

Justification for No Material or Nonsubstantive Change to Currently-Approved Collection

AGENCY: Pension Benefit Guaranty Corporation (PBGC)
TITLE: Application for Special Financial Assistance (29 CFR part 4262)
STATUS: OMB control number 1212-0074; expires 01/31/2023
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The Pension Benefit Guaranty Corporation (PBGC) is making changes that are not material to three currently-approved documents used by multiemployer plans to apply for Special Financial Assistance (SFA) under section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) and part 4262 of PBGC's regulations. A plan must submit an application to PBGC, so that PBGC can review the plan's eligibility for SFA and amount of requested SFA.

Under § 4262.6(e)(1) of PBGC's regulations, a plan applying for SFA must amend its governing plan document to affirm that the plan will be administered in compliance with the conditions and restrictions on plans that receive SFA. Under § 4262.7(e)(1), this amendment must be included with the plan's application for SFA.

Under § 4262.6(e)(2) of PBGC's regulations, a plan that has suspended benefits and that is applying for SFA must amend its governing plan document to state that it will reinstate benefits in accordance with guidance from the Department of the Treasury. Under § 4262.7(e)(2), this amendment, if required, must be included with the plan's application for SFA along with a certification that the amendment will be timely adopted.

PBGC provides three model documents that plans may use when applying for SFA: (1) a model amendment on compliance, (2) a model amendment on reinstatement of benefits, and (3) a model certification of timely adoption of the amendment on reinstatement.

PBGC is making minor changes to the three model documents in part to better reflect the language of the required amendments that was added for clarity in the final rule. PBGC is modifying the language to reflect more accurately the required wording as stated in §§ 4262.6(e)(1), 4262.6(e)(2), and § 4262.7(e)(2). Other changes are intended to assist filers in complying with the amendment requirements. These changes do not affect the time or cost burden of submitting an application for SFA. PBGC is simply modifying the wording of the model documents that the plans may use. The changes to the 3 model documents are in red below:

CERTIFICATION THAT ~~THE~~ PLAN AMENDMENT TO REINSTATE SUSPENDED BENEFITS WILL BE TIMELY ADOPTED

As required by 29 C.F.R. § 4262.7(e)(2) for the application for special financial assistance for the [NAME OF PLAN] (the "Application" for the "Plan"), we, ~~the~~ [CHOOSE EITHER: 'the' OR 'as'] members of the Board of Trustees of the Plan hereby certify that the proposed amendment to the [NAME AND DATE OF CURRENT PLAN DOCUMENT] to reinstate benefits under the Plan that have been suspended under [CHOOSE EITHER: 'section 305(e)(9) of ERISA' OR 'section 4245(a) of ERISA due to plan insolvency'], which proposed amendment is submitted

herewith as part of the Application, will be timely adopted upon approval by the Pension Benefit Guaranty Corporation of the Application.

[INCLUDE ONLY IF LESS THAN THE ENTIRE BOARD OF TRUSTEES IS SIGNING:] Section *[REFERENCE TO APPROPRIATE PROVISION]* of the *[NAME AND DATE OF PLAN'S CURRENT TRUST DOCUMENT]*, as amended, authorizes *[DESCRIBE HOW TRUST DOCUMENT OR OTHER GOVERNING DOCUMENT AUTHORIZES THE SIGNERS BOTH TO SIGN ON BEHALF OF ENTIRE BOARD]; AND TO COMMIT THE BOARD TO TIMELY ADOPT THE AMENDMENT AFTER THE PLAN'S APPLICATION FOR SPECIAL FINANCIAL ASSISTANCE IS APPROVED*].

AMENDMENT TO THE [NAME OF PLAN DOCUMENT]

Background

1. The Board of Trustees of the *[PLAN NAME]* (the "Board") has applied to the Pension Benefit Guaranty Corporation ("PBGC") under section 4262 of the Employment Retirement Income Security Act of 1974, as amended ("ERISA"), and 29 C.F.R. § 4262 for special financial assistance for the *[PLAN NAME]* (the "Plan").
2. 29 C.F.R. § 4262.6(e)(1) requires that the plan sponsor of a plan applying for special financial assistance amend the **written instrument governing the** plan to require that the plan be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and 29 C.F.R. part 4262 and that the amendment be contingent upon approval by PBGC of the plan's application for special financial assistance.
3. Under *[REFERENCE TO APPROPRIATE PROVISION]* of the *[NAME AND DATE OF CURRENT PLAN DOCUMENT]* (the "Plan Document"), the Board has the power to amend the Plan Document.
4. *[INCLUDE ONLY IF LESS THAN THE ENTIRE BOARD OF TRUSTEES IS SIGNING:]* Section *[REFERENCE TO APPROPRIATE PROVISION]* of the *[NAME AND DATE OF PLAN'S CURRENT TRUST DOCUMENT OR OTHER GOVERNING DOCUMENT]*, as amended, authorizes *[DESCRIBE HOW TRUST DOCUMENT OR OTHER GOVERNING DOCUMENT AUTHORIZES THE SIGNERS TO SIGN ON BEHALF OF ENTIRE BOARD]*. *[REFERENCE TO APPROPRIATE PROVISION]* of the *[NAME AND DATE OF PLAN'S CURRENT TRUST DOCUMENT]*, as amended, authorizes *[DESCRIBE HOW TRUST DOCUMENT AUTHORIZES THE SIGNERS TO SIGN ON BEHALF OF ENTIRE BOARD]*.

Amendment

The Plan Document is amended by adding a new *[ARTICLE/SECTION #]* to read as follows:

~~"The following provisions applies notwithstanding anything to the contrary in this or any other document governing the Plan.—~~

“Beginning with the SFA measurement date selected by the Plan in the Plan’s application for special financial assistance, **the Plan notwithstanding anything to the contrary in this or any other document governing the Plan, the plan** shall be administered in accordance with the restrictions and conditions specified in section 4262 of ERISA and 29 C.F.R.CFR part 4262. This amendment is contingent upon approval by PBGC of the Plan’s application for special financial assistance.”

**AMENDMENT TO THE
[NAME OF PLAN DOCUMENT]
TO REINSTATE SUSPENDED BENEFITS**

Background

1. The Board of Trustees of the [PLAN NAME] (the “Board”) has applied to the Pension Benefit Guaranty Corporation (“PBGC”) under section 4262 of the Employment Retirement Income Security Act of 1974, as amended (“ERISA”), and 29 C.F.R. § 4262 for special financial assistance for the [PLAN NAME] (the “Plan”).
2. 29 C.F.R. §§ 4262.6(e)(2) and 4262.15(a) require that the plan sponsor of a plan that is applying for special financial assistance and that suspended benefits under section 305(e)(9) or 4245(a) of ERISA amend the **written instrument governing the plan** to reinstate such suspended benefits and provide make-up payments in accordance with guidance issued by the Secretary of the Treasury under section 432(k) of the Internal Revenue Code (which was issued in IRS Notice No. 2021-38).
3. 29 C.F.R. § § 4262.7(e)(2) requires that an application for special financial assistance for a plan that suspended benefits under section 305(e)(9) or 4245(a) of ERISA include a copy of the proposed plan amendment required under **§section 4262.6(e)(2) of ERISA** and certification by the plan sponsor that the plan amendment will be timely adopted. **Section 4262.7(e)(2) further requires (1) that such certification be signed either by all members of the plan’s board of trustees or by one or more trustees duly authorized both to sign the certification on behalf of the entire board and to commit the board to timely adopting the amendment after the plan’s application for special financial assistance is approved, and (2) that each signature be accompanied by the printed name and title of the signer.**
4. Benefits under the Plan have been suspended under [*CHOOSE EITHER: ‘section 305(e) (9) of ERISA’ OR ‘section 4245(a) of ERISA due to plan insolvency’*].
5. Under [*REFERENCE TO APPROPRIATE PROVISION*] of the [*NAME AND DATE OF CURRENT PLAN DOCUMENT*] (the “Plan Document”), the Board has the power to amend the Plan Document.
6. [*INCLUDE ONLY IF LESS THAN THE ENTIRE BOARD OF TRUSTEES WILL BE SIGNING:*] Section [*REFERENCE TO APPROPRIATE PROVISION*] of the [*NAME AND DATE OF PLAN’S CURRENT TRUST DOCUMENT*], as amended, authorizes [*DESCRIBE HOW TRUST DOCUMENT OR OTHER GOVERNING DOCUMENT AUTHORIZES THE SIGNERS BOTH TO SIGN ON BEHALF OF THE ENTIRE BOARD AND TO COMMIT THE BOARD TO*

TIMELY ADOPTING THE AMENDMENT AFTER THE PLAN'S APPLICATION FOR SPECIAL FINANCIAL ASSISTANCE IS APPROVED].