrevocable commitments only if the portion of the price of the contract that is attributable to the participation feature—

(i) Is not taken into account in determining the amount of residual assets; and

(ii) Is not paid from residual assets allocable to participants.

(3) *Missing participants.* The plan administrator shall distribute benefits to missing participants in accordance with part 4050.

(d) *Notice of annuity contract.* If benefit liabilities are provided through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer shall, within 30 days after it is available, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit; and

(2) If such a contract or certificate is not available on or before the date on which the post-distribution certificate is required to be filed in order to avoid the assessment of penalties under § 4041.29(b), the plan administrator shall, no later than such date, provide each participant and beneficiary with a written notice stating—

(i) That the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) That the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's benefit.

§ 4041.29 Post-distribution certification.

(a) *Deadline.* Within 30 days after the last distribution date for any affected party, the plan administrator shall file with the PBGC a post-distribution certification consisting of the PBGC Form 501, completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* The PBGC will assess a penalty for late filing of a post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.30 Requests for deadline extensions.

(a) *In general.* In narrow circumstances, the PBGC may in its discretion extend a deadline for taking action under this subpart to a later date. The PBGC will grant such an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC shall consider—

(1) The length of the delay; and

(2) Whether ordinary business care and prudence in attempting to meet the deadline is exercised.

(b) *Time of extension request.* Any request for an extension under paragraph (a) that is filed later than the 15th day before the applicable deadline shall include a justification for not filing the request earlier.

(c) *IRS determination letter requests.* Any request for an extension under paragraph (a) of the deadline in § 4041.25(c) for submitting a determination letter request to the IRS (in order to qualify for the distribution deadline in § 4041.28(a)(1)(ii)) shall be deemed to be granted unless the PBGC notifies the plan administrator otherwise within 60 days after receipt of the request (or, if later, by the end of the PBGC's review period under § 4041.26(a)). The PBGC shall notify the plan administrator in writing of the date on which it receives such request.

(d) *Statutory deadlines not extendable.* The PBGC may not—

(1) Extend the 60-day time limit under § 4041.23(a) for issuing the notice of intent to terminate;

(2) Waive the requirement in § 4041.24(a) that the notice of plan benefits be issued by the time the plan administrator files the standard termination notice with the PBGC; or

(3) Extend the deadline under § 4041.29(a) for filing the post-distribution certification. However, the PBGC will assess a penalty for late filing of a post-distribution certification only under the circumstances described in § 4041.29(b).

§ 4041.31 Notice of noncompliance.

(a) *Failure to meet pre-distribution requirements.*

(1) *In general.* Except as provided in paragraphs (a)(2) and (c), the PBGC shall issue a notice of noncompliance within the 60-day (or extended) time period prescribed by § 4041.26(a) whenever it determines that—

(i) The plan administrator failed to issue the notice of intent to terminate to all affected parties (other than the PBGC) in accordance with §§ 4041.23;

(ii) The plan administrator failed to issue notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(iii) The plan administrator failed to file the standard termination notice in accordance with § 4041.25;

(iv) As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all benefit liabilities under the plan; or

(v) In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator failed to issue the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2).

(2) *Interests of participants.* The PBGC may decide not to issue a notice of noncompliance based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(iii) or (a)(1)(v) of this section if it determines that issuance of the notice would be inconsistent with the interests of participants and beneficiaries.

(3) *Continuing authority.* The PBGC may issue a notice of noncompliance or suspend the termination proceeding based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(v) of this section after expiration of the 60-day (or extended) time period prescribed by § 4041.26(a) (including upon audit) if the PBGC determines such action is necessary to carry out the purposes of Title IV.

(b) *Failure to meet distribution requirements.*

(1) *In general.* If the PBGC determines, as part of an audit or otherwise, that the plan administrator has not satisfied any distribution requirement of § 4041.28(a), it may issue a notice of noncompliance.

(2) *Criteria.* In deciding whether to issue a notice of noncompliance under paragraph (b)(1) of this section, the PBGC may consider—

(i) The nature and extent of the failure to satisfy a requirement of § 4041.28(a);

(ii) Any corrective action taken by the plan administrator; and

(iii) The interests of participants and beneficiaries.

(3) *Late distributions.* The PBGC shall not issue a notice of noncompliance for failure to distribute timely based on any facts disclosed in the post-distribution certification if 60 or more days have passed from the PBGC's receipt of the post-distribution certification.

(c) *Correction of errors.* The PBGC shall not issue a notice of noncompliance based solely on the plan administrator's inclusion of erroneous information (or omission of correct information) in a notice required to be provided to any person under this part if—

(1) The PBGC determines that the plan administrator acted in good faith in connection with the error;

(2) The plan administrator corrects the error no later than—

(i) In the case of an error in the notice of plan benefits under § 4041.24, the latest date an election notice may be provided to the person; or

(ii) In any other case, as soon as practicable after the plan administrator knows or should know of the error, or by any later date specified by the PBGC; and

(3) The PBGC determines that the delay in providing the correct information will not substantially harm any person.

(d) *Reconsideration.* A plan administrator may request reconsideration of a notice of noncompliance in accordance with the rules prescribed in part 4003, subpart C.

(e) *Consequences of notice of noncompliance.*

(1) *Effect on termination.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. A notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration under paragraph (d) of this section or, if reconsideration is requested, a decision by the PBGC upholding the notice. However, once a notice is issued, the plan administrator shall take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked pursuant to a decision by the PBGC on reconsideration. A plan administrator that still desires to terminate a plan shall initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) *Effect on plan administration.* If the PBGC issues a notice of noncompliance, the prohibitions in § 4041.22(a) shall cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of decision on reconsideration upholding the notice of noncompliance.

(f) *If no notice of noncompliance is issued.* A standard termination is deemed to be valid if—

(1) The plan administrator files a standard termination notice under § 4041.25 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(a); and

(2) The plan administrator files a post-distribution certification under § 4041.29 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(b).

(g) *Notice to affected parties.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance or, if earlier, upon the plan administrator's decision not to request reconsideration, the plan administrator shall notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.23(c), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

§ 4041.41 [Amended]

7. Paragraph (a) of redesignated § 4041.41 is amended by removing the words ''Requirements for a distress termination'' and adding in their place, ''Distress requirements'' in the title.

8. Paragraph (a)(1) of redesignated § 4041.41 is amended by removing ''4041.41'' and adding in its place ''4041.43'' and by adding the words ''(except with PBGC approval)'' after ''and'' and before ''not''.

9. Paragraph (a)(2) of redesignated § 4041.41 is amended by removing ''4041.43'' and adding in its place ''4041.45'' and by removing the words ''or, if applicable, no later than the due date established in an extension notice issued under § 4041.8''.

10. Paragraphs (a)(3) and (e) of redesignated § 4041.41 are amended by removing ''paragraph (e)'' and adding in its place ''paragraph (c)''.

11. Paragraph (b)(1) of redesignated § 4041.41 is amended by removing the word ''If'' and adding in its place ''Except as provided in paragraph (b)(2)(i) of this section, if''; and by removing the words ''of paragraph (b) of this section for a standard termination or, except as provided in paragraph (d)(2)(i) of this section, all of the requirements of paragraph (c) of this section''

12. Paragraph (b)(2)(i) of redesignated § 4041.41 is amended by removing ''(c)(1)'' and adding in its place ''(a)(1)''; and by removing ''(c)(2)'' and adding in its place ''(a)(2)''.

13. Paragraphs (d)(1) and (d)(2) of redesignated § 4041.41 are amended by removing ''(e)(2)'' and adding in its place ''(c)(2)''.

14. Paragraphs(d)(1)(i), (d)(1)(iii), and (d)(2) of redesignated § 4041.41 are amended by removing ''(e)(3)'' and adding in its place ''(c)(3)''.

§ 4041.42 [Amended]

15. Redesignated § 4041.42 is amended by removing the words ''pendency of termination proceedings'' and adding in their place ''termination process'' in the title.

16. Paragraph (a) of redesignated § 4041.42 is amended by adding the word ''and'' after ''due the plan,''; and by removing the words ''and, during the pendency of a standard termination, making loans to participants,''.

17. Paragraph (b) of redesignated § 4041.42 is amended by removing the words ''in a distress termination'' in the title; and by removing ''4041.48'' and adding in its place ''4041.50''.

18. Paragraph (c) of redesignated § 4041.42 is amended by removing the words ''in a distress termination'' in the title.

19. Paragraph (d) of redesignated § 4041.42 is amended by removing ''4041.42(c)'' and adding in its place ''4041.44(c)''; and by removing ''4041.44(c)(1)'' and adding in its place ''4041.46(c)(1)''.

20. Paragraph (d)(1) of redesignated § 4041.42 is amended by removing ''(c)'' and adding in its place ''(b)''; and by removing ''(c)(1)'' and adding in its place ''(b)(1)''.

21. Paragraph (d)(1)(i) of redesignated § 4041.42 is amended by removing ''4041.42(e) and 4041.44(d)'' and adding in its place ''4041.44(e) and 4041.46(e)''.

22. Paragraph (d)(2) of redesignated § 4041.42 is amended by removing ''(f)'' and adding in its place ''(c)''.

23. Paragraph (e) of redesignated § 4041.42 is amended by removing ''4041.47(b)'' and adding in its place ''4041.49(b)''; by removing ''4041.47(d)'' and adding in its place ''4041.49(d)''; by removing ''(c)'' and adding in its place ''(b)''; and by removing ''4041.47(e)'' and adding in its place ''4041.49(e)''.

§ 4041.43 [Amended]

24. Paragraph (a)(3) of redesignated § 4041.43 is amended by removing ''(d)'' and adding in its place ''(b)''.

25. Paragraphs (b) and (c) of redesignated § 4041.43 are removed.

26. Paragraph (d) of redesignated § 4041.43 is redesignated as paragraph (b), and as so redesignated is amended by removing the words ''employer identification number (''EIN')'' and adding in their place ''EIN''; and by removing the words ''plan number ('PN')'' and adding in their place ''PN'' in paragraph (d)(2); by removing ''.'' and adding in its place '';'' in paragraph (d)(4); and by removing the words ''A statement that benefit and service accruals will continue until the termination date or, if applicable, that benefit accruals were or will be frozen as of a specific date in accordance with section 204(h) of ERISA'' and by adding in their place ''The cessation of accruals

information in § 4041.23(b)(4)'' in paragraph (d)(5).

27. Paragraph (e) of redesignated § 4041.43 is redesignated as paragraph (c) and as so redesignated is amended by removing ''4041.21(f)'' and adding in its place ''4041.23(c)''.

§ 4041.44 [Amended]

28. In redesignated § 4041.44, paragraphs (a)(1), (b), and (c) are amended by removing ''4041.41'' and adding in its place ''4041.43''.

29. Paragraph (b)(3) of redesignated § 4041.44 is amended by removing ''4041.43'' and adding in its place ''4041.45''.

30. Paragraph (c) of redesignated § 4041.44 is amended by removing ''4041.3(d)(2)(i)'' and adding in its place ''4041.41(b)(2)(i)''.

31. Paragraph (f) of redesignated § 4041.44 is amended by removing ''4041.41(e))'' and adding in its place ''4041.43(e))''; and by removing the sentence ''The notice required by this paragraph shall be provided in the manner described in § 4041.26(d)(2).''.

§ 4041.45 [Amended]

32. Paragraph (b)(1)(ii) of redesignated § 4041.45 is amended by removing ''4041.44(b)'' and adding in its place ''4041.46(b)''.

33. Redesignated § 4041.45(d) is removed.

§ 4041.46 [Amended]

34. Paragraphs (a) and (b) of redesignated § 4041.46 are amended by removing ''4041.3(c)'' and adding in its place ''4041.41(c)''.

35. Paragraph (b) of redesignated § 4041.46 is amended by removing ''4041.43(b)'' and adding in its place ''4041.45(b)''.

36. Paragraph (c)(1) of redesignated § 4041.46 is amended by removing ''4041.3(c)'' and adding in its place ''4041.41''; and by removing ''4041.3(d)'' and adding in its place ''4041.41(b)''.

37. Paragraph (c)(2) of redesignated § 4041.46 is amended by removing the words '', or, if applicable, no later than the due date established in an extension notice issued under § 4041.8''.

38. Paragraph (e) of redesignated § 4041.46 is amended by removing ''4041.41(e)'' and adding in its place ''4041.43(e)''; and by removing the sentence ''The notice required by this paragraph shall be provided in the manner described in § 4041.26(d)(2).''

§ 4041.47 [Amended]

39. Paragraph (a) of redesignated § 4041.47 is amended by removing ''4041.43(b)(1)'' and adding in its place ''4041.45(b)(1)''.

40. Paragraph (b)(1) of redesignated § 4041.47 is amended by removing ''4041.4'' and adding in its place ''4041.42''.

41. Paragraph (c)(1) of redesignated § 4041.47 is amended by removing ''4041.46'' and adding in its place ''4041.48''.

42. Paragraph (c)(2) of redesignated § 4041.47 is amended by removing ''4041.48'' and adding in its place ''4041.50''.

43. Paragraph (c)(3) of redesignated § 4041.47 is amended by removing ''4041.48(b)'' and adding in its place ''4041.50(b)''.

44. Paragraph (c)(4) of redesignated § 4041.47 is amended by removing ''4041.11'' and adding in its place ''4041.5''.

45. Redesignated § 4041.47 is amended by adding a new paragraph (d) to read as follows:

§ 4041.47 PBGC determination of plan sufficiency/insufficiency.

* * * * *

(d) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forego receipt of all or part of his or her benefit in connection with a distress termination. Any such alternative treatment—

(1) Is valid only if the conditions in § 4041.21(b)(2)(i) through (iii) are met; and—

(2) Is subject to the PBGC's approval if the election—

(i) Is made after the termination date; and

(ii) Would result in the PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c).

46. § 4041.48 is revised to read as follows:

§ 4041.48 Sufficient plans; notice requirements.

(a) *Notices of benefit distribution.* When a distribution notice is issued by the PBGC pursuant to § 4041.47, the plan administrator shall issue notices of benefit distribution in accordance with the rules regarding notice of plan benefits in § 4041.24, except that—

(1) The deadline for issuing the notices of benefit distribution is the 60th day after receipt of the distribution notice; and

(2) With respect to the information described in § 4041.24(b), the terms ''plan benefits'' and ''pension benefits'' are replaced with ''Title IV benefits'' and the term ''proposed termination date'' is replaced with ''termination date''.

(b) *Certification to PBGC.* No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, the plan administrator shall file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(c) *Notice of annuity information.* (1) *In general.* Unless all plan benefits will be distributed in the form of nonconsensual lump sums, the plan administrator shall provide a notice of annuity information to each affected party other than—

(i) An affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum; and

(ii) The PBGC.

(2) *Spin-off/termination transactions.* The plan administrator shall provide the information in paragraph (c)(4) of this section to a person entitled to notice under § 4041.43(c), at the same time and in the same manner as required for an affected party described in paragraph (c)(1) of this section.

(3) *Selection of different insurer.* A plan administrator that decides to select a different insurer after having previously notified the affected party of the identity of insurer(s) under this paragraph shall provide another notice of annuity information.

(4) *Content of notice.* The notice shall include—

(i) The identity-of-insurer information in § 4041.27(b)(1);

(ii) The information regarding change in identity of insurer(s) in § 4041.27(b)(2); and

(iii) Unless the state guaranty coverage information in § 4041.27(b)(3) was previously provided to the affected party, such information and the extinguishment-of-guaranty information in § 4041.23(b)(8) (replacing the term ''pension benefits'' with ''Title IV benefits'').

(5) *Deadline for notice.* The plan administrator shall issue the notice of annuity information to each affected party by the deadline in § 4041.27(d)(1).

(d) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii) (as modified and made applicable by § 4041.50(c)), the plan administrator shall submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the day on which the plan administrator completes the issuance of the notices of benefit distribution.

§ 4041.49 [Amended]

47. Paragraphs (a) and (c) of redesignated § 4041.49 are amended by

removing ''4041.48'' and adding in its place ''4041.50''.

48. Paragraph (b)(1)(i) of redesignated § 4041.49 is amended by removing ''4041.45(b)'' and adding in its place ''4041.47(b)''.

49. Paragraph (e) of redesignated § 4041.49 is amended by removing ''4041.4(c)'' and adding in its place ''4041.42''.

50. § 4041.50 is added to read as follows:

§ 4041.50 Closeout of plan.

If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.47 and neither the plan administrator nor the PBGC makes the finding described in § 4041.49(b) or (d), the plan administrator shall distribute plan assets in accordance with § 4041.28 and file a post-distribution certification in accordance with § 4041.29, except that—

(a) The term ''benefit liabilities'' is replaced with ''Title IV benefits'';

(b) For purposes of applying the distribution deadline in § 4041.28(a)(1)(i), the phrase ''after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a)'' is replaced with ''the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 4041.48(a)''; and

(c) For purposes of applying the distribution deadline in § 4041.28(a)(1)(ii), the phrase ''the requirements of § 4041.25(c)'' is replaced with ''the requirements of § 4041.48(d)''.

PART 4001—TERMINOLOGY

51. The authority citation for Part 4001 continues to read as follow:

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

§ 4001.2 [Amended]

52. In § 4001.2, paragraph (2) of the definition of *Distribution date* is amended by removing the words ''Other than for purposes of determining the interest rate to be used in calculating the value of a benefit to be paid as a lump sum to a late-discovered participant, the'' and adding in their place ''The''; and by removing the words ''PBGC, a benefit provided after the deemed distribution date to a late-discovered participant, or an irrevocable commitment purchased from an insurer after the deemed distribution date for a recently-missing participant'' and adding in their place the word ''PBGC''.

PART 4006—PREMIUM RATES

53. The authority citation for Part 4006 continues to read as follow:

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

§ 4006.5 [Amended]

54. In § 4006.5, paragraph (f)(3) is amended by removing the words ''or, if later (in the case of a single-employer plan), the date 30 days prior to the date the PBGC receives the plan's post-distribution certification''.

PART 4050—MISSING PARTICIPANTS

55. The authority citation for Part 4050 is added to read as follow:

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 4050.1 [Amended]

56. In § 4050.1, the reference ''§ 4041.27(c)'' is removed and the reference ''§ 4041.28(c)'' is added in its place.

57. In § 4050.2, the definition of *Late-discovered participant* is removed; the definition of *Recently-missing participant is* removed; the definition of *Post-distribution certification* is amended by removing the words ''§ 4041.27(h) or § 4041.48(b)'' and adding in their place the words ''§ 4041.29 or § 4041.50''; and the definition of *Deemed distribution date* is revised to read as follows:

§ 4050.2 Definitions.

* * * * *

Deemed distribution date ordinarily means the last day of the period in which distribution may be made (determined without regard to the provisions of this part) under part 4041 of this chapter. The plan administrator may select an earlier date, provided that the selected date is no earlier than the date when all benefit distributions have been made under the plan except for distributions to missing participants whose designated benefits are paid to the PBGC.

* * * * *

§ 4050.3 [Amended]

58. In § 4050.3, paragraph (a) is amended by removing the words ''§ 4041.27(c) or § 4041.48(a)(1)'' and adding in their place the words ''§ 4041.28(c) or § 4041.50''.

59. In § 4050.4, paragraph (b)(1) is amended by removing the words ''(or, in the case of a recently-missing participant, on or before the 90th day after the deemed distribution date)''; and paragraph (a) is revised to read as follows:

§ 4050.4 Diligent search.

(a) *Search required.* A diligent search shall be made for each missing participant before information about the missing participant or payment is submitted to the PBGC pursuant to § 4050.6.

* * * * *

60. In § 4050.6, paragraphs (a)(2) and (a)(3) are removed; paragraph (a)(1) is redesignated as paragraph (a), the heading is revised as set forth below, and the reference ''§ 4041.9'' is revised to read ''§ 4041.3(b)'; paragraph (b) is amended by removing the words ''If the plan administrator'' and adding in their place the words ''Except as provided in paragraph (b)(2) of this section, if the plan administrator'; the heading and text of paragraph (b) (as so amended) are redesignated as paragraph (b)(1); a new heading is added to paragraph (b), and new paragraph (b)(2) is added, to read as follows:

§ 4050.6 Payment and required documentation.

(a) *Time of payment and filing.*

* * * * *

(b) *Late charges.*

(1) *Interest on late payments.* * * *

(2) *Assessment of interest and penalties.* The PBGC will assess interest for late payment of a designated benefit or a penalty for late filing of information only to the extent paid or filed beyond the time provided in § 4041.29(b).

* * * * *

§ 4050.7 [Amended]

61. In § 4050.7, paragraph (a) is amended by removing the words ''the insurer and the relevant policy number'' and adding in their place the words ''the insurer, the relevant policy number, and (to the extent known) the amount or value of the benefit''.

§ 4050.12 [Amended]

62. In § 4050.12, paragraphs (a) and (h) are removed and paragraphs (b), (c), (d), (e), (f), (g), and (i) are redesignated as paragraphs (a), (b), (c), (d), (e), (f), and (g) respectively; redesignated paragraph (a) is amended by removing the words ''treat the missing participant like a late-discovered participant'' and adding in their place the words ''make distribution to the individual in such manner as the PBGC shall direct''; redesignated paragraph (c) is amended by removing the references ''paragraph (d)(2)'', ''paragraph (d)(2)(i)'', and ''paragraph (d)(2)(ii)'' and adding in their place the references ''paragraph (c)(2)'', ''paragraph (c)(2)(i)'', and ''paragraph (c)(2)(ii)'' respectively; and redesignated paragraph (g) is amended by removing the reference ''paragraph

(i)'' in both places where it appears and adding in each place the reference ''paragraph (g)''.

§ 4050.13 [Removed]

63. Section 4050.13 is removed.

Issued in Washington, DC, this 11th day of March, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

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