

**PENSION BENEFIT GUARANTY CORPORATION**

**DRAFT**

**Election of Multiemployer Plan Status**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice.

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**SUMMARY:** This Notice establishes implementing procedures for a special election concerning multiemployer plan status that may be made under the Employee Retirement Income Security Act of 1974, as amended by the Pension Protection Act of 2006. Under these procedures, an eligible plan may elect to be a multiemployer plan for all purposes under ERISA and the Internal Revenue Code of 1986.

**EFFECTIVE DATE:** [To be inserted after OMB approval]

**FOR FURTHER INFORMATION CONTACT:** John H. Hanley, Director, or Constance Markakis, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:**

**The Pension Protection Act of 2006**

The Pension Protection Act of 2006 (“PPA 2006”), Pub. L. No. 109-280, 120 Stat. 780, became law on August 17, 2006, and amended the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code of 1986 (the “Code”). ERISA and the Code, as amended by section 1106 of PPA 2006, was further amended by section 6611(a) of the fiscal year 2007 supplemental appropriations legislation, Pub. L. No. 110-28, 121 Stat. 112, which became law on May 25, 2007. Reference in this document to any ERISA provision should be construed to include reference to any parallel provision in section 414(f) of the Code.

*Election of Multiemployer Plan Status Generally*

Section 1106 of PPA amended the definition of a “multiemployer plan” under ERISA and the Code to allow certain plans to elect to be multiemployer plans, pursuant to procedures prescribed by PBGC. An eligible plan may elect to be a multiemployer plan for all purposes under ERISA and the Code, provided that PBGC procedures are followed and the election is made on or before August 17, 2007. Under Pub. L. No. 110-28, an election is effective starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in its election. No later than 30

days before an election is made, the plan administrator must give notice of the pending election to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries, and each employer that has an obligation to contribute to the plan. (See Model Notice of Pending Election Regarding Plan's Status issued by the Department of Labor, [www.dol.gov/ebsa/regs/fedreg/notices/2006009491.htm](http://www.dol.gov/ebsa/regs/fedreg/notices/2006009491.htm).) In order to be eligible for the election, a plan must satisfy the requirements of section 3(37)(G)(i)(I) or section 3(37)(G)(i)(II) of ERISA.

#### *Election to Revoke Single-Employer Plan Status*

Under section 3(37)(G)(i)(I) of ERISA, a plan may revoke an existing election under section 3(37)(E) to be treated as a single-employer plan. An election made under section 3(37)(G)(i)(I) is irrevocable.

Section 3(37)(E) of ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980, permitted a plan that was excluded from multiemployer status under the prior contributions test,<sup>[1]</sup> and that would otherwise be a multiemployer plan, to continue its single-employer status. To do so, a plan was required to follow PBGC procedures, including a written notice of election filed with PBGC. An election was effective upon written approval by PBGC.

In order to be eligible under PPA to revoke an election made under the 1980 Multiemployer Act, the plan must show that, for each of last three plan years before August 17, 2006, the plan would have been a multiemployer plan absent the election. Under section 3(37)(A), a multiemployer plan is defined as a plan to which more than one employer is required to contribute, that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies the requirements established under Department of Labor ("DOL") regulations. For these purposes, all trades or business (whether or not incorporated) under common control within the meaning of section 4001(b)(1) of ERISA (or section 414(c) of the Code) are considered a single employer.

DOL regulations (29 CFR §2510.3-37) prescribe other requirements that a plan must meet, in addition to those contained in section 3(37)(A) of ERISA, to be a multiemployer plan. The regulation provides that a multiemployer plan established on or after September 2, 1974, must further meet the requirement that it was established for a substantial business purpose, which includes the interest of a labor organization in securing an employee benefit plan for its members, in accordance with relevant factors set forth under the regulation.

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<sup>[1]</sup> Prior to amendment by the Multiemployer Pension Plan Amendments Act of 1980, the definition of a multiemployer plan excluded a plan if one of its employers contributed 50% or more of the total annual contributions made under the plan (or 75% or more of the total contributions, if a plan met the less than 50% contributions test for any preceding plan year). (ERISA sections 3(37)(A)(iii) and 3(37)(B)(i) prior to September 26, 1980.)

### *Election by Plans with Significant Contributions by Tax-Exempt Organizations*

Under section 3(37)(G)(i)(II) of ERISA, a plan may elect to be a multiemployer plan if it meets the criteria for a multiemployer plan under clauses (i) and (ii) of section 3(37)(A). Specifically, for the plan year ending after August 17, 2006, and for each of the three plan years ending immediately before the first plan year for which the plan elects multiemployer status, the plan must be a plan to which more than one employer is required to contribute, and that is maintained pursuant to one or more collective bargaining agreements. For these purposes, all trades or businesses (whether or not incorporated) under common control within the meaning of section 4001(b)(1) of ERISA (or section 414(c) of the Code) are considered a single employer.

In addition, the plan must have been established before September 2, 1974, and, for each of the three plan years immediately preceding the first plan year for which the plan elects multiemployer status, substantially all of the plan's employer contributions must have been made or required to be made by organizations that were exempt from taxation under section 501 of the Code. A plan is not required to satisfy the multiemployer criteria if that plan was sponsored by an organization described in section 501(c)(5) of the Code, exempt from taxation under section 501(a) of the Code, and established in Chicago, Illinois, on August 12, 1881.

An election under section 3(37)(G)(i)(II) is irrevocable, except that the plan ceases to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which more than fifty percent of all of the plan's employer contributions were made or required to be made by organizations that were not exempt from taxation under section 501 of the Code.

### **Explanation of PBGC Procedures**

#### *Election Requirements*

Under section 2(b) of the procedures, a plan making an election under section 3(37)(G)(i)(I) of ERISA must demonstrate that it would have been a multiemployer plan but for the existing election. The specific information required under section 3(d) of the procedures to demonstrate compliance with section 3(37) includes the identity of the contributing employers to the plan, information on whether trades or businesses that are required to contribute to the plan are under common control, and copies of collective bargaining agreements for the three largest contributing employers to the plan (in amount of contributions).

Pursuant to section 6611(a) of Pub. L. No. 110-28, for the limited purpose of this election and these procedures, a plan will be treated as maintained pursuant to one or more collective bargaining agreements if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of

whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement. –

In satisfying clause (iii) of section 3(37)(A) of ERISA, the procedures allow a plan some flexibility in establishing whether it was in existence before September 2, 1974. The procedures require the best available evidence that, before September 2, 1974, more than one employer was required to contribute to the plan under one or more collective bargaining agreements. PBGC may in its discretion accept evidence for this proof. For a plan established on or after September 2, 1974, the procedures also require the plan to show compliance with 29 CFR §2510.3-37(c) of the Department of Labor regulations.

A plan making an election under section 2(b) of the procedures is required to submit a copy of PBGC's written decision approving the plan's post-1980 election to continue being a single-employer plan under section 3(37)(E) of ERISA. To address the possibility that a plan may no longer have PBGC's written decision, the procedures permit a plan to produce the plan amendment adopted pursuant to, and contemporaneous with, the election under section 4303 of ERISA providing that the plan will be treated as a single-employer plan. In addition, the procedures require a written statement signed by the plan sponsor that the plan received PBGC's written approval for the election.

Under section 2(c) of the procedures, a plan making an election under section 3(37)(G)(i)(II) of ERISA must provide evidence that it satisfies certain criteria for a multiemployer plan in section 3(37) for the first plan year ending after August 17, 2006, and for each of the three plan years ending immediately before the first plan year for which the plan elects multiemployer status. In this regard, the information required under section 3(d) (and the exceptions thereto) is the same as the information required for a plan electing multiemployer status under section 2(b), except that a plan eligible for the election under section 2(c) is not required to satisfy clause (iii) of section 3(37)(A).

For purposes of establishing that substantially all of the employer contributions were made or required to be made by organizations that are exempt from taxation under section 501 of the Code, the procedures require a copy of a governmental filing or document evidencing the tax-exempt status of each contributing employer that meets this definition, for each of the three plan years ending immediately before the effective date of the multiemployer election; appropriate filings or documents include a current favorable determination letter issued by the Internal Revenue Service ("IRS") approving the organization's exempt status, an IRS Form 990 or Form 990-EZ (Return of Organization Exempt from Income Tax) (copy of first page and signed and dated last page), or a Form LM-2 or LM-3 (Labor Organization Annual Report) filed with the DOL (copy of signed and dated first page).

A plan must also provide the amount of annual contributions that were made or required to be made in the aggregate by all tax-exempt organizations, and the percentage of such contributions to the total annual contributions to the plan. The PBGC procedures establish a safe harbor for plans certifying that at least 85 percent of all employer contributions for the relevant plan year were made or required to be made by tax-exempt

organizations. A plan that meets this safe harbor is required to provide evidence of the tax-exempt status of only those employers needed to reach the 85 percent threshold, and not the tax-exempt status of any additional employers. PBGC will review the filing of a plan that is unable to certify to the safe harbor provision and will approve the election if it determines that the requirements of section 3(37)(G)(i)(II)(bb) are met under all the relevant facts and circumstances

### *Notice to PBGC*

Section 3 of these procedures prescribes the requirements for giving notice of an election to PBGC, including due dates, how to file, and contents of the notice, which as explained above are necessary to satisfy the statutory requirements for an election. The plan's submission to PBGC must include a copy of the notice of the pending election of multiemployer plan status to participants and other parties and a written statement signed by the plan administrator that it has complied with the notice requirements in section 3(37)(G)(v)(I). Information provided under these procedures is subject to disclosure under FOIA.

A summary checklist of information and documents for an election filing is found at the end of the procedures. A filing is considered complete if it substantially includes the information in the checklist. A complete filing is required for a timely election. PBGC may permit a plan sponsor to supplement or update a filing after the election deadline if PBGC determines that the omitted item was minor in nature and the plan sponsor reasonably believed that the filing was complete at the time it was filed, or the plan sponsor can show there was good cause for the omission. PBGC may request additional information relating to the requirements under these procedures at any time without affecting the timeliness of the filing.

### *PBGC Action*

Depending on the number of filings PBGC receives and the volume of material submitted with each file, there may be some delay before PBGC is able to determine that the information requirements set forth in the procedures are met. A plan that has properly filed an election is not prohibited from acting in accordance with the election solely because PBGC has not issued a decision approving or disapproving the election on or before August 17, 2007. However, if PBGC subsequently disapproves the election, any actions taken by the plan will need to be corrected.

PBGC will issue a written decision on a plan's request for approval of an election. PBGC will approve the election based on its determination that a plan has complied with these procedures based on the plan's information and representations in its notice of election to PBGC. PBGC may audit the plan to verify any information or representation made and may revoke its approval if the plan is unable to verify the representations made or the information submitted. Consistent with section 4003 of ERISA, plans should maintain records necessary to verify the representations and information submitted in support of the election. In addition, PBGC may audit a plan for continued compliance with the legally-mandated percentage of tax-exempt contributing employers or other statutory or

regulatory requirements. The Code and ERISA may impose additional recordkeeping requirements that are under the jurisdiction of the Internal Revenue Service or the Department of Labor. See section 6001 of the Code and section 107 of ERISA.

PBGC approval has no effect on the rights of private parties nor the authority of other Federal agencies. However, PBGC has been advised by both the Internal Revenue Service and the Department of Labor that, for the limited purposes of an election under section 3(37)(G) of ERISA and section 414(f)(6) of the Code, the agencies will follow the safe harbor for a demonstration that substantially all of the plan's employer contributions were made by tax-exempt organizations.

The information collection in these procedures has been approved by the Office of Management and Budget under OMB control number [insert]. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## **PBGC PROCEDURES ELECTION OF MULTIEMPLOYER PLAN STATUS**

Sec.

- 1 Purpose and scope.
- 2 Eligibility and requirements for election.
- 3 Notice of election.
- 4 PBGC action on election.

Authority: 29 U.S.C. 1002(3)(37).

### **§ 1 Purpose and scope.**

(a) *Purpose.* This notice establishes procedures for an eligible plan to elect under section 3(37)(G) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and section 414(f)(6) of the Internal Revenue Code of 1986, as amended ("Code"), to be a multiemployer plan for all purposes under ERISA and the Code.

(b) *Scope.* This notice applies to any plan covered under section 4021(a) of ERISA:

(1) That made an election to be treated as a single-employer plan pursuant to section 3(37)(E) and section 4303 of ERISA, and that otherwise satisfies the criteria for a multiemployer plan under section 3(37)(G) of ERISA, and

(2) That satisfies certain criteria for a multiemployer plan under section 3(37)(G) of ERISA or is otherwise specifically described, that is sponsored in large part by organizations that are exempt from taxation under section 501 of the Code, and that was established before September 2, 1974.

## **§ 2 Eligibility and requirements for election.**

(a) *General rule.* A plan that is eligible to make an election under paragraph (b) or paragraph (c) of this section and makes a valid election in accordance with the procedures in §3 and within the time limits specified in paragraph (e) of this section will be treated as a multiemployer plan for all purposes under ERISA and the Code. An election made under this notice is irrevocable, except as provided under paragraph (f) of this section.

(b) *Eligibility for election to revoke single-employer status.* A plan may elect to be a multiemployer plan if—

(1) The plan made an irrevocable election to be a single-employer plan pursuant to section 3(37)(E) and section 4303 of ERISA; and

(2) For each of the last three plan years ending on or before August 17, 2006, the plan would have been a multiemployer plan described in section 3(37) of ERISA (modified in accordance with paragraph (e) of §3 of these procedures), absent the election under section 3(37)(E). (For this purpose, all trades or businesses (whether or not incorporated) under common control within the meaning of section 4001(b)(1) of ERISA (or section 414(c) of the Code) are considered a single employer.)

(c) *Eligibility for election to be a multiemployer plan by plans maintained by tax-exempt employers.* Except as provided in paragraph (d) of this section, a plan may elect to be a multiemployer plan if –

(1) For the first plan year ending after August 17, 2006, and each of the three plan years ending immediately before the first plan year for which the plan elects multiemployer status, the plan met the criteria in section 3(37)(A)(i) and (ii) of ERISA (modified in accordance with paragraph (e) of §3 of these procedures). (For this purpose, all trades or businesses (whether or not incorporated) under common control within the meaning of section 4001(b)(1) of ERISA (or section 414(c) of the Code) are considered a single employer.) Solely for purposes of this election and these procedures, a plan would not be treated as failing to satisfy the requirement for more than one employer in section 3(37)(A)(i) and (ii) for the first plan year ending after August 17, 2006, solely as a result of a reduction to less than two employers required to contribute pursuant to a collective bargaining agreement that occurs in the intervening period from the effective date of the election;

(2) For each of the last three plan years ending immediately before the first plan year for which the plan elects multiemployer status, substantially all of the plan's employer contributions were made or required to be made by employers that were exempt from taxation under section 501 of the Code (see paragraph (c) of §4); and

(3) The plan was established prior to September 2, 1974.

(d) *Exception.* The conditions stated in paragraph (c)(1) of this section are met if the plan is sponsored by an organization which is described in section 501(c)(5) of the Code and exempt from taxation under section 501(a) of the Code, and which was established in Chicago, Illinois, on August 12, 1881.

(e) *Requirements for an effective election.* An election is effective only if—

(1) A written notice of the election that conforms with the requirements of §3 of these procedures is filed by the plan with PBGG on or before August 17, 2007, and at least 30 days after the plan administrator has provided notice of the pending election to each plan participant and beneficiary, each labor organization representing such participants or beneficiaries, and each employer that has an obligation to contribute to the plan, in accordance with ERISA section 3(37)(G)(v)(I); and

(2) The election is approved by PBGC.

(f) *Effect of election.* An election approved by PBGC will be effective for all purposes under ERISA and the Code as of the first day of the first plan year for which the plan elects multiemployer status, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008. If approved, an election will be irrevocable, except that a plan described in paragraph (c) of this section will automatically cease to be a multiemployer plan as of the first day of the plan year beginning immediately after the first plan year for which a majority of its employer contributions were made or required to be made by organizations that were not exempt from taxation under section 501 of the Code.

### **§ 3 Notice of election.**

(a) *General.* A written notice of election must be filed with PBGC no later than August 17, 2007. The notice of election must include a copy of the notice of the pending election provided to participants and other parties in accordance with ERISA section 3(37)(G)(v)(I) and a signed statement signed by the plan administrator that it has complied with the notice requirements in section 3(37)(G)(v)(I).

(b) *Who must sign notice.* A notice under these procedures must be signed by the plan sponsor or a duly authorized representative acting on behalf of the plan sponsor.

(c) *How to file.* A notice under these procedures may be filed by hand, mail, commercial delivery service, or electronic means. The notice may be provided to: Multiemployer Program Division, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Suite 930, Washington, D.C. 20005, faxed to 202-326-4243, or e-mailed to [Multiemployerprogram@PBGC.gov](mailto:Multiemployerprogram@PBGC.gov).



(d) *Content.* In addition to the information required in paragraph (a) of this section, and except as provided in paragraph (g) of this section, each notice under these procedures must contain the following information:

(1) The name of the plan and the plan's PN and EIN (if applicable);

(2) The name, address and telephone number of the plan administrator, and of the duly-authorized representative, if any, of the plan administrator;

(3) The first plan year for which an election is effective with respect to the plan;

(4) For each of the three plan years ending immediately before the first plan year for which the plan elects multiemployer status –

(i) The trust agreement, plan document, plan amendments, and summary plan description in effect;

(ii) The name and EIN of each employer required to contribute to the plan and information as to whether any trades or businesses required to contribute to the plan are under common control; and

(iii) A copy of each collective bargaining agreement obligating an employer to make contributions to the plan for the three largest contributing employers to the plan (in amount of contributions).

(5) For a plan electing multiemployer status under paragraph (b) of §2 –

(i) The information described in paragraph (d)(4) of this section for each of the three plan years ending on or before August 17, 2006 (rather than for the plan years described in paragraph (d)(4));

(ii) A copy of the PBGC's decision approving the plan's application to stay a single-employer plan pursuant to section 3(37)(E) of ERISA, or, if such documentation is unavailable, a copy of the plan amendment required pursuant to section 4303 of ERISA providing that the plan will be treated as a single-employer plan, evidence that the amendment was adopted contemporaneous with the election, and a written statement signed by the plan sponsor that the plan's election to be a single-employer plan under section 3(37)(E) of ERISA was approved by the PBGC; and

(iii) For a plan established –

(I) Before September 2, 1974, the best available evidence that, for the plan year preceding September 2, 1974, the plan was one to which more than one employer was required to contribute under one or more collective bargaining agreements between one or more employee organizations and more than one employer;

(II) On or after September 2, 1974, demonstrate that the requirement (I) above is met and show compliance with 29 CFR §2510.3-37(c) of the Department of Labor regulations.

(6) For a plan electing multiemployer status under paragraph (c) of §2 –

(i) The information described in paragraph (d)(4) of this section for the first plan year ending after August 17, 2006 (in addition to the plan years described in paragraph (d)(4)), or, documentation showing that there has been a reduction in the intervening period since the plan years described in paragraph (d)(4) to less than two of the number of employers required to contribute pursuant to a collective bargaining agreement;

(ii) For each of the three plan years ending immediately before the first plan year for which the plan elects multiemployer status, a list of all employers that made contributions or were required to make contributions to the plan and that were also exempt from taxation under section 501 of the Code, and with respect to each such employer, a copy of a favorable determination letter issued by the Internal Revenue Service (“IRS”) approving the organization’s exempt status that is currently effective, an IRS Form 990 or Form 990-EZ (Return of Organization Exempt from Income Tax) (copy of first page and signed and dated last page) applicable to each tax year ending with or within the last three plan years, or a Form LM-2 or LM-3 (Labor Organization Annual Report) filed with the DOL (copy of signed and dated first page) applicable to each fiscal year ending with or within the last three plan years. If the plan sponsor certifies to the safe harbor provision in clause (iii) of this subparagraph (6), documentation on the tax-exempt status of employers beyond the safe harbor is not required;

(iii) The amount of the annual contributions in the aggregate that were made or required to be made by all tax-exempt organizations listed in paragraph (d)(6)(ii) of this section for each year described in such paragraph (d)(6)(ii), and the percentage of the contributions made or required to be made in the aggregate by all tax-exempt organizations to the total annual contributions to the plan. If at least 85 percent of all employer contributions for the relevant plan year were made or required to be made by tax-exempt organizations, submit a written statement by the plan sponsor to that effect; and

(iv) A plan document, trust instrument, plan amendment, or Plan Description Form D-1 or Annual Report Form D-2 under the Welfare and Pension Plans Disclosure Act, from a period in the plan’s existence prior to September 2, 1974 (if this documentation is unavailable, a plan may submit for PBGC’s review documentation from a later date that provides substantial evidence of the plan’s existence before September 2, 1974).

(e) *Collective bargaining agreement.* For the limited purpose of this election and these procedures, a collective bargaining agreement means a written agreement between a bona fide employee representative and an employer that, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an

employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(f) *Additional information.* In addition to the information described in paragraph (d) of this section, PBGC may require the plan sponsor to submit any other information directly related to these requirements that PBGC determines it needs to review a notice of election. Additional information must be submitted within 60 days of PBGC's request.

(g) *Exception for a certain plan.* A plan sponsored by an organization which is described in section 501(c)(5) of the Code and exempt from tax under section 501(a) of the Code and which was established in Chicago, Illinois, on August 12, 1881, that files a notice under these procedures must establish its identity accordingly and is not required to provide the information described in paragraph (d)(4)(iii) of this section.

#### **§ 4 PBGC action on election.**

(a) *General.* PBGC's decision approving or disapproving an election will be in writing. If PBGC disapproves the election, the decision will state the reasons for the determination. PBGC will approve the election based on its determination that a plan has complied with these procedures based on the plan's information and representations in its notice of election to PBGC. PBGC may audit a plan to verify any information or representation made and may revoke its approval if the plan is unable to verify the representations made or the information submitted. Consistent with section 4003 of ERISA, plans should maintain records necessary to verify the representations and information submitted in support of the election. The Code and ERISA may impose additional recordkeeping requirements that are under the jurisdiction of the Internal Revenue Service or the Department of Labor. See section 6001 of the Code and section 107 of ERISA.

(b) *Effect of PBGC decision.* PBGC approval has no effect on the rights of private parties nor the authority of other Federal agencies. However, PBGC has been advised by both the Internal Revenue Service and the Department of Labor that, for the limited purposes of an election under section 3(37)(G) of ERISA and section 414(f)(6) of the Code, the agencies will follow the safe harbor provision under §4(c).

(c) *Safe Harbor (Tax-Exempt Organizations).* A plan will be deemed to comply with the requirement that substantially all of the plan's employer contributions were made or required to be made by tax-exempt organizations if the plan certifies that at least 85 percent of all employer contributions for the relevant plan year were made or required to be made by employers that were exempt from taxation under section 501 of the Code.

PBGC will review the filing of a plan that is unable to certify to the safe harbor provision and will approve the election if it determines that the requirements of section 3(37)(G)(i)(II)(bb) are met under all the relevant facts and circumstances.

Issued in Washington, DC, on this \_\_ day of \_\_\_\_\_ 2007.

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**Charles E.F. Millard**  
Interim Director  
Pension Benefit Guaranty Corporation

## Checklist of Documents and Information

- I. Name of plan  
Plan number  
Plan EIN  
Name, address, telephone number of plan administrator and representative (if any)  
First PY for which the plan is electing multiemployer status
  
- II. For each of 3 PYs ending before first PY that plan elects multiemployer status:
  - Trust agreement (one copy if same for 3 years)
  - Plan document (one copy if same for 3 years)
  - Summary plan description (one copy if same for 3 years)
  - Plan amendments
  - Name and EIN of each employer required to contribute to plan
  - Information whether trades or businesses required to contribute to plan are under common control
  - Copies of collective bargaining agreements for 3 largest contributing employers (in amount of contributions)
  
- III. For plans electing under §2(b) of the procedures:
  - Information in II is required for each of 3 PYs ending before 8-17-2006 (rather than PYs described in II)
  - PBGC approval of election to stay a single-employer plan under ERISA §3(37)(E), or copy of amendment, evidence of timeliness, and certification that election was approved
  - Best available evidence that before 9-2-74, plan had more than 1 contributing employer under collective bargaining agreements
  - If plan established after 9-2-74, best available evidence that plan had more than 1 contributing employer under collective bargaining agreements and compliance with §2510.3-37(c) of DOL regulations
  
- IV. For plans electing under §2(c) of the procedures:
  - Information in II is required for PY ending after 8-17-2006 (or, evidence of a reduction in number of employers to less than two since the PYs described in II), in addition to PYs described in II
  - For PYs described in II, list contributing employers exempt under §501
  - For employers listed above, evidence of exempt status – IRS approval letter; IRS Form 990 or Form 990-EZ (first page and signed and dated last page only); copy of LM-2 or LM-3 (signed and dated first page only)
  - For PYs described in II, aggregate contributions by employers listed above, and percentage of the total annual contributions to plan
  - If percentage above at least 85%, written statement by plan administrator
  - Plan document, trust instrument, plan amendment, Plan Description Form D-1, or Annual Report Form D-2 from period before 9-2-74, or if unavailable, documentation from later date providing substantial evidence of plan's existence before 9-2-74