

# STANDARD TERMINATION FILING INSTRUCTIONS

**This package contains:**

PBGC Form 500  
Schedule EA-S  
Schedule REP-S  
PBGC Form 501  
Instructions

## Paperwork Reduction Act Notice

PBGC needs this information to ensure that a standard termination under section 4041(b) of ERISA is completed in accordance with statutory and regulatory requirements. Participants need the information so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination. You are required to provide this information pursuant to section 4041(b) of ERISA and 29 CFR Part 4041, Subparts A and B. The information provided to PBGC may be subject to disclosure under the Freedom of Information Act or protected from disclosure by the Privacy Act, as applicable.

This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0036. 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 estimates that it will take an average of 1.17 hours and \$1,523 to comply with standard termination requirements, including requirements for missing participants. These are estimates and the actual time will vary depending on the circumstances of a given plan.

If you have comments concerning the accuracy of these estimates or suggestions for making the forms simpler, please send your comments to the Pension Benefit Guaranty Corporation, Legislative and Regulatory Department, 1200 K Street, NW, Washington, DC 20005-4026.

<b>Table of Contents</b>	<b>Page</b>
I. Overview	2
II. Standard Termination Process	4
A. Computation of Time; Filing and Issuance Rules	5
1. Filing with PBGC	5
2. Issuance to Other Affected Parties	6
B. Administration of Plan During Termination Process	8
C. Notice of Intent to Terminate (NOIT)	9
D. Notice of Plan Benefits (NOPB)	12
E. Standard Termination Notice (Form 500)	14
F. PBGC Review	14
G. Notice of Noncompliance (NONC)	15
H. Closeout of Plan	16
1. Distribution Deadline	16
2. Distributing Plan Benefits	17
3. Post-Termination Amendments	18
4. Providing the Annuity Contract	18

5. Missing Participants	19
I. Post-Distribution Certification (Form 501)	19
J. Requests for Deadline Extensions	19
K. Maintaining Plan Records	20
L. Forms and Instructions; Contacting Us	20
III. General Instructions for Standard Termination Forms	21
IV. Specific Instructions for Standard Termination Forms	21
A. Form 500	21
B. Schedule EA-S	24
C. Schedule REP-S	28
D. Form 501	28
Appendix A: Glossary of Terms	31
Appendix B: Model NOIT	34
Appendix C: Notice of State Guaranty Association Coverage of Annuities	36
Appendix D: Commitment to Make Plan Sufficient for Plan Benefits	37

## I. OVERVIEW

A plan administrator of a single-employer plan covered by PBGC's termination insurance program that has sufficient assets to provide all plan benefits may voluntarily terminate the plan in a standard termination. The plan administrator must follow specific steps and meet specific deadlines. These steps and deadlines are briefly summarized below and explained in more detail in sections II through IV of this package.

### Step 1:

- ◆ Select a proposed termination date.

### Step 2:

- ◆ Issue a **Notice of Intent to Terminate (NOIT)** to affected parties (other than PBGC) at least 60 days and not more than 90 days before the proposed termination date. Affected parties (see Appendix A, Glossary of Terms) include participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, and employee organizations representing participants. (See section II.C.)

### Step 3:

- ◆ Issue a **Notice of Plan Benefits** to participants, beneficiaries of deceased participants, and alternate payees no later than the time the plan administrator files the Standard Termination Notice (PBGC Form 500) with PBGC. (See section II.D.)

**Note:** If the plan administrator wants to qualify for the distribution deadline linked to receipt of the IRS determination letter, the determination request must be submitted no later than the time the plan administrator files the Form 500 with PBGC. (See section II.H.)

**Step 4:**

- ◆ File a **Standard Termination Notice** (PBGC Form 500, including the Schedule EA-S) with PBGC on or before the 180th day after the proposed termination date. (See section II.E.)

*Note: PBGC has 60 days after receiving a complete Form 500 to review the termination for compliance with the law and regulations.*

**Step 5:**

- ◆ If any benefits may be distributed in an annuity form, provide a **Notice of Annuity Information** to affected parties other than PBGC no later than 45 days before the distribution date. (See section II.C.)

**Step 6:**

- ◆ Distribute plan assets to satisfy all plan benefits by the distribution deadline. The distribution deadline is the later of (a) 180 days after expiration of PBGC's 60-day review period, or (b) 120 days after receipt of a favorable IRS determination letter *provided that* the plan administrator submits a valid request for an IRS determination letter by the time he or she files the Form 500 with PBGC. (See section II.H.)

**Step 7:**

- ◆ If the plan has missing participants, follow the rules for distributing benefits of missing participants described in PBGC Schedule MP package.

**Step 8:**

- ◆ Provide a **Notice of Annuity Contract** to participants receiving their plan benefits in the form of an annuity no later than 30 days after all plan benefits are distributed. (See section II.H.4.)

**Step 9:**

- ◆ File a **Post-Distribution Certification** (PBGC Form 501) with PBGC no later than 30 days after all plan benefits are distributed. (See section II.I.)

*Note: PBGC may assess a penalty for late filing of a Form 501. However, PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1.*

This package contains (1) a glossary of terms used in the standard termination process (see Appendix A); (2) a model NOIT that the plan administrator may use or adapt (see Appendix B); (3) information on state guaranty association coverage of annuities (see section II.C and Appendix C); (4) a model commitment to make the plan sufficient for plan benefits (see Appendix D); (5) PBGC Form 500, which includes the Schedules EA-S (the required enrolled actuary certification) and Rep-S (an optional form for designating an authorized representative); and (6) PBGC Form 501 (the post-distribution certification), along with detailed instructions for completing the forms (see section IV). The Missing Participant Program forms and instructions are in a separate PBGC Schedule MP package.

The specific rules for terminating a single-employer plan in a standard termination and for distributing benefits to missing participants are set forth in sections 4041(a), 4041(b) and 4050 of the Employee Retirement Income Security Act (ERISA) and in PBGC's regulations on *Termination of Single-Employer Plans*, 29 CFR Part 4041, Subparts A and B, and *Missing Participants*, 29 CFR Part 4050.

See PBGC's Web site, [www.pbgc.gov](http://www.pbgc.gov), for these regulations (at the "Practitioners" page select "Code of Federal Regulations" under "Law, Regulations & Informal Guidance"), along with FAQs about terminations and additional copies of termination forms and instructions for downloading (at the "Practitioners" page look for "Plan Terminations").

[TIMELINE DIAGRAM]

## II. STANDARD TERMINATION PROCESS

To terminate a plan in a standard termination, the plan administrator, within specified timeframes, must notify participants of the proposed termination; provide participants detailed information on their plan benefits; file certain information, including actuarial information, with PBGC; and, if PBGC does not issue a notice of noncompliance, distribute plan assets to satisfy all plan benefits under the plan.

**Failure to Comply.** Failure to comply with the standard termination requirements or failure to meet the deadlines may cause the proposed termination to be nullified. To avoid inadvertently missing deadlines, the plan administrator should, early in the termination process, review the rules for computing due dates (see section II.A) and begin collecting the data necessary to complete a standard termination (*e.g.*, participant and beneficiary information, including current addresses, and the location and value of plan assets).

*Note: PBGC may extend certain deadlines as discussed in section II.J (see 29 CFR § 4041.30).*

**Consequence of Nullification.** If the termination is nullified, the plan administrator may not make a final distribution of assets and the plan is an ongoing plan for all purposes. If the plan administrator still intends to terminate the plan, he or she will have to start the process again, beginning with issuance of a new NOIT establishing a new proposed termination date for the plan.

**Effect of Failure to Provide Required Information.** If a plan administrator fails to provide any required information within the specified time limit, PBGC may assess a penalty of up to \$1,100 a day for each day that the failure continues. Under PBGC's penalty policy, the penalty rate is generally much lower — \$25 per day for the first 90 days and \$50 per day thereafter, with lower rates for small plans. 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 (NONC). See 29 CFR §4041.6 and PBGC's Statement of Policy on ERISA section 4071 penalties, 60 Fed. Reg 36837 (July 18, 1995).

**Post-Termination Amendments.** The plan administrator may take into account a plan amendment that is adopted after a plan's termination date only if certain conditions are met (see section II.H.3).

**Conversion to a Defined Contribution (DC) Plan.** Converting a defined benefit plan to a defined contribution plan is a voluntary termination of the defined benefit plan and is subject to all rules and requirements governing such terminations.

**Cessation of Accruals.** For plans with 100 or more participants, ERISA section 204(h) and Treas. Reg. §54.4980F-1 generally provide that a plan may not be amended to provide for a significant reduction in the rate of future benefit accrual unless, at least 45 days before the effective date of the plan amendment, the plan administrator provides a written notice setting forth the plan amendment and its effective date to participants, alternate payees, and employee organizations representing participants. For plans with fewer than 100 participants, substitute "15 days" for "45 days." If the plan terminates in accordance with Title IV of ERISA, section 204(h) is deemed to be satisfied as of the termination date. (See Treas. Reg. §54.4980F- I, Q&A-I 7.)

**Note:** A NOIT must include a statement concerning the cessation of accruals under the plan (see 29 CFR § 4041.23(b) (4) and section II. C of these instructions). If the termination is not successfully completed, a NOIT does not serve as an ERISA section 204(h) notice unless the NOIT meets all section 204(h) requirements.

**Making Plans Sufficient.** To facilitate the termination of a plan and the distribution of assets in a standard termination, a contributing sponsor or controlled group member may make a commitment in writing to the plan to contribute, by the distribution date, the amount necessary to make the plan sufficient for all plan benefits (see the specific instructions to item 5, Schedule EA-S). In addition, *majority owners* (individuals owning 50 percent or more of the interest of the employer) may agree to forgo receipt of all or part of their plan benefits until the benefits of all other plan participants have been satisfied (see the specific instructions to item 6, Schedule EA-S).

**IRS Determination Letter.** Plan administrators who want to defer the final distribution of plan assets until 120 days after receipt of a favorable tax qualification (on termination) determination letter from the IRS must submit a valid request for the determination to the IRS *by the time* the standard termination notice is filed with PBGC.

**Voluntary Termination of an Insufficient Plan.** A single-employer plan covered by PBGC's termination insurance program that does not have sufficient assets to satisfy all plan benefits can terminate voluntarily only if the contributing sponsor(s) and each member of the contributing sponsor's controlled group satisfy the requirements for a distress termination pursuant to ERISA section 4041(c) and 29 CFR Part 4041, Subpart C. The distress termination rules are described in detail in a separate PBGC distress termination package, which also contains the necessary forms and instructions.

#### **A. Computation of Time; Filing and Issuance Rules** (see 29 CFR § 4041.3 and 29 CFR § 4000.3(c))

In computing any period of time, if you are counting forwards, begin counting on the day *after* the event occurs and count the last day of the period. If you are counting backwards, begin counting on the day *before* the event occurs and count the last day of the period. If you counted forwards and if the last day is a weekend or Federal holiday, then the period runs until the next regular business day *after* the last day of the period. If an event cannot be more than a certain number of days before a certain date and the last day of the period is a weekend or Federal holiday, then the period runs until the next regular business day *before* the last day of the period.

**Note:** *A proposed termination date may be any day, including a Saturday, Sunday or Federal holiday.*

*Example: Suppose you are issuing a notice of intent to terminate. The notice must be issued at least 60 days, but not more than 90 days, before the proposed termination date. Suppose the 60th day before the proposed termination date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Friday, July 4, 2008 (a Federal holiday), your notice is timely if you issue it on Thursday, July 3, even though that is 91 days before the proposed termination date.*

### **1. Filing with PBGC**

**Filing Methods.** You may file PBGC Form 500 (including Schedules EA-S and REP-S) and Form 501 by hand, mail, or commercial delivery service. **NOTE:** Forms 500 (and schedules) and 501 require original signatures. They may not be faxed or e-mailed to PBGC. Other filings relating to a standard termination (e.g., a request for an extension of a deadline) may be e-mailed or faxed, as well as filed by hand, mail, or commercial delivery service. Current information on how to file, including permitted filing methods, fax numbers, and mail and e-mail addresses is on PBGC's website at [www.pbgc.gov](http://www.pbgc.gov) (at the "Practitioners" page, select "Code of Federal Regulations" under "Law, Regulations & Informal Guidance" )

**Filing Date.** Your filing date will be the date you send your filing (the "send date"), provided you meet certain requirements that are summarized below. If you do not meet these requirements, your filing date is the date the PBGC receives your submission. (If you file your submission by hand, your filing date is the date of receipt of your hand-delivered submission at the proper address.)

If PBGC receives your submission after 5:00 p.m. (Washington, D.C. time) on a business day, or anytime on a weekend or Federal holiday, PBGC treats it as received on the next business day.

**Filings by mail.** If you file your submission using the U.S. Postal Service, your filing date is the date you mail your submission by the last collection of the day, provided that the submission: (1) meets the applicable postal requirements; (2) is properly addressed; and (3) is sent by First-Class Mail (or another class that is at least equivalent). If you mail the submission after the last collection of the day, or if there is no scheduled collection that day, your filing date is the date of

the next scheduled collection. If you meet these requirements, the PBGC makes the following presumptions:

*Legible postmark date.* If your submission has a legible U.S. Postal Service postmark, the PBGC presumes that the postmark date is the filing date.

*Legible private meter date.* If your submission has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, the PBGC presumes that the metered postmark date is your filing date.

You may prove an earlier send date.

**Filings using a commercial delivery service.** If you file your submission using a commercial delivery service, your filing date is the date you deposit your submission by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery) with the commercial delivery service, provided that the submission meets the applicable requirements of the commercial delivery service and is properly addressed, and the delivery service meets one of the requirements listed below. If you deposit it later than that last scheduled collection of the day, or if there is no scheduled collection that day, your filing date is the date of the next scheduled collection. The delivery service must meet one of the following requirements:

*Delivery within two days.* it must be reasonable to expect your submission will arrive at the proper address by 5:00 p.m. on the second business day after the next scheduled collection; or

*Designated delivery service.* You must use a "designated delivery service" within the meaning of section 7502(f) of the Internal Revenue Code (Title 26, USC). PBGC's Web site, [www.pbgc.gov](http://www.pbgc.gov), lists those designated delivery services (at the "Practitioners" page select "Contact Us"). You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

**Where to file.** PBGC Forms 500 (and schedules) and 501 may be filed by mail, commercial delivery service or hand delivery (they may not be e-mailed or faxed; see "Filing Methods" at section II.A.1 above) to:

Pension Benefit Guaranty Corporation  
Standard Termination Compliance Division, Suite 930  
Processing and Technical Assistance Branch  
1200 K Street, NW  
Washington, DC 20005-4026

Other filings relating to a standard termination (such as a request for an extension) may be e-mailed or faxed (as well as filed by mail, commercial delivery service or hand delivery) to:

By e-mail: [standard@pbgc.gov](mailto:standard@pbgc.gov)

By fax: (202) 326-4001

## **2. Issuance to Affected Parties Other than PBGC (29 CFR § 4041.3 and 29 CFR Part 4000)**

All notices must be readable and written in a manner calculated to be understood by the average plan participant. Additional information may be provided with a notice only if the information is not misleading.

**Issuance Methods.** Notices may be issued by any method that uses measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Permissible methods of issuance include hand delivery, first class mail, electronic delivery by electronic media, and commercial delivery service to the affected party's last known address.

**NOTE: Posting is not a permissible method.**

PBGC's issuance rules describe in detail a safe harbor method (for delivery by electronic media) that meets the requirement of using measures reasonably calculated to ensure actual receipt. You may view these rules (and the rules on how PBGC determines your issuance date) on PBGC's Web site, [www.pbgc.gov](http://www.pbgc.gov) (at the "Practitioners" page, select "Code of Federal Regulations" under "Law, Regulations & Informal Guidance").

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

**Issuance Date.** Generally, your issuance date is the date on which you send the notice if you meet the "send date" requirements in PBGC's rules at Part 4000, summarized below. If you do not meet these requirements, the issuance date is the date the intended recipient receives your notice. (If you issue your notice by hand, your issuance date is the date of receipt of your hand-delivered notice at the proper address.)

**Issuances by mail.** If you issue your notice using the U.S. Postal Service, your issuance date is the date you mail your notice by the last collection of the day, provided that the notice: (1) meets the applicable postal requirements; (2) is properly addressed; and (3) is sent by First-Class Mail (or another class that is at least equivalent). If you mail the notice after the last collection of the day, or if there is no scheduled collection that day, your issuance date is the date of the next scheduled collection. If you meet these requirements, PBGC makes the following presumptions:

*Legible postmark date.* If your notice has a legible U.S. Postal Service postmark, PBGC presumes that the postmark date is the issuance date.

*Legible private meter date.* If your notice has a legible postmark made by a private postage meter (but no legible U.S. Postal Service postmark) and arrives at the proper address by the time reasonably expected, PBGC presumes that the metered postmark date is your issuance date.

You may prove an earlier issuance date.

**Issuances using a commercial delivery service.** If you issue your notice using a commercial delivery service, your issuance date is the date you deposit your notice by the last scheduled collection of the day for the type of delivery you use (such as two-day delivery or overnight delivery) with the commercial delivery service, provided that the notice meets the applicable requirements of the commercial delivery service and is properly addressed, and the delivery service meets one of the requirements listed below. If you deposit it later than that last scheduled collection of the day, or if there is no scheduled collection that day, your issuance date is the date of the next scheduled collection. The delivery service must meet one of the following requirements:

*Delivery within two days.* It must be reasonable to expect your notice will arrive at the proper address by 5:00 p.m. on the second business day after the next scheduled collection; or

*Designated delivery service.* You must use a "designated delivery service" within the meaning of section 7502(f) of the Internal Revenue Code (Title 26, USC). PBGC's Web site, [www.pbgc.gov](http://www.pbgc.gov), lists those designated delivery services (at the "Practitioners" page select "Contact Us"). You should make sure that both the provider and the particular type of delivery (such as two-day delivery) are designated.

**Issuances using electronic delivery.** Your issuance date is the date you send your notice if you comply with the electronic safe harbor method (see 29 CFR § 4000.14(b)). If you do not comply with the safe harbor method, but you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient, then your issuance date is the date of receipt at the proper address.

**Failure to meet address requirement.** If you send your electronic issuance to the wrong address (but you meet the other applicable requirements), your filing or issuance date is the date of receipt at the proper address.

**Reason to believe issuance not received or defective.** If you have reason to believe that the intended recipient has not received your issuance (or has received it in a form that is not useable), you must promptly resend it to get your original issuance date.

**Request to resend issuance for technical reasons.** The intended recipient may, for good reason (of a technical nature), ask you to resend all or a portion of your issuance (for example, because of a technical problem in opening an attachment to your e-mail). If you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance.

**Special Rule for Foreign Languages.** This rule applies to (1) a plan that covers fewer than 100 participants at the beginning of a plan year in which 25% or more of all plan participants are literate only in the same non-English language; or (2) a plan that covers 100 or more participants in which 500 or more participants or 10% or more of all plan participants, whichever is less, are literate only in the same non-English language. The plan administrator of such a plan must, for any notice to affected parties, include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice, or provide the notice in that common non-English language to those affected parties who are literate only in that language.

*Example: The plan administrator of a terminating plan in which 30% of the participants are literate only in Spanish must either (1) include on each notice a statement with the name, address and telephone number of an individual fluent in Spanish who may be contacted for assistance with questions concerning the notice, or (2) provide a copy of the notice in Spanish to those persons literate only in Spanish.*

**Omission of Affected Parties.** If the plan administrator discovers additional affected parties after expiration of the deadline for issuance of any notice, the notice will be considered timely if (1) the plan administrator could not reasonably have been expected to know of the additional affected parties or the failure to notify was due to administrative error involving only a *de minimis* percent of affected parties, and the plan administrator promptly issues the notice to each additional affected party, or (2) the plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly when the affected party is located.

**Note:** *The plan administrator need not issue a notice to the estate of a deceased participant if the estate is not entitled to a distribution.*

## **B. Administration of Plan During Termination Process (see 29 CFR § 4041.22)**

A plan administrator may not distribute plan assets in connection with the termination until PBGCPBGC's review period ends. The plan administrator must continue to carry out the normal operations of the plan during the termination process. These operations include, e.g., putting participants into pay status, collecting contributions due the plan, investing plan assets and making loans to participants in accordance with plan provisions.

However, during the period beginning on the first day the plan administrator issues a notice of intent to terminate until the last day of PBGCPBGC's review period, the plan administrator, except as described below, must not:

1. Purchase irrevocable commitments to provide any plan benefits; or
2. Pay any plan benefits attributable to employer contributions (other than death benefits) in any form other than as an annuity.

**Exception:** The plan administrator may provide benefits attributable to employer contributions either through the purchase of an irrevocable commitment or in a form other than as an annuity if (1) the participant has separated from active employment or is otherwise permitted under the Code to receive the distribution, (2) the distribution is consistent



with prior plan practice, and (3) the distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

**Note:** *A distribution, transfer, or allocation of assets to a participant, beneficiary or alternate payee, or to an insurer for the benefit of such a person, made in anticipation of plan termination may be a violation of Title IV of ERISA (see 29 CFR § 4044.4(b)).*

If, after beginning the standard termination process, the plan administrator determines that the plan is insufficient for plan benefits, he or she should stop the termination process and notify PBGC. (In very limited circumstances, PBGC, upon request, may permit a conversion of a standard termination to a distress termination.)

### **C. Notice of Intent to Terminate (NOIT) (see 29 CFR § 4041.23)**

At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a written NOIT to each person (other than PBGC) who is an affected party as of the proposed termination date. Affected parties include (1) participants, (2) beneficiaries of deceased participants, (3) alternate payees under applicable qualified domestic relations orders, (4) employee organizations currently representing participants and (5) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented the group within the 5-year period preceding issuance of the NOIT.

**Note:** *An NOIT must also be issued to a person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the distribution date. That NOIT will not be untimely, provided the "after-discovered affected parties" requirements described in section II.A.2, "Omission of Affected Parties," are satisfied.*

**Proposed Termination Date.** The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

*Example: Assume a proposed termination date of May 4, 2008 (a Sunday). For the NOIT to be timely, it must be issued no later than March 5, 2008, and no earlier than February 4, 2008. In counting backwards, start with May 3, 2008 (a Saturday), as day 1.*

**Contents of NOIT.** An NOIT must contain the information, including the **Notice of Annuity Information**, listed below. (See Appendix B for a model NOIT, which may be used or adapted by the plan administrator.)

- ◆ Each contributing sponsor's name and employer identification number (EIN).
- ◆ Plan name and plan number.
- ◆ Name, address and telephone number of a contact person.
- ◆ Statement that the plan administrator intends to terminate the plan in a standard termination.
- ◆ Proposed termination date.
- ◆ Statement that the plan administrator will notify the affected party if the proposed termination date changes or the termination does not occur.
- ◆ Statement that, in order to terminate, plan assets must be sufficient to provide all plan benefits.
- ◆ One of the following statements concerning the cessation of accruals under the plan, whichever applies:

- Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;
  - A plan amendment has been adopted under which benefit accruals will cease, in accordance with ERISA section 204(h), as of [insert either the proposed termination date or a specified date before the proposed termination date, whichever applies], whether or not the plan is terminated; or
  - Benefit accruals ceased, in accordance with ERISA section 204(h), as of [insert specified date before the NOIT was issued].
- ◆ Statement that each affected party entitled to plan benefits will receive a written notification regarding his or her benefits.
  - ◆ Statement explaining how an affected party entitled to receive the latest updated summary plan description (SPD) under ERISA §104(b) can obtain it.

**Note** *The plan administrator may simply provide a copy of the SPD with the NOIT rather than including this statement in the NOIT. The plan administrator may impose a reasonable charge to cover the cost of furnishing the SPD to the extent allowed under regulations issued by the Department of Labor (see 29 CFR § 2520.104b-30). Some affected parties (e.g., a union) are not entitled to receive a copy of the SPD under ERISA section 104. The plan administrator may, but need not, include this statement in the NOIT issued to any such affected parties.*

- ◆ For those persons who are in pay status as of the proposed termination date, a statement (as applicable) that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination, or explaining how such benefit amounts will be affected under plan provisions.
- ◆ Statement that, after plan assets have been distributed to provide all plan benefits, either through the purchase of an annuity contract or in another form permitted by the plan, PBGC's guarantee ends.

**Notice of Annuity Information.** The NOIT to an affected party entitled to plan benefits, other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum (a lump sum payment that may be distributed without the consent of the participant or the participant's spouse in accordance with the plan's provisions for *de minimis* benefit amounts; the payment may not exceed the dollar limit under section 411(a)(11) of the Code) must include the following annuity information –

*If the identity-of-insurer information is known at the time the NOIT is issued:*

- ◆ Name and address of each insurer from whom, or from among whom, the plan administrator intends to purchase annuity contracts.
- ◆ Statement that, if the plan administrator later decides to select a different insurer, the plan administrator will issue a supplemental notice no later than 45 days before the distribution date.
- ◆ Statement concerning state guaranty association coverage of annuities that:
  - Once the plan distributes a benefit in the form of an annuity purchased from an insurance company, the insurance company takes over the responsibility for paying that benefit;
  - 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;
  - A guaranty association is responsible for all, part or none of the annuity if the insurance company cannot pay;

- Each guaranty association has dollar limits on the extent of its guaranty coverage, along with a general description of applicable dollar coverage limits;
- In most cases the policyholder is covered by the guaranty association for the state where he or she lives at the time the insurance company fails to pay; and
- The individual may obtain the addresses and telephone numbers of guaranty association offices from PBGC by calling or writing PBGC's Customer Contact Center, P.O. Box 151750, Alexandria, VA 22315-1750 (1-800-400-7242) (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 1-800-400-7242), or by going to PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) (at "Workers & Retirees" page look for this information under "Benefit Information").

See Appendix C for a model notice providing this information, which may be used or adapted by the plan administrator.

***If the identity-of-insurer information is not known at the time the NOIT is issued:***

- ◆ Statement that annuity contracts may be purchased to provide some or all of the benefits under the plan, but the plan administrator has not yet identified the insurer or insurers from whom the plan may purchase the annuities.
- ◆ Statement that 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 each insurer from whom, or from among whom, the plan administrator intends to purchase annuity contracts.

**Supplemental Notice of Annuity Information.** If the NOIT did not include the identity of potential insurers, or if annuities will be purchased from insurers other than those identified in the NOIT (or in a prior supplemental notice), the plan administrator must issue a Supplemental Notice of Annuity Information to —

1. Each affected party entitled to plan benefits (other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum) no later than 45 days before the affected party's distribution date; and
2. Each employee organization representing participants no later than 45 days before the earliest distribution date for any affected party represented by the employee organization.

The supplemental notice must include:

- ◆ Name and address of each insurer from whom (if known), or from among whom (if specific insurer not known), the plan administrator intends to purchase annuity contracts.
- ◆ Statement that, if the plan administrator later decides to select a different insurer, the plan administrator will issue a written supplemental notice no later than 45 days before the distribution date.
- ◆ Unless the information on state guaranty association coverage of annuities described above was previously provided, that information and the statement that PBGC's guarantee ends after plan assets have been distributed.

**Special Rule for Spin-off/Termination Transactions.** For a spin-off/termination transaction, the plan administrator must provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date of the terminating plan) covered by an ongoing plan with —

1. A notice describing the transaction at least 60 days, and no more than 90 days, before the proposed termination date of the terminating plan; and
2. The same annuity information for the ongoing plan that is required as part of the NOIT for the terminated plan (*i.e.*,

identity of insurer, change in identity of insurer, statement that PBGC's guarantee ends after plan assets have been distributed and information on state guaranty association coverage of annuities) no later than 45 days before an annuity is purchased for the person.

The issuance rules in section II.A.2 apply to these notices. (See the instructions in Part III for item 18b of Form 500 for other requirements relating to spin-off/termination transactions.)

#### **D. Notice of Plan Benefits (NOPB)** (see 29 CFR § 4041.24)

The plan administrator must issue an NOPB to each affected party who is, as of the proposed termination date, a participant, a beneficiary of a deceased participant, or an alternate payee under an applicable qualified domestic relations order no later than the time the plan administrator files the standard termination notice with PBGC (see section II.E).

***Note:** An NOPB must also be issued to a person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the distribution date. (The NOPB will be saved from being untimely, provided the "after-discovered affected parties" requirements described in section II.A.2 are satisfied.)*

**Contents of NOPB.** An NOPB must contain both general information and specific additional information for three categories of participants: (1) persons in pay status as of the termination date; (2) persons not then in pay status but who, as of the termination date, have made valid benefit elections or for whom the plan administrator has determined that the benefit will be payable as a lump sum; and (3) all others.

##### **General information:**

- ◆ Contributing sponsor's name and employer identification number (EIN).
- ◆ Plan name and plan number (PN).
- ◆ Name, address and telephone number of a contact person for benefit questions.
- ◆ Proposed termination date given in the NOIT and, if any, the extended proposed termination date given in the standard termination notice (see section II.E).
- ◆ If the amount of the plan benefits described in the NOPB is an estimate, a statement that the amount is an estimate and plan benefits paid may be greater than or less than the estimate.
- ◆ Except for a participant or beneficiary in pay status for more than one year as of the proposed termination date,
  - Personal data (if available) needed to calculate the person's plan benefits, *e.g.*, date of birth, date of hire, credited service, salary (if applicable);
  - Statement requesting that the affected party promptly correct any information he or she believes to be incorrect; and
  - If any of the personal data needed to calculate the affected party's plan benefits is not available, the best available data, along with a statement informing the affected party of the data not available and affording him or her the opportunity to provide it.

***Note:** The plan administrator should highlight (*e.g.*, bold or all capital letters) the requests for corrected or, if applicable, additional information.*

##### **For persons in pay status as of the termination date:**

- ◆ Amount and form of the participant's or beneficiary's plan benefits payable as of the proposed termination date.
- ◆ Amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary.
- ◆ Amount and date of any increase or decrease in the benefit that has already occurred or is scheduled to occur after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision.

***For persons who, as of the termination date, have validly elected a form and starting date, or for whom, as of such date, the plan administrator has determined that the benefits will be paid in a nonconsensual lump sum:***

- ◆ Amount and form of the participant's or beneficiary's plan benefits payable as of the projected benefit starting date, and what that date is.
- ◆ Amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary.
- ◆ Amount and date of any increase or decrease in the benefit that has already occurred or is scheduled to occur after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provisions.
- ◆ If the plan benefits will be paid in any form other than a lump sum, and the age at which, or the form in which, the plan benefits will be paid differs from the normal retirement benefit, the age or form stated in the plan for the normal retirement benefit and the age or form adjustment factors.
- ◆ If the plan benefits will be paid in a lump sum:
  - Explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;
  - Description of the mortality table used to convert to the lump sum benefit and a reference to the pertinent plan provision;
  - Description of the interest rate to be used to convert to the lump sum benefit and a reference to the pertinent plan provision, and (if known) the applicable interest rate;
  - Explanation of how interest rates are used to calculate lump sums;
  - Statement that use of a higher interest rate results in a smaller lump sum amount; and
  - Statement that the applicable interest rate may change before the distribution date.

***For all other persons not in pay status as of the termination date (or for whom a portion of the person's benefit is not in pay status):***

- ◆ Amount of the participant's or beneficiary's plan benefits payable at normal retirement age in any one form permitted under the plan, and a description of that form.
- ◆ Availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death, either before or after benefits commence.

◆ If the participant or beneficiary is or may become entitled to a benefit payable before normal retirement age, 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.

◆ If the plan benefits may be paid in a lump sum:

- Explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;
- Description of the mortality table used to convert the annuity form to the lump sum benefit and a reference to the pertinent plan provision;
- Description of the interest rate to be used to convert to the lump sum benefit and a reference to the pertinent plan provision, and (if known) the applicable interest rate;
- Explanation of how interest rates are used to calculate lump sums;
- Statement that use of a higher interest rate results in a smaller lump sum amount; and
- Statement that the applicable interest rate may change before the distribution date.

**Special Rule for Spin-off/Termination Transactions.** For a spin-off/termination transaction, the plan administrator must provide an NOPB containing the information described above to all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date of the terminating plan) covered by an ongoing plan. The NOPB must be issued no later than the time the plan administrator files the standard termination notice for any terminating plan.

#### **E. Standard Termination Notice (Form 500) (see 29 CFR § 4041.25)**

The plan administrator must file with PBGC a Form 500, Standard Termination Notice, with Schedule EA-S, the standard termination certification of sufficiency, completed in accordance with the instructions to the form (see sections III and IV). Form 500 must be filed on or before the 180th day after the proposed termination date.

***Note:** Plan administrators who want to defer the final distribution of plan assets until 120 days after receipt of a favorable tax qualification determination letter from the IRS must submit a valid request for the determination to the IRS by the time the standard termination notice is filed with PBGC.*

**Proposed Termination Date.** The plan administrator may select on PBGC Form 500 a proposed termination date that is later than the date specified in the NOIT. The new termination date cannot be more than 90 days after the earliest date on which the plan administrator issued an NOIT to any affected party.

**Contents of Standard Termination Notice.** See the specific instructions to PBGC Form 500 (section IV.A) and the Schedule EA-S (section IV.B).

#### **F. PBGC Review (see 29 CFR § 4041.26)**

PBGC has 60 days after receipt of a complete Form 500 filing at the address listed in section II.A to review the termination for compliance with the law and regulations. PBGC will notify the filer in writing of the receipt date so that the filer can determine when the 60-day review period will expire. The review period may be extended if PBGC and the plan administrator agree, in writing, to an extension before the expiration of the review period.

**Incomplete Filing.** If the Form 500 filing is incomplete, PBGC may, based on the nature and extent of the omission,

provide the plan administrator an opportunity to complete the filing. In such cases, the filing will be deemed complete (for purposes of determining the timeliness of the Form 500) as of the date originally filed, *provided* the plan administrator files the missing information by the later of (1) the 180th day after the proposed termination date or (2) the 30th day after the date of PBGC notice that the filing was incomplete. PBGC will determine, however, whether to begin its 60-day review period as of the date it receives the original filing or the missing information, and notify the plan administrator of its determination.

**Additional Information.** PBGC may in any case require the submission of additional information relevant to the termination proceeding. This information must be submitted within 30 days after the date of a written request by PBGC, or within a different time period specified by PBGC in its request. PBGC may in its discretion shorten the time period where it determines that the interests of PBGC or participants may be prejudiced by a delay in receipt of the information.

A request for additional information suspends the running of PBGC's 60-day review period. The review period begins running again on the day the required information is received and continues for the greater of (1) the number of days remaining in the review period or (2) five regular business days.

### **G. Notice of Noncompliance (NONC) (see 29 CFR § 4041.31)**

A NONC ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan.

**During PBGC's Review Period.** PBGC will issue a NONC within its 60-day (or extended) review period whenever PBGC determines that —

1. The plan administrator failed to properly issue the notice of intent to terminate to all affected parties other than PBGC (see section II.C and 29 CFR § 4041.23);
2. The plan administrator failed to properly issue a notice of plan benefits to all affected parties entitled to plan benefits (see section II.D and 29 CFR § 4041.24);
3. The plan administrator failed to properly file the standard termination notice (see section II.E and 29 CFR § 4041.25);
4. As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all plan benefits under the plan (see section II.H and 29 CFR § 4041.28); or
5. In the case of a spin-off/termination transaction, the plan administrator failed to properly issue any required notice (see sections II.C and II.D and 29 CFR §§ 4041.23, 4041.24 and 4041.27).

PBGC may decide not to issue a NONC based on a failure to meet a notice requirement described in paragraphs (1), (2), (3) or (5) above if PBGC determines that issuance of the NONC would be inconsistent with the interests of participants and beneficiaries.

**After PBGC's Review Period.** PBGC may issue a NONC or suspend a termination proceeding for a failure to meet a requirement described in (1) through (5) above after expiration of its 60-day (or extended) review period, including after a PBGC audit, if PBGC determines such action is necessary to carry out the purposes of Title IV.

PBGC may issue a NONC at any time if the plan administrator fails to properly complete the final distribution of plan assets (*e.g.*, by failing to satisfy any of the requirements for providing all plan benefits in the form of an irrevocable commitment or other permitted form, or by failing to complete the distribution before the distribution deadline).

**Request for Reconsideration.** A plan administrator may request reconsideration of a NONC. Any request for

reconsideration, if submitted timely and in accordance with the rules prescribed in PBGC's regulation on *Administrative Review* (29 CFR Part 4003), automatically stays the effectiveness of the NONC until PBGC issues its decision on reconsideration. **Note:** Once a NONC is issued: (1) the running of all time periods relating to the termination will be suspended and (2) the plan administrator can take no further action to terminate the plan (except by initiation of a new termination) unless and until the NONC is revoked pursuant to a decision by PBGC on reconsideration.

**Notice to Affected Parties.** If a NONC becomes effective because either the plan administrator does not request reconsideration or PBGC issues a decision upon reconsideration affirming issuance of the NONC, the plan administrator must notify affected parties other than PBGC in writing that the plan is not going to terminate or, if applicable, that the termination was invalid and that a new NOIT is being or will be issued. The plan administrator must also notify persons who received an annuity notice or NOPB because the proposed termination was part of a spin-off/termination transaction (see sections II.C and II.D. and 29 CFR §§4041.23, 4041.24 and 4041.27).

**Correction of Errors.** PBGC will not issue a NONC 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 if:

1. 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:
  - a. In the case of an error in the NOPB under 29 CFR §4041.24, the latest date an election notice may be provided to the person; or
  - b. 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 PBGC; and
3. PBGC determines that the delay in providing the correct information will not substantially harm any person.

#### **H. Closeout of Plan (see 29 CFR § 4041.28)**

Unless PBGC issues a NONC, the plan administrator must complete the distribution of plan assets by purchasing annuity contracts that are irrevocable commitments, or by otherwise providing all plan benefits (see section II.H.2 for the rules governing distribution of plan benefits).

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing the plan benefits passes irrevocably from the plan to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan, benefit arrangement, or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

##### **1. Distribution Deadline**

The plan administrator must complete the distribution of plan assets in satisfaction of plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) by the later of (a) 180 days after PBGC review period ends (*i.e.*, generally by no later than 240 days after PBGC's receipt of a complete and valid Form 500 filing), or (b) 120 days after the plan's receipt of a favorable IRS determination letter. The IRS determination letter deadline described in (b) above is available only if, on or before the time the plan administrator files the Form 500 with PBGC, the plan administrator submits to IRS a valid request for a determination letter with respect to the plan's tax-qualification status upon termination. **This deadline does not apply to a distribution of residual assets, whether to the employer or to participants and beneficiaries.**



**Note:** Failure to timely distribute plan assets in satisfaction of plan benefits may cause the termination to be nullified.

A plan administrator may request an extension of the time to file for an IRS determination letter to qualify for the IRS determination letter distribution deadline in accordance with the rules described in section II.J of these instructions and 29 CFR § 4041.30. Such a request will be deemed to be granted unless PBGC notifies the plan administrator otherwise within 60 days after receipt of the request or, if later, by the end of PBGC's 60-day (or extended) review period. PBGC will notify the plan administrator in writing of the date it receives the request.

**Extensions of Distribution Deadline.** The 180-day distribution deadline or the IRS determination letter distribution deadline described above may be extended only under the circumstances described below. (If more than one extension applies, the deadline is extended to the latest applicable date.)

**A. Revocation of Notice of Noncompliance.** If PBGC revokes a NONC, the distribution deadline is extended until the 180th day after the date of revocation.

**B. PBGC Discretion.** PBGC may extend the distribution deadline to a later date in accordance with the rules described in section II.J of these instructions and 29 CFR §4041.30.

**Note:** If, late in the distribution process, the plan administrator (1) locates a participant or beneficiary who was thought to be missing or (2) learns that a participant or beneficiary whom the plan administrator thought was located is, in fact, missing, the plan administrator should request a discretionary extension of the distribution deadline.

## 2. Distributing Plan Benefits

Except for missing participants (see section II.H.5), each participant must be offered all optional forms of benefits for which he or she is eligible under the terms of the plan. Plan benefits may be distributed in a form other than an annuity (e.g., an immediate lump sum) only if the plan provides for such a distribution and (1) the participant elects the alternative form in writing, with the written consent of his or her spouse, or (2) for participants not already in pay status, the present value of the participant's benefit (valued in accordance with the rules described under "Valuation of Other Benefits" in the instructions to item 6 of Schedule EA-S), is at or below the plan's cash out limit for de minimis benefit amounts, which may not exceed the dollar limit under section 411(a)(11) of the Code (currently \$5,000).

**Note:** For an election of a lump sum to be valid, the participant must have the opportunity to commence an annuity immediately (see 26 CFR § 1.417(e)-1(b)(1)).

If plan benefits are not payable in an optional form under the conditions described above, plan benefits must be distributed by the purchase from an insurer of an annuity contract that is an irrevocable commitment. The plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA. Unless the participant is already in pay status, or has both elected to retire and elected a particular benefit form, the irrevocable commitment (annuity contract) must preserve all benefit options under the plan in accordance with Code section 411 and the regulations thereunder.

**Note:** Spousal consent is required for married participants for all options (other than a qualified joint and survivor annuity) if the present value of the participant's plan benefit is more than the plan's cash out limit for de minimis benefit amounts.

**Participating Annuities.** A participating annuity contract may be purchased to provide plan benefits if all plan benefits will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer. For a plan in which any residual assets will be distributed to participants: (1) the additional premium for the

participation feature must not be paid from the residual assets allocable to participants, and (2) the amount of residual assets must be determined using the price of the annuities for all plan benefits without the participation feature. If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

### **3. Post-Termination Amendments (see 29 CFR § 4041.8)**

**Plan Benefits.** A participant's or beneficiary's plan benefits are determined under the plan's provisions in effect on the plan's termination date. However, an amendment that is adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's plan benefits to the extent the amendment (1) does not decrease the value of the participant's or beneficiary's plan benefits under the plan's provisions in effect on the termination date; and (2) does not eliminate or restrict an optional form of benefit available to the participant or beneficiary on the termination date. Thus, for example, a post-termination amendment that eliminates an ancillary benefit, or that increases the dollar limit (subject to the dollar limit under section 411(a)(11) of the Code) for nonconsensual lump sums, would not be taken into account in determining a participant's or beneficiary's plan benefits.

**Residual Assets.** In a plan in which participants or beneficiaries will receive some or all of the plan's residual assets based on an allocation formula, the amount of the plan's residual assets, and each participant's or beneficiary's share of the residual, is determined under the plan's provisions in effect on the termination date. However, an amendment adopted after the termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets only to the extent the amendment does not decrease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

**Permitted Decreases.** An amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits or allocation of residual assets to the extent (1) the decrease is necessary to meet a qualification requirement under Code section 401; (2) the participant's or beneficiary's allocation of residual assets is paid in the form of an increase in the participant's or beneficiary's plan benefits; or (3) the decrease is offset by assets that would otherwise revert to the contributing sponsor or by additional contributions.

### **4. Providing the Annuity Contract (see 29 CFR § 4041.28(d))**

If the plan administrator distributed plan benefits to any participant or beneficiary through the purchase of annuity contracts, either the plan administrator or the insurer must, within 30 days after it is available, provide each such participant and beneficiary (other than a missing participant) with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly stating the insurer's obligation to provide the participant's or beneficiary's plan benefits.

If such a contract or certificate is not provided to the participant or beneficiary by the date on which the Form 501 is required to be filed to avoid the assessment of penalties (see section II.I), the plan administrator must, no later than that date, provide the participant and beneficiary with a notice stating:

- a. That the obligation for providing the plan benefits has transferred to the insurer;
- b. The name and address of the insurer;
- c. The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and
- d. That the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly stating the insurer's obligation to provide the participant's or beneficiary's plan benefits.

## 5. Missing Participants (see 29 CFR Part 4050)

If the plan administrator is unable to locate a participant or beneficiary after a diligent search, the plan administrator must distribute the plan benefits of the Missing Participant either by purchasing an annuity contract from an insurance company or paying the value of the missing participant's benefit to PBGC. The rules for distributing the benefits of Missing Participants are described in detail in a separate package of instructions and forms (Schedule MP package). See PBGC's Web site for information, instructions, and forms concerning Missing Participants (at "Practitioners" page look for "Plan Terminations").

### I. Post-Distribution Certification (Form 501) (see 29 CFR §4041.29)

The plan administrator must file a completed PBGC Form 501 with PBGC within 30 days after the last distribution date for plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) for any affected party. **The due date for the Form 501 is unaffected by the timing of any distribution of residual assets, whether to the employer or to participants and beneficiaries.**

***Note:** A plan administrator who is distributing benefits for missing participants for whom designated benefits will be paid to PBGC must file the Form 501 within 30 days after the deemed distribution date rather than the last distribution date. (See Schedule MP Package for distribution and filing rules for missing participants.)*

PBGC may assess a penalty for late filing of a Form 501. However, PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1. *Note that the plan administrator may want to file the Form 501 before the end of this penalty-free zone to ensure that, if the plan is audited, the audit will take place within a reasonable time period. As required by ERISA section 4003(a), PBGC audits a statistically significant number of plans terminating in standard terminations. PBGC periodically selects plans to audit from among those plan terminations for which PBGC has recently received the Form 501. Therefore, if you want your plan to be included in an audit pool as soon as possible, you should file the Form 501 as soon as possible.*

### J. Requests for Deadline Extensions (see 29 CFR §4041.30)

PBGC may in its discretion extend a deadline for taking a required action to a later date. 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. PBGC will consider (1) the length of the delay and (2) whether ordinary business care and prudence in attempting to meet the deadline is exercised.

***Note:** PBGC will not extend the following statutory deadlines: (1) that the NOIT be issued not less than 60 days before the proposed termination date, (2) that the NOPB be issued by the time the plan administrator files the standard termination notice with PBGC, and (3) that the post-distribution certification, the Form 501, be filed with PBGC within 30 days after the last distribution date. Although PBGC may assess a penalty for late filing of a post-distribution certification, it will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1.*

If the plan administrator files a request for an extension with PBGC later than the 15th day before the applicable deadline, the plan administrator must include a justification for not filing the request earlier.

Requests for extensions must be in writing and —

Addressed to:

Pension Benefit Guaranty Corporation  
Standard Termination Compliance Division, Suite 930

Processing and Technical Assistance Branch  
1200 K Street, NW Washington, D.C. 20005-4026

E-mailed to: [standard@pbgc.gov](mailto:standard@pbgc.gov); or

Faxed to: (202) 326-4001.

#### **K. Maintaining Plan Records (see 29 CFR § 4041.5)**

Each contributing sponsor and the plan administrator of a terminated plan must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and 29 CFR Part 4041 for six years after the date the Form 501 is filed with PBGC. For rules on maintaining records electronically, see 29 CFR Part 4000, Subpart E (also available on PBGC's web site, [www.pbgc.gov](http://www.pbgc.gov): at the "Practitioners" page select "Code of Federal Regulations" under "Law, Regulations & Informal Guidance").

*Note: If a contributing sponsor or the plan administrator maintains information in accordance with this requirement, the other(s) need not maintain that information.*

These records include the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of the plan benefits of each individual.

The contributing sponsor or plan administrator, as appropriate, must make all such records available to PBGC upon request for inspection and photocopying (or, for electronic records, for inspection, electronic copying, and printout) at the location where they are kept (or another mutually agreeable location), and must submit the records to PBGC within 30 days after receipt of PBGC's written request or by a later date specified in the request.

#### **L. Forms and Instructions; Contacting Us**

You may obtain forms and instructions from PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) (at the "Practitioners" page look for "Plan Terminations").

If you have any questions about standard terminations, distress terminations, or missing participants, or if you need copies of this package, the distress termination package, or the Schedule MP package, call the toll-free telephone number at PBGC's Service Center for Plan Administrators and Pension Professionals (1-800-736-2444). (TTY/ TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 1-800-736-2444.)

E-mail addresses:

Standard Terminations ([standard@pbgc.gov](mailto:standard@pbgc.gov)) —

Questions about standard terminations and missing participants in a standard termination.

Distress Terminations ([distress.term@pbgc.gov](mailto:distress.term@pbgc.gov)) —

Questions about distress terminations and missing participants in a distress termination.

Fax: (202) 326-4001

**Note:** Do not fax or e-mail Form 500 (and schedules) or 501. See "Filing Methods" at section II.A.1 above.

### **III. GENERAL INSTRUCTIONS FOR STANDARD TERMINATION FORMS**

This part contains the following PBGC termination forms and instructions:

**Form 500** is the Standard Termination Notice that the plan administrator must file with PBGC pursuant to ERISA

section 4041(b)(2) and 29 CFR §4041.25 to advise PBGC of a proposed standard termination and to provide various plan data. Form 500 includes Schedule EA-S and Schedule REP-S.

**Schedule EA-S** is the Standard Termination Certification of Sufficiency that must be used by the enrolled actuary or, in certain situations, the plan administrator to certify that a single-employer plan terminating in a standard termination is projected to have sufficient assets to provide all plan benefits.

**Schedule REP-S** is the Designation of Representative form that the plan administrator may use to designate a representative or representatives to act on his or her behalf before PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-S also may be used to revoke a prior designation.

**Form 501** is the Post-Distribution Certification that the plan administrator must file with PBGC pursuant to ERISA section 4041(b)(3)(B) and 29 CFR §4041.29(a) to certify that the distribution of plan assets was completed in accordance with ERISA section 4041(b) and 29 CFR § 4041.28.

**How to Complete the Forms.** The filer should ensure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.
2. If an item provides a box or boxes to be checked, a check should be entered (written responses are not acceptable).
3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

PBGC will accept the original pre-printed forms, photocopies of the forms, or downloaded forms. However, all forms must have an original signature.

**Who Must File.** The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with PBGC. Schedule REP-S (or another form for designating a representative) must accompany the filing if it is made by a representative of the plan administrator.

***Note:** While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 500, Schedule REP-S or other designation (where the filing includes a designation), and Form 501 in all cases. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the plan does not designate a plan administrator or it designates the plan sponsor or contributing sponsor as the plan administrator, the forms must be signed by an officer of the plan sponsor or contributing sponsor who has the authority to sign on behalf of that entity. Schedule EA-S must be signed by an enrolled actuary unless the plan is a Code section 412(i) plan. In that case, the Schedule EA-S must be signed either by the enrolled actuary or by the plan administrator.*

#### **IV. SPECIFIC INSTRUCTIONS FOR STANDARD TERMINATION FORMS**

##### **A. Form 500**

Form 500 with Schedule EA-S and any required supplemental information must be filed simultaneously on or before the 180th day after the proposed termination date (see section II.A.1 for filing rules).

##### **Part I. Identifying Information**

1a-b Enter the complete name of the plan as it appears in the plan document, and the last day of the plan year.

- 2a-b Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.
- 2c Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.
- 2d If the EIN or PN entered in item 2c is different from that used in earlier filings with PBGC (including premium and reportable event filings for this plan), enter the EIN(s) and PN(s) previously reported.
- 2e Enter the same 6-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.
- 3a-c Enter the name, address, telephone number and e-mail address (3c is optional) of the individual, board, or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated, enter name of plan sponsor. If the same as 2a, enter "same."
- 3d-f Enter the name, address, telephone number and e-mail address (3f is optional) of person to be contacted for more information. If none is so designated or is the same as 3a, enter "same."

## Part II. General Plan Information

- 4a-b If the plan administrator is filing for a tax qualification determination from the IRS *and* wants to defer the deadline for the final distribution of plan assets until 120 days after receipt of a favorable determination letter, the plan administrator should submit the determination request to the IRS by the time the Form 500 is filed with PBGC. The IRS determination letter distribution deadline (see section II.H.1) is available to a plan that files with the IRS by the time the Form 500 is filed with PBGC. Enter the date you filed the determination request with IRS in 4b.
- 5 For purposes of 5, "multiple-employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer. If "Yes," is checked, a list of the names and EINs of all contributing sponsors of the multiple-employer plan must be attached to the Form 500.
- 6a-i Check reason for plan termination. If termination due to more than one reason, rank all reasons that apply in order of importance, *i.e.*, enter "1" in box for the most important reason, "2" in box for next most important reason, etc., until ranks entered for all reasons that apply.
- 7 Check statement(s) which describe(s) any change in the organization or structure of the contributing sponsor associated with the plan's termination.
- 8a For purposes of 8a, "active participants" includes both currently employed participants and separated, nonvested participants who are earning or retaining credited service under the plan.
- 9a-h For each box, enter the percent of currently employed participants whom you expect will be covered under no plan (9a) or one or more types of new or existing plans listed in 9b-g; currently employed participants should be included in each percent that applies.
- 10 If the number entered in either 9b, 9c, or 9d is greater than zero, check "Yes" if the types and levels of benefits under the new or existing defined benefit plan will be substantially the same as under the terminating plan for all affected participants (*i.e.*, participants who will be covered under the new plan). Otherwise, check "No."
- 11a-b The proposed termination date entered in item 11a may be later than the proposed termination date specified in the

NOIT, but it may not be later than the 90th day after the earliest date an NOIT is issued to any affected party.

*Example: The plan administrator begins issuing the NOIT on March 3, 2008, and completes the issuance to all affected parties on March 6, 2008, specifying a proposed termination date of May 5, 2008 (63 days after March 3, 2008). In item 11a, the plan administrator may specify a proposed termination date of any day from May 5, 2008, to and including June 1, 2008.*

12a Enter the earliest date any NOIT was issued to any affected party (see section II.A.2 for issuance rules).

12b Enter the latest date any NOIT was issued to any affected party.

The "latest" date of issuance of any NOIT is the date when the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. The plan administrator is responsible for taking all necessary and appropriate steps under the circumstances to locate all affected parties.

13 Enter the latest date on which any NOPB was issued to any affected party other than any employee organization (see section II.A.2 for issuance rules).

The "latest" date of issuance of any NOPB is the date when the last notice is issued to each person reasonably identified as being entitled to an NOPB on or before the date of filing of Form 500. The plan administrator is responsible for taking all necessary and appropriate steps under the circumstances to locate all affected parties.

14a If PBGC is advised, before the 60-day (or extended) period in 29 CFR §4041.26(a) ends, that a formal challenge to the plan termination has been initiated, PBGC *will* suspend the termination proceeding and will so advise the plan administrator in writing. If PBGC is advised of a challenge to the termination after the 60-day (or extended) period ends but before the termination procedure is concluded, PBGC *may* suspend the termination proceedings and, if it does, will so advise the plan administrator in writing. (See 29 CFR §4041.7.) For this purpose, the following definitions apply:

**Formal challenge to a termination** means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement, or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

**Existing collective bargaining agreement** means a collective bargaining agreement that (1) has not been made inoperative by a judicial ruling and (2) by its terms, 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 both 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.

14b If you checked "Yes" in item 14a, attach a copy of the formal challenge and a statement describing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

15 PBGC premiums are due for each year up to and including the plan year in which assets are distributed pursuant to the termination.

### Part III. Plans with Residual Assets

16a-b Section 4044(d) of ERISA permits a distribution of residual assets to the employer if (1) all liabilities of the plan to participants and their beneficiaries have been satisfied, (2) the distribution does not contravene any provision of law, and (3) the plan provides for such a distribution in these circumstances. In addition, in a plan that provided for

mandatory employee contributions, the portion of the residual assets attributable to those contributions must be equitably distributed to the participants who made such contributions (see ERISA section 4044(d)(3)). If residual assets will be returned to the employer, check "Yes" in item 16a and enter the estimated amount of residual assets in item 16b. If item 16a is checked "No," do not complete remainder of Part II; go to Part IV.

17a-c Unless there is a plan provision providing for a reversion of residual assets to the employer, residual assets cannot revert to the employer. However, even if a plan has such a provision, under ERISA section 4044(d)(2), a plan provision permitting an employer to recover residual assets, or a plan amendment increasing the amount of such assets that may revert to the employer, is not effective before the end of the fifth calendar year following the adoption of the amendment unless:

- (1) the amendment was adopted before December 18, 1988; or
- (2) a plan that contains the provision has contained such a provision since the effective date of the plan.

If you checked "Yes" to item 17b, go to item 18; if you checked "No" to item 17b, complete item 17c.

18a-c Check "Yes" in item 18a if the plan has been involved in a spin-off/termination transaction. Otherwise, check "No," do not complete the remainder of Part II, and go to Part IV.

If a transfer of assets or liabilities is part of a spin-off/termination transaction, generally the termination would not be recognized and any asset reversion to the contributing sponsor would be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries, unless the requirements set forth in the Guidelines (see Appendix A, Glossary of Terms, for definition) are satisfied as follows:

- (1) All participants and beneficiaries in the original plan who are covered by the ongoing plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated (see sections II.C and II.D);
- (2) The plan benefits under the ongoing plan of participants and beneficiaries described in (1) above must be fully vested as of the termination date of the terminating plan; and
- (3) All plan benefits described in (2) above must be provided for by the purchase of annuity contracts that represent irrevocable commitments for the plan benefits of each participant or beneficiary.

If "Yes" is checked in item 18a, and "No" or "N/A" is checked in 18b, attach a statement describing the transaction and explaining why the Guidelines were not, or did not need to be, followed.

#### **Part IV. Plan Administrator Certification**

Part IV should be completed and signed by the plan's administrator.

##### **B. Schedule EA-S**

Schedule EA-S must be used to certify that a plan terminating in a standard termination is projected to have sufficient assets to provide all plan benefits as of the proposed distribution date, as required under ERISA section 4041(b)(2)(A).

The Schedule EA-S must be signed by the enrolled actuary, unless the plan is a Code section 412(i) plan. For a Code section 412(i) plan, either the enrolled actuary or the plan administrator may sign the Schedule EA-S



## Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 500 that you filed, or are filing, with PBGC. If the plan covers the employees of more than one contributing sponsor, the EIN of the contributing sponsor with the greatest number of participants should be used.

## Part II. Code Section 412(i) Plan

2-3 Check "Yes" to item 2 if this is a plan described in Code section 412(i) and enter the name, address and telephone number of the insurer in item 3. If "No" is checked, leave item 3 blank and go to Part III.

## Part III. Plan Sufficiency

Part III must be completed by the plan's enrolled actuary if "No" was checked to item 2. If "Yes" was checked, either the plan administrator or enrolled actuary may complete Part III.

4 Enter the proposed distribution date. The proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the filing date of the Form 500 (see section II.A for rules on computation of time).

*Example: The plan administrator files the Form 500 on March 24, 2008. The earliest possible proposed distribution date is May 24, 2008. The latest possible proposed distribution date is November 19, 2008.*

For the rules governing the time period in which the actual distribution date may fall, see section II.H.1. The actual distribution date need not match the proposed distribution date.

5 Check whether the value of the plan assets are projected to be sufficient to provide all plan benefits, as of the proposed distribution date.

6 Enter the estimated fair market value of the plan assets available to pay for plan benefits, valued as of the proposed distribution date. Plan assets available to pay for plan benefits include all plan assets remaining after subtracting all liabilities (other than liabilities for future plan benefits that will be provided when assets are distributed). Liabilities include, e.g., benefit payments due before the distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; and expenses, fees, and other administrative costs.

The enrolled actuary may include as a plan asset for this purpose the value of a commitment by a contributing sponsor or controlled group member to contribute any additional sums necessary to make a plan sufficient for all plan benefits, in accordance with the rules in 29 CFR § 4041.21(b)(1). (See Appendix D for a model commitment to make a plan sufficient.)

7 Enter the estimated present value of plan benefits as of the proposed distribution date.

**Value of Annuity Contracts.** The value of plan benefits that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such plan benefits.

**Note:** *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 500 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before item 7 is completed and may enter an estimated cost in item 7.*

## **Value of Other Benefits (excluding payments to PBGC for missing participants)**

### **I. General**

If a participant or beneficiary is to receive benefits as a lump sum, the lump sum must be at least the minimum determined in accordance with the rules of Code sections 411(a)(11) and 417(e)(3) and the regulations thereunder. (See also ERISA sections 203(e) and 205(g)(3).) Similar rules apply to other non-annuity forms of payment.

#### *Caution:*

The rules of Code sections 411(a)(11) and 417(e)(3) specify only minimum values for lump sums. Plans frequently also contain a second set of assumptions and provide that the benefit will be based on whichever set of assumptions yields the greater lump sum. In such cases, each participant's or beneficiary's lump sum using the second set of assumptions must be compared to that participant's or beneficiary's minimum required lump sum, and the higher of the two lump sums must be paid. On audit, PBGC has found that some plans paid only the minimum required lump sum, improperly ignoring alternative plan provisions that would have resulted in a higher lump sum for a participant or beneficiary.

The discussion in II through III below is PBGC's summary of the applicable rules based on Title IV of ERISA, the Code, and implementing regulations and other guidance. Plan administrators should always refer to these sources to ensure that they complete the distribution in accordance with applicable law.

### **II. Assumptions for Minimum Lump Sums**

The plan must calculate the minimum lump sum value based on the annuity starting date, using both the interest rate and the mortality table specified in the Code.

In the absence of evidence establishing that another date is the "annuity starting date" under the Code, the distribution date is the "annuity starting date" for purposes of (1) calculating the present value of plan benefits that may be provided in a form other than by purchase of an irrevocable commitment from an insurer (*e.g.*, in selecting the interest rate(s) to be used to value a lump sum distribution), and (2) determining whether plan benefits will be paid in such other form. (See Appendix A for the definition of distribution date.)

**Note:** For example, if the lump sum election form given to a participant does not specify the annuity starting date of a qualified joint and survivor annuity commencing immediately and there is no other evidence establishing an annuity starting date, the distribution date is the "annuity starting date" for the purposes described above.

The age (or ages, when valuing a joint and survivor benefit) used in the calculation of the lump sum value must be the age(s) as of the annuity starting date rather than as of the plan's termination date or as of the date of the participant's termination of employment. The plan may specify a reasonable method to deal with fractional ages.

#### *Caution:*

Some participants' and beneficiaries' ages will almost certainly change if the distribution is delayed beyond the date as of which calculations were done.

The present value of a lump sum cannot be less than the present value of the normal retirement benefit calculated using the applicable interest rate and the applicable mortality table. (See Treas. Reg. §1.417(e)-1(d)(1).)

Guidance on calculating minimum lump sums both for plans that terminate before January 1, 2008, and for plans that terminate on or after January 1, 2008, is posted on PBGC's web site, [www.pbgc.gov](http://www.pbgc.gov) (on the Practitioners Page). This guidance includes an explanation of how the Pension Protection Act of 2006 affects these calculations.

**Note regarding use of PBGC interest rates :** The Retirement Protection Act of 1994 eliminated the linkage between PBGC interest rates and minimum lump sum amounts under section 417(e) of the Code. Some plans continue to pay lump sums based on PBGC interest rates where that would provide a greater lump sum than the minimum lump sum. See PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) for information on PBGC lump sum interest rates (at the "Practitioners" page look for "Interest Rates").

---

### III. Plan Amendments

In general, a plan amendment may not cut back accrued benefits (see Code section 411(d)(6)). **Note:** *A plan administrator may take into account a plan amendment that is adopted after a plan's termination date, only if certain conditions are met (see section II.H.3).*

**Value of Designated Benefits Paid to PBGC.** The amount of designated benefits to be paid to PBGC for missing participants is determined under 29 CFR sections 4050.5 and 4050.12(c)(1).

**Special Rule for Majority Owners.** A majority owner may elect to forgo receipt of all or part of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits if (1) the majority owner's election is in writing; (2) in any case in which the plan would require the spouse of the majority owner to consent to distribution of the owner's plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election; (3) the election and consent occur during the time period beginning with the date of issuance of the first NOIT and ending with the date of the last distribution; and (4) neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in ERISA section 206(d)(3)). (See 29 CFR § 4041.21(b)(2).)

An election to forgo receipt of plan benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the plan benefits of the majority owner before any assets may revert to the contributing sponsor.

**Note:** Majority owner status is determined at the time of the election.

- 8 Enter the estimated total amount of residual assets.
- 9 Enter that portion of the amount in item 8 that will be distributed to the employer pursuant to ERISA section 4044(d). If the amount entered in item 9 is \$1 million or more and if any benefits are to be distributed other than through annuity contracts, you must attach the statement described in item 12.
- 10 Enter that portion of the amount in item 8 that will be distributed to participants. This amount includes the amount of the residual assets, if any, that are attributable to mandatory employee contributions.

**Note:** The sum of the amounts in item 9 and item 10 must equal the amount in item 8.

- 11 Check "Yes" if the plan has ever required that participants contribute to the plan.

If there are residual assets and the plan required employee contributions, the portion of the residual assets attributable to such employee contributions must be determined pursuant to ERISA section 4044(d)(3).

- 12 If the amount entered in item 9 is \$1 million or more *and* if any benefits are to be distributed other than through annuity contracts, attach a statement that describes the interest rates and mortality tables that will be used to value the plan benefits that are to be distributed other than through the purchase of annuity contracts and the source, *e.g.*, that the interest rate is the rate specified in the plan as of the appropriate date (see instructions to item 7 on page 25). (If the interest rate is PBGC rate, include the deferral factors or rate structure that will be used to value the

benefits for participants who are not immediately eligible for an annuity.)

#### **Part IV (Enrolled Actuary Certification) and Part V (Plan Administrator Certification for Code Section 412(i) Plans)**

Based on who completed Part III, either Part IV should be completed and signed by the plan's enrolled actuary, or Part V should be completed and signed by the plan administrator.

#### **C. Schedule REP-S**

Schedule REP-S may be used to designate a person or persons to represent you before PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-S (or another form for designating a representative) must be filed simultaneously with Form 500 and Schedule EA-S if Form 500 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-S at any time that you wish to designate a representative or representatives in connection with a standard termination. Schedule REP-S also may be used to revoke a prior designation.

##### **Part I. Identifying Information**

The information entered in Part I should be the same as that entered in Part I of the Form 500 that you filed, or are filing, with PBGC. If the plan covers the employees of more than one contributing sponsor, the EIN of the contributing sponsor with the greatest number of participants should be used.

##### **Part II. Designation of Representative(s)**

3 The plan administrator must enter his or her name in item 3.

4a-f Enter the name, address, telephone number, and e-mail (this last item is optional) for up to two representatives.

5 If there are any matters relating to the termination of the plan that you wish to exclude from the representative's authorization to act on your behalf, list the matters in item 5.

##### **Part III. Retention/Revocation of Prior Designation(s)**

If you want a previous designation for the same termination to remain in effect, check "Yes" in items 6a and 6b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect. If "No" is checked for item 6a, 6b should be left blank.

##### **Part IV. Signature of Plan Administrator**

The plan administrator must sign the Schedule REP-S. PBGC will accept the original pre-printed forms, photocopies of the forms, or downloaded forms. However, all forms must have an original signature.

*Note: If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan does not designate a plan administrator or it designates the plan sponsor or contributing sponsor as the plan administrator, this form must be signed by an officer of the plan sponsor or contributing sponsor who has the authority to sign on behalf of that entity.*

#### **D. Form 501**

The plan administrator must file Form 501, the Post-Distribution Certification, with PBGC within 30 days after the last

distribution date for any affected party. PBGC may assess a penalty for late filing of a Form 501. However, PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1. The distribution of plan assets in satisfaction of plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) must generally be completed by the later of (1) 180 days after the expiration of PBGC's 60-day (or extended) review period for determining whether to issue a notice of noncompliance, or (2) the IRS determination letter distribution deadline described in section II.H.1 and 29 CFR §4041.28(a)(1)(ii). (See also section II.H.1 for rules for an extension of the distribution deadline.)

*Note: The plan administrator of a plan with one or more missing participants must file the Schedule MP (including attachments) with the Form 501. (See section II.H.5 and the Schedule MP Package.)*

## **Part I. Identifying Information**

1a-c The information entered in item 1 should be the same as that entered in Part I of the PBGC Schedule EA-S that you filed with PBGC. If the plan covers the employees of more than one contributing sponsor, the EIN of the contributing sponsor with the greatest number of participants should be used.

2 Enter PBGC Case Number, which will be on PBGC's letter acknowledging receipt of the Form 500 for this plan.

## **Part II. Distribution Information**

3a Enter the date on which the distribution of assets in satisfaction of plan benefits was completed; do not enter the date that residual assets were distributed (see II.H.1).

Exception: Enter the deemed distribution date if the plan is or will be paying designated benefits to PBGC for one or more missing participants (see II.H.5).

3b If your distribution deadline is the IRS determination letter distribution deadline described in section II.H.1, enter the date of receipt of the IRS determination letter with respect to the plan's tax-qualification status upon termination.

4 Check "Yes" if you provided the name and address of the insurer(s) no later than 45 days before the date of distribution to each individual other than: (1) an unlocated participant or beneficiary; or (2) an individual whose benefit was distributed as a nonconsensual lump sum.

5 If you are not able to locate a participant or beneficiary after a diligent search, you must either purchase an irrevocable commitment from an insurer for that Missing Participant or pay the Missing Participant's benefit to PBGC.

If the plan has one or more Missing Participants, check "No" on line 5 and submit a Schedule MP with the Form 501.

6 If you checked "Yes" to item 6, enter latest date that annuity contracts, certificates, or written notices were provided to each individual for whom an annuity was purchased,

If you checked "No" or "N/A" to item 6, attach a statement explaining why a copy of the annuity contract, certificate, or written notice was not provided, your efforts to provide copies, and when copies were expected to be provided to any individuals who had not received them by the time you filed the Form 501.

- 7 Enter the name(s) and address(es) of the insurer(s), if any, that made an irrevocable commitment to provide plan benefits under the plan, along with the annuity contract numbers. The name(s) must be the complete official name(s) of record for the insurer(s).
- 8 Enter the name, address, and telephone number of the person to be contacted for access to plan or employer records used to compute benefits. If such records are in the possession of more than one person, attach a listing that provides this information for each person who has possession of plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the Form 501 is filed with PBGC.
- 9 In reporting the counts of participants or beneficiaries who received each form of distribution (or received no distribution), include in 9a, the "Annuities" count, those Missing Participants for whom annuities were purchased. Include in 9c, the "Designated benefits paid to PBGC" count, those Missing Participants whose designated benefits were paid to PBGC. For participants or beneficiaries who received lump sums, two counts should be entered: (1) the number of participants and beneficiaries who received consensual lump sums and (2) the number of participants and beneficiaries who received nonconsensual lump sums.

In reporting the values for each form of distribution follow the same rules as for the counts., e.g., include annuities purchased for Missing Participants in "Annuities." For the values, use the actual cost to the plan of the distribution (e.g., the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract).

The counts and values reported should include all distributions made after the plan's termination date that were made in the normal course of business (e.g., to individuals who retired or terminated employment while you were administering the plan during the termination process), as well as distributions made to close out the plan at termination. If this filing is an amended Form 501, see instructions at beginning of Part I.

**Note:** If column (1) of item 9e (Total count of participants and beneficiaries) does not match the total count of participants and beneficiaries reported on the Form 500, item 8d, or if the total value of distributions reported in column (2) of item 9e (Total value of distributions) is less than the estimated present value of plan benefits reported on item 7 on Schedule EA-S to Form 500, attach a statement to the Form 501 explaining the difference(s).

### **Part III. Plan Administrator Certification**

Part III should be completed and signed by the plan's administrator.

## APPENDIX A: GLOSSARY OF TERMS

**Affected party** means, with respect to a plan--

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;
- (3) Each alternate payee under an applicable qualified domestic relations order, as defined in ERISA section 206(d)(3);
- (4) Each employee organization that currently represents any group of participants;
- (5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate; and
- (6) PBGC.

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

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

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

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

**Controlled group** means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under 29 CFR § 4001.3. Notwithstanding the preceding sentence, for purposes of determining the persons liable for contributions under Code section 412(c)(11)(B) or ERISA section 302(c)(11)(B), or for premiums under ERISA section 4007(e)(2), a controlled group also includes any group treated as a single employer under Code section 414(m) or (o). Any reference to the controlled group of a plan means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

**Deemed distribution date** means (1) the last day of the period in which a distribution may be made under 29 CFR Part 4041, or (2) if the plan administrator selects an earlier date that is no earlier than the date when all benefit distributions have been made under the plan except for distributions for missing participants whose designated benefits are paid to PBGC, such earlier date.

**Distribution date** means:

- (1) Except as provided in paragraph (2) —
  - (a) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and
  - (b) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or
- (2) The deemed distribution date in the case of a designated benefit paid to PBGC in accordance with 29 CFR Part 4050 (dealing with missing participants).

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

**Guidelines** means the Joint Implementation Guidelines issued by PBGC, the Department of the Treasury, and the Department of Labor on May 24, 1984, for processing defined benefit pension plan terminations involving asset reversions to the contributing sponsor.

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

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

**IRS** means the Internal Revenue Service.

**Majority owner** means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of Code section 414(b) and (c)) 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.

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

**Missing participant** means a participant or beneficiary entitled to a distribution under a terminating plan whom (after a diligent search) the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living. (See the Schedule MP Package for rules for making distributions to missing participants.)

**Notice of intent to terminate** means the notice of a proposed termination of a single-employer plan, as required by ERISA section 4041(a)(2) and 29 CFR § 4041.23 (in a standard termination) or § 4041.43 (in a distress termination).

**Notice of noncompliance** means a notice issued to a plan administrator by PBGC pursuant to 29 CFR §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 29 CFR §4041.24.

**Participant** means--

- (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;
- (2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and
- (3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.



**Plan benefits** means benefit liabilities determined as of the termination date (taking into account the rules in 29 CFR §4041.8(a)). (See section II.H.3.)

**Proposed distribution date** means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files the Form 500 with PBGC.

**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 termination notice.

**Residual assets** means the plan assets remaining after all plan benefits and other liabilities (*e.g.*, PBGC premiums) of the plan have been satisfied (taking into account the rules in 29 CFR § 4041.8(b)). (See section II.H.3.)

**Section 412(i) plan** means a plan described in Code section 412(i) and the regulations thereunder.

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

**Spin-off/termination transaction** means 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.

**Standard termination** means the voluntary termination, in accordance with ERISA section 4041(b) and 29 CFR Part 4041, Subpart B, of a single-employer plan that is able to provide for all plan benefits when plan assets are distributed.

**Standard termination notice** means the notice filed with PBGC pursuant to 29 CFR § 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.

## APPENDIX B: MODEL NOTICE OF INTENT TO TERMINATE (NOIT)

(See section II.C for the requirements for an NOIT.)

Month/Day/Year

### NOTICE OF INTENT TO TERMINATE [PLAN NAME]

The [plan administrator] intends to terminate the [plan name] in a standard termination. The law requires that we provide you with written notice of the proposed termination.

In order for this plan to terminate, plan assets must be sufficient to provide all plan benefits. If the proposed termination does not occur, the [plan administrator] will notify you in writing.

**NAME AND EIN OF EACH CONTRIBUTING SPONSOR:** [Name] , EIN: [#####]

**PN:** [###]

**FOR CURRENT RETIREES:** [Include whichever statement applies]

- The proposed termination will not affect your [monthly] benefit amount.
- The proposed termination will affect your [monthly] benefit amount as follows: [explain]

**PROPOSED TERMINATION DATE:** MM/DD/YY

We will notify you in writing if the proposed termination date is changed to a later date.

**CONTACT PERSON:** If you have any questions concerning the plan's termination, contact:

[Name, Address, Phone Number]

**CESSATION OF ACCRUALS:** [Include one of the following statements, whichever applies.]

- Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;
- A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of [insert either the proposed termination date or a specified date before the proposed termination date, whichever applies], whether or not the plan is terminated; or
- Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of [insert specified date before the NOIT was issued].

**OBTAINING A SUMMARY PLAN DESCRIPTION:**

- If you wish to obtain a copy of the summary plan description for your plan, you may [call or write. . .] [Include, if applicable: A reasonable fee to cover the cost of furnishing the SPD may be charged. Please inquire at the time of your request.]

**NOTIFICATION OF PLAN BENEFITS:**

- The [plan administrator] will provide you, at a later date, written notification regarding your benefits.

**IDENTITY OF INSURER(S):** [For all participants and beneficiaries, except those who will receive benefits in the form of a nonconsensual lump sum, include whichever statement applies.]

- If you will receive a benefit in the form of an annuity, the [plan administrator] intends to purchase the annuity contract for your benefit from (one of) the following insurer(s) listed below. If we decide to select a different insurer, we will notify you in writing no later than 45 days before we purchase the annuity.

[Insurer(s) Name and Address]

- If you will receive a benefit in the form of an annuity, the [plan administrator] intends to purchase an annuity contract for your benefit from an insurer to be selected at a later date. We will notify you in writing of the name and address of the insurer(s) from whom, or from among whom, we intend to purchase the annuity at least 45 days before we make the purchase.

**END OF PBGC GUARANTEE:**

- After plan assets have been distributed to provide all of your benefit, either through the purchase of an annuity contract or in another form permitted by the plan, PBGC's guarantee of your benefit ends.

**STATE GUARANTY ASSOCIATION COVERAGE:** [Required only first time insurer(s) is/are identified]

- See enclosed notice.

## **APPENDIX C: MODEL NOTICE OF STATE GUARANTY ASSOCIATION COVERAGE OF ANNUITIES**

Your pension plan may pay you your pension benefit in the form of an annuity purchased from a licensed insurance company. Once the plan purchases an annuity for you, the insurance company will be responsible for paying your benefit.

All states, Puerto Rico and the District of Columbia have "guaranty associations." The purpose of a guaranty association is to protect policyholders, up to specified limits, in the event the insurance company is financially unable to meet its obligations.

If you receive your pension benefits in the form of an annuity and the insurance company becomes unable to pay, a guaranty association may be responsible for all, part or none of your annuity. Generally, where you live at the time the insurance company is unable to pay determines which guaranty association is responsible. In certain circumstances, other factors, such as where the insurance company is licensed to do business, determine which guaranty association may be responsible.

Each guaranty association has dollar limits on the extent of its coverage. In many states, guaranty association coverage limits are \$100,000 for individual annuities and \$300,000 for all insurance contracts with the same insurance company combined. However, state laws vary and can change over time, and different states may calculate the value of annuities differently.

This notice is to help you understand the general nature of the guaranty association protection of the annuity you may receive. It is only a summary. If you need information now or in the event the insurance company fails, a list of the addresses and telephone numbers of guaranty association offices is available by contacting PBGC's Customer Contact Center, PO Box 151750, Alexandria, VA 22315-1750 (telephone: 1-(800) 400-7242 or by visiting PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) (at the "Workers & Retirees" page look for "State life and health insurance guaranty association offices" under "Benefit Information").

**APPENDIX D: MODEL COMMITMENT TO MAKE A PLAN  
SUFFICIENT FOR PLAN BENEFITS**

This agreement, by and between [name of company] (the "Company") and [name of plan] (the "Plan") shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001-1461; and

Whereas the Company is [describe entity, e.g., corporation, partnership]; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. §§ 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301-1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for plan benefits, as described in section 29 CFR § 4041.2; and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for plan benefits, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. § 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution of assets is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all plan benefits.
2. For the sole purpose of determining whether the Plan is sufficient to provide all plan benefits, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. § 1344.
3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Company: \_\_\_\_\_

Plan: \_\_\_\_\_