



DISTRESS TERMINATION FILING INSTRUCTIONS

This package contains:

Instructions
PBGC Form 600
Schedule P
Schedule F
PBGC Form 601
Schedule EA-D
PBGC Form 602

Paperwork Reduction Act Notice

PBGC needs this information to ensure that a distress termination under section 4041(c) of ERISA is completed in accordance with statutory and regulatory requirements and to facilitate the payment of benefits to participants. 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(c) of ERISA and 29 CFR Part 4041, Subparts A and C. 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. Under the Paperwork Reduction Act, 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 the average time and cost for each distress filing to comply with these requirements is as follows: 80 hours and \$15,720. 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 this time estimate or suggestions for making the forms simpler, please send your comments to the Pension Benefit Guaranty Corporation, Office of General Counsel, 445 12th Street SW, Washington, DC 20024-2101.

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NOTE: *If you have questions about any of the information in these instructions, please call PBGC’s Corporate Finance and Restructuring Department at (202) 326-4070 or send an email to distress@pbgc.gov.*

I. OVERVIEW

A plan administrator of a single-employer plan covered by PBGC's termination insurance program that does not have sufficient assets to provide for all benefit liabilities may voluntarily terminate the plan only if each contributing sponsor and each member of a contributing sponsor's controlled group satisfy one of four statutory distress criteria. Briefly, the four-statutory distress criterion are —

1. Liquidation in bankruptcy or insolvency proceedings;
2. Reorganization in bankruptcy or insolvency proceedings with court approval of the termination;
3. Inability to pay debts when due and to continue in business unless a distress termination occurs; and
4. Unreasonably burdensome pension costs due solely to declining covered employment in all single-employer plans for which the person seeking the distress termination is a contributing sponsor.

In addition, the plan administrator must follow specific steps and meet specific deadlines for each plan that it seeks to terminate. These steps and deadlines are briefly summarized below and explained in more detail in sections II through IV of this package. Step 1 is highly recommended but not required.

Step 1: Schedule a pre-filing consultation call with PBGC's Corporate Finance and Restructuring Department to discuss the filing process and ensure the filing of a distress termination is appropriate given the sponsor's specific circumstances. This consultation may identify potential issues preventing a distress termination of a particular plan, determine if the commencement of an agency-initiated termination of the pension plan is warranted, and assist PBGC in determining whether a waiver of one or more filing obligations is appropriate. Contact PBGC by sending an email to distress@pbgc.gov or calling (202) 326-4070.

Step 2: Select a proposed termination date.

Step 3: Identify which of the four distress criteria can be satisfied by each contributing sponsor and controlled group member. Note: Each entity can satisfy a different criterion, but all must satisfy at least one criterion.

Step 4: Issue a Notice of Intent to Terminate (NOIT) to affected parties at least 60 days and, except with PBGC's approval, not more than 90 days before the proposed termination date. Affected parties (see Glossary, Appendix A) include participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, employee organizations representing participants and PBGC.

NOTE: *The NOIT filed with PBGC must use PBGC Form 600, Schedule P, and Schedule F. (See section II.C.)*

Step 5: Beginning on the proposed termination date, reduce the benefits of participants in pay status to the estimated benefit amounts payable upon termination under ERISA in accordance with 29 CFR Part 4022, Subpart D. (See section II.B). See PBGC's website, www.pbgc.gov, for these regulations (at "Employers & Practitioners" page select "Law & Regulations"). For PPA 2006 bankruptcy terminations (see Note at Step 6) benefits are to be reduced as of the proposed termination date, based on the estimated benefit amounts payable as of the bankruptcy filing date.

Step 6: File a Distress Termination Notice (PBGC Form 601, including the Schedule EA-D) with PBGC on or before the 120th day after the proposed termination date. (See section II.E.)

Step 7: If a plan meets the criteria for a distress termination under ERISA section 4041 and PBGC determines that the plan has insufficient assets to pay benefits guaranteed by PBGC, PBGC will take over the plan and, as statutory trustee, pay benefits in accordance with Title IV of ERISA. PBGC personnel will contact the plan administrator to collect information needed to complete trusteeship of the plan.

NOTE: *If the plan has sufficient assets to provide at least all guaranteed benefits, see Appendix C for the requirements for notifying participants, distributing benefits (including benefits of missing participants), and filing a Post-Distribution Certification (PBGC Form 602) with PBGC. (For PPA 2006 bankruptcy terminations, the bankruptcy filing date is treated as the plan termination date for purposes of guaranteed benefits and priority category 3 benefits.)*

NOTE: *Whenever a plan terminates in a distress termination without sufficient assets to pay all benefit liabilities, the contributing sponsor(s) and each controlled group member are jointly and severally liable to PBGC under ERISA section 4062 for the total amount of unfunded benefit liabilities under the plan. In addition, these parties are liable for termination premiums under ERISA section 4006 for distressed terminations under criteria 2, 3, and 4.*

When a distress termination should not be filed: A terminating plan that has sufficient assets to satisfy all benefit liabilities normally should be terminated in a standard termination, not a distress termination, even if the contributing sponsor(s) and controlled group members can meet the requirements for a distress termination (the standard termination process is faster and less costly for the plan). See PBGC’s website for information on the standard termination process. At www.pbgc.gov, go to the “Employers & Practitioners” page and select “Plan Terminations.” If, after beginning the distress termination process, the plan administrator determines that the plan is sufficient for all benefit liabilities, see Appendix C.

This package contains (1) a glossary of terms used in the distress termination process (see Appendix A); (2) a model NOIT that the plan administrator may use or adapt (see Appendix B); (3) a separate section describing rules for distress terminations of plans with sufficient assets to provide at least all guaranteed benefits (see Appendix C); and (4) the following PBGC forms: Form 600 (the NOIT to be filed with PBGC), which includes the Schedules P and F; Form 601 (the Distress Termination Notice), which includes the Schedule EA-D (the required enrolled actuary certification); and Form 602 (the post-distribution certification for plans that have sufficient assets to provide at least guaranteed benefits), 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 if the date of plan termination is before January 1, 2018, and Form MP-100 if the date of plan termination is on or after January 1, 2018.

The specific rules for terminating a single-employer plan in a distress termination are set forth in section 4041(a) and (c) 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 C, and *Missing Participants*, 29 CFR Part 4050.

See PBGC’s website, www.pbgc.gov, for these regulations (at “Employers & Practitioners” page select “Laws & Regulations”), along with FAQs about terminations and termination forms and instructions for downloading (at “Employers & Practitioners” page select “Plan Terminations”).

II. DISTRESS TERMINATION PROCESS

To terminate in a distress termination, the plan administrator, within specified timeframes, must notify affected parties (*see* Glossary, Appendix A) of the proposed termination and file certain information with PBGC. Information to be filed with PBGC includes information demonstrating that each contributing sponsor and each controlled group member satisfies a distress criterion; actuarial information; and detailed information about participants' benefits.

NOTE: *Section 404 of the Pension Protection Act of 2006 ("PPA 2006") added sections 4022(g) and 4044(e) of ERISA. These sections provide that when an underfunded pension plan terminates while a contributing sponsor is in bankruptcy (or a similar proceeding under Federal, State, or local law), the date that the sponsor's bankruptcy petition was filed is treated as the plan's termination date for purposes of determining the amount of benefits guaranteed by PBGC. In addition, the amount of benefits in priority category 3 in the section 4044 asset allocation is limited to those benefits that were (or could have been) in pay status three years before the bankruptcy filing date (based generally on the plan provisions as of five years before the bankruptcy filing date). These sections apply only if the bankruptcy filing date is on or after September 16, 2006. Such terminations are referred to as "PPA 2006 bankruptcy terminations."*

These distress termination instructions generally refer to a plan's termination date or proposed termination date. However, for PPA 2006 bankruptcy terminations, the bankruptcy filing date should instead be used for the purposes described above (but not for all purposes). For a detailed description of how a plan sponsor's bankruptcy can affect participants, click [How The Bankruptcy Date Rule Can Affect Your Benefits](#) or go to PBGC's website at www.pbgc.gov and enter "bankruptcy date" in the search window.

NOTE: *Section 506 of PPA 2006 added section 4041(c)(2)(D) to ERISA. This provision requires the plan administrator in the case of a distress termination to provide an affected party, upon request, with certain information provided to PBGC in connection with the proposed termination. (A similar disclosure provision was also added for PBGC-initiated terminations under section 4042 of ERISA.) This provision is applicable to any distress termination for which the notice of intent to terminate is issued after August 17, 2006. See PBGC rule, 29 CFR § 4041.51, and guidance on PBGC's website, www.pbgc.gov, for a detailed description of these disclosure obligations (go to the "Employers & Practitioners" page, select "Plan Terminations," click on "Distress Terminations," and then select "Disclosure of Distress Termination Information" at the bottom of the page).*

Failure to Comply. Failure to comply with the distress 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, at the start of the termination process, (1) review the rules for computing due dates (*see* section II.A); (2) review *all* forms and instructions to identify all information that must be provided at each deadline; and (3) begin collecting the information identified in (2) to complete the distress termination.

Consequence of Nullification. If PBGC determines that the plan does not satisfy the distress criteria or otherwise nullifies the termination, the plan is an ongoing plan for all purposes. Any benefit cutbacks made on account of the termination (*see* section II.B) must be restored with interest. 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.

Post-Termination Amendments. The plan administrator may take into account a plan amendment that is adopted after a plan's termination date if certain conditions are met (*see* 29 CFR § 4041.8).

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-1, Q&A-17(b).)

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.

Formal Challenge to the Termination. Initiation of a formal challenge to the termination under ERISA section 4041(a)(3) (*see* 29 CFR § 4041.7 and the specific instructions to Form 601, item 8) does not relieve the plan administrator of the obligation to timely file Form 600 (including Schedule P and Schedule F) and Form 601 (including Schedule EA-D).

A. Computation of Time; Filing and Issuance Rules (*see* 29 CFR § 4041.3 and 29 CFR Part 4000, Subpart D)

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 and (except with PBGC approval) no 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 Monday, September 2, 2013 (a Federal holiday), your notice is timely if you issue it on Friday, August 30, even though that is 93 days before the proposed termination date.

1. Filing with PBGC

Filing Methods. You may file PBGC Form 600 (including Schedule P and Schedule F), Form 601 (including Schedule EA-D), and Form 602 (if required) by hand, mail, email, or commercial delivery service.

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 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, PBGC makes the following presumptions:

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

You may prove an earlier send date.

Filings by email. If you file your submission by email, your filing date is the date you send your email. Filings by email should include scanned copies of documents with original signatures and should be emailed to distress@pbgc.gov. If you are filing materials electronically that are larger than 10 megabytes, please use LeapFILE. Enter “pbgc.leapfile.com” in your Internet browser, click on “secure upload,” enter distress@pbgc.gov in the “Recipient Email” field, and attach the files.

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 private delivery service. You must use a “designated private delivery service” within the meaning of § 7502(f) of the Code. PBGC’s website, www.pbgc.gov, lists those designated private delivery services. 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 600, 601, and 602 (and schedules of each) may be filed by mail, email, commercial delivery service or hand delivery to:

Pension Benefit Guaranty Corporation
CFRD - Distress Terminations
1200 K Street, NW, Suite 270
Washington, DC 20005-4026

By email: distress@pbgc.gov

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. The plan administrator may provide additional information with a notice only if the information is not misleading.

Issuance Methods. Notices may be issued by any method that is 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 being reasonably calculated to ensure actual receipt (*see* 29 CFR § 4000.14(b)). You may view these rules (and the rules on how PBGC determines your issuance date) on PBGC’s website, www.pbgc.gov (at the “Employers & Practitioners” page, select “Laws & Regulations”).

For an email issuance with an attachment, you must include, in the body of your email, 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 send 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 private delivery service. You must use a “designated private delivery service” within the meaning of § 7502(f) of the Code. PBGC’s website, www.pbgc.gov, lists those designated private delivery services. 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. 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 email). 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 email), 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 § 4041.42)

The plan administrator must 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, and investing plan assets. However, during the period beginning on the first day a notice of intent to terminate is issued, the plan administrator shall 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 (*i.e.*, no lump sum payments).

Beginning on the proposed termination date, ERISA section 4041(c)(3)(D)(ii)(IV) and 29 CFR § 4041.42 require that the plan administrator reduce the benefits paid to a plan's participants and beneficiaries in pay status to the estimated benefit amounts determined in accordance with 29 CFR Part 4022, Subpart D.

NOTE: *If you need assistance, you may call PBGC's Customer Service Center for Plan Administrators and Pension Professionals at (800) 736-2444 and ask to be transferred to PBGC's Actuarial Services Division.*

If, after beginning the distress termination process, PBGC determines that the plan is sufficient for guaranteed benefits or benefit liabilities, PBGC will advise the plan administrator to take actions required under 29 CFR §4041.47(c).

Failure to Qualify for Distress Termination. If PBGC issues a determination that the plan does not qualify for a distress termination, the prohibitions on paying lump sums and purchasing irrevocable commitments cease to apply (1) upon expiration of the period during which the plan administrator can request reconsideration of PBGC's determination (or, if earlier, at the time the plan administrator decides not to request reconsideration); or (2) if the plan administrator requests reconsideration, at the time PBGC issues its decision upon reconsideration that the plan does not qualify for a distress termination.

Also, any benefits that were not paid because of the requirement to reduce benefits to estimated benefits shall be due and payable as of the effective date of PBGC's determination. Unpaid amounts must be paid together with interest from the date or dates on which the amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under 29 CFR § 4022.81(c).

C. Notice of Intent to Terminate (NOIT) (*see* 29 CFR § 4041.43)

At least 60 days and, except with PBGC approval, not more than 90 days before the proposed termination date (*see* section II.A for rules on computation of time), the plan administrator must issue a written NOIT to each person 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, (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, and (6) PBGC.

***NOTE:** A 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 date a trustee is appointed for the plan (or, in the case of a plan that will distribute assets pursuant to 29 CFR § 4041.50, 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.*

The NOIT to affected parties other than PBGC must be issued at or before the time a NOIT is filed with PBGC.

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

Contents of NOIT to PBGC. NOIT submissions to PBGC must use PBGC Form 600 (including Schedule P and Schedule F), and provide all information and documents requested by the instructions for the form and schedules (*see* the instructions in section IV.A-C for a detailed description of what is required to be filed with PBGC).

Contents of NOIT to Affected Parties Other than PBGC. There is no prescribed form for the NOIT to affected parties other than PBGC. (*See* Appendix B for a model NOIT, which may be used or adapted by the plan administrator.) The NOIT must contain the information below:

- ▶ 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 distress termination.
- ▶ Proposed termination date.
- ▶ 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 § 204(h), as of [insert specified date before the NOIT was issued].
- ▶ 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 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). The plan administrator may simply provide a copy of the SPD with the NOIT rather than including this statement in the NOIT. 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.*

- ▶ Statement indicating whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities as of the termination date (for PPA 2006 bankruptcy terminations, the bankruptcy filing date is treated as the plan termination date for purposes of guaranteed benefits and priority category 3 benefits).
- ▶ Brief description of what benefits are guaranteed by PBGC (e.g., if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained).
- ▶ Statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits.
- ▶ Statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by PBGC or because plan assets are insufficient to pay for full benefits (pursuant to 29 CFR Part 4022, Subparts B and D), and that payments in excess of the amount guaranteed by PBGC may be recouped (pursuant to 29 CFR Part 4022, Subpart E).

D. PBGC Review of Form 600 (see 29 CFR § 4041.44)

PBGC will review the Form 600 and make a tentative determination whether the NOIT complies with the law and regulations. PBGC will notify the filer in writing of its finding no later than the proposed termination date. After reviewing the Form 601, PBGC will make final, or reverse, this tentative determination.

NOTE: *PBGC may decide, on its own, to waive any requirement for the NOIT that must be filed with PBGC (but **not** for the NOIT that must be issued to other affected parties) if PBGC believes it will be less costly or administratively burdensome to do so.*

If PBGC makes a tentative determination that the Form 600 is in compliance, the distress termination proceeding may continue. If PBGC makes a tentative determination that the Form 600 is not in compliance, the distress termination is null and void and the plan is an ongoing plan for all purposes unless the tentative determination is revoked by PBGC in a decision upon reconsideration.

Request for Reconsideration. A plan administrator may request reconsideration of PBGC's tentative determination of noncompliance. 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 determination until PBGC issues its decision on reconsideration. Note also that, once PBGC issues a determination of noncompliance, the plan administrator can take no further action to terminate the plan (except by initiation of a new termination) unless and until PBGC revokes the determination pursuant to a decision upon reconsideration.

NOTE: During the period that the request for reconsideration is pending, the plan administrator must continue to administer the plan subject to the requirements of 29 CFR § 4041.42. See section II.B.

Notice to Affected Parties. If a determination of noncompliance becomes effective because either the plan administrator does not request reconsideration or PBGC issues a decision upon reconsideration affirming its determination of noncompliance, the plan administrator must notify affected parties (including persons who received notice because the proposed termination is part of a spin-off/termination transaction) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid and that a new NOIT is being or will be issued.

Information on Need for PBGC-Initiated Termination. PBGC may require the plan administrator to submit any information that PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to ERISA section 4042 whenever —

1. Benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the NOIT;
2. PBGC issues a determination that the Form 600 is not in compliance with the law and regulations; or
3. PBGC has any reason to believe it may be necessary or appropriate to institute proceedings under ERISA section 4042.

This information must be submitted within 20 days after the date of a written request by PBGC, or within a different time period specified by PBGC in its request for information.

E. Distress Termination Notice (Form 601) (*see* 29 CFR § 4041.45)

The plan administrator must file with PBGC a Form 601, Distress Termination Notice, with Schedule EA-D (Distress Termination Enrolled Actuary Certification), completed in accordance with the instructions to the form (*see* sections III and IV). Form 601 and the attachment must be filed with PBGC on or before the 120th day after the proposed termination date.

NOTE: *To the extent information or documents required to be provided as part of Form 601 were filed with Form 600, such information and documents need not be re-submitted with the Form 601.*

Proposed Termination Date. The plan administrator may on Form 601 select 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 a NOIT to any affected party.

NOTE: *Where there is a change in the proposed termination date, the plan may become subject to benefits restrictions under § 436 of the Code because of a change in its adjusted funding target attainment percentage between the earlier proposed DOPT and the later proposed DOPT or by application of the presumption rules under § 436(h) between those dates. See Treas. Reg § 1.436-1(a)(3)(ii)(A).*

Contents of Distress Termination Notice. *See* the specific instructions to Form 601 (section IV.D) and the Schedule EA-D (section IV.E).

Additional Information. PBGC may, in any case, require the submission of any additional information it needs in order to make any determination relating to the proposed distress termination or to pay benefits pursuant to ERISA section 4061 or 4022(c). The plan administrator shall submit any information within 30 days after receiving PBGC's written request, or within a different time period specified by PBGC in its request for information.

F. PBGC Determination of Distress (*see* 29 CFR § 4041.46)

Based on information submitted with the Form 600 and Form 601, and any information submitted by an affected party or otherwise obtained by PBGC, PBGC will determine whether the requirements for a distress termination have been met. PBGC will notify the filer in writing of its determination.

NOTE: *PBGC may decide, on its own, to waive any requirement for the Form 601 that must be filed with PBGC if PBGC believes it will be less costly or administratively burdensome to do so.*

If PBGC determines that the plan qualifies for a distress termination, the termination proceeding may continue. If PBGC makes a determination that the plan does not qualify for a distress termination, the termination is null and void and the plan is an ongoing plan for all purposes unless the determination is revoked by PBGC in a decision upon reconsideration.

NOTE: *If the only reason for PBGC's determining that the plan does not qualify for a distress termination is that the Form 601 is incomplete, PBGC shall advise the plan administrator of the missing item(s) of information. PBGC will consider the original filing complete if the information is filed with PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of PBGC's written notice, whichever is later.*

Request for Reconsideration. A plan administrator may request reconsideration of PBGC's determination that the plan does not qualify for a distress termination. Any request for consideration, 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 determination until PBGC issues its decision on reconsideration.

Notice to Affected Parties. If a determination that the plan does not qualify for a distress termination becomes final because (1) the plan administrator does not request reconsideration or (2) PBGC issues a decision on reconsideration affirming its determination, the plan administrator must notify affected parties (and persons who received notice because the proposed termination is part of a spin-off/termination transaction) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid and that a new NOIT is being or will be issued.

G. PBGC Determination of Plan Sufficiency/Insufficiency (see 29 CFR § 4041.47)

If PBGC determines that the plan's assets are sufficient to provide at least guaranteed benefits, PBGC may issue a distribution notice advising the plan administrator (1) to issue notices of benefit distribution in accordance with 29 CFR § 4041.48; (2) to close out the plan in accordance with 29 CFR § 4041.50; (3) file a timely Form 602; and (4) that either the plan administrator or the contributing sponsor must preserve and maintain plan records. (*See Appendix C for a description of these requirements for sufficient distress terminations.*) If PBGC determines that the plan's assets are not sufficient to provide at least guaranteed benefits, PBGC, in accordance with ERISA section 4042(b), will proceed to become trustee of the plan.

Special Rule for Majority Owners (*see Appendix A, Glossary of Terms, for definition*). A majority owner of the plan sponsor may elect to forgo receipt of all or part of his or her benefit in connection with a distress termination 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 benefit in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election; (3) the election and the 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; (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)); and (5) PBGC approves the election if (a) the election is made after the termination date and (b) the election would result in PBGC's determining that the plan is sufficient for guaranteed benefits. In the case of a plan that is or will be trustees by PBGC, the majority owner may make the election and the spouse may consent at any time on or after the date of issuance of the first NOIT.

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

H. 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 and (2) in the case of a plan that is sufficient for at least guaranteed benefits, that the Form 602 be filed with PBGC within 30 days after the last distribution date. (Although PBGC may assess a penalty for late filing of a Form 602, it will do so only to the extent the Form 602 is filed more than 90 days after the distribution deadline (including extensions) described in Appendix C.)

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
CFRD - Distress Terminations
1200 K Street, NW, Suite 270
Washington, D.C. 20005-4026

Alternatively, requests may be emailed to: distress@pbgc.gov

I. Forms and Instructions; Contacting Us

You may obtain forms and instructions from PBGC's website at www.pbgc.gov.

If you have any questions, call (202) 326-4070. (TTY/ASCII users may call the Federal relay service toll-free at (800) 877-8339 and ask to be connected to (800) 736-2444.)

Email address: distress@pbgc.gov.

III. GENERAL INSTRUCTIONS FOR DISTRESS TERMINATION FORMS

This part contains the instructions for the following PBGC termination forms:

Form 600 is the Notice of Intent to Terminate that the plan administrator must file with PBGC pursuant to ERISA section 4041(a)(2) and 29 CFR § 4041.43 in order to advise PBGC of a proposed distress termination and to provide various plan and sponsor data. Form 600 includes Schedule P and Schedule F.

Schedule P provides basic plan information and lists the additional plan information that must be attached to the schedule.

Schedule F is filed for each contributing sponsor and controlled group member. It provides information about the entity including which distress criterion it satisfies and lists additional information

Form 601 is the Distress Termination Notice that the plan administrator must file with PBGC pursuant to ERISA section 4041(c)(2)(A) and 29 CFR § 4041.45 to provide certain plan and plan sponsor information. Form 601 includes Schedule EA-D.

Schedule EA-D is the Distress Termination Enrolled Actuary Certification that an enrolled actuary must complete to certify to the level of plan benefits that can be provided by plan assets.

Form 602 is the Post-Distribution Certification that the plan administrator must file with PBGC pursuant to 29 CFR § 4041.50(b), if the plan is sufficient for at least guaranteed benefits (and thus will close out in the private sector), to certify that the distribution of plan assets pursuant to the distress termination was completed in accordance with ERISA section 4041(c) and 29 CFR § 4041.50. See instructions in section IV.F for a detailed description of what documents are required to be attached to the Form 602.

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 requires a box or boxes to be checked, a check mark must 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 original signatures.**

Who Must File. The plan administrator or the plan administrator’s authorized representative must submit all filings required to be made to PBGC.

NOTE: *While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 600, Form 601, and Form 602.*

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-D must always be signed by the enrolled actuary.

IV. SPECIFIC INSTRUCTIONS FOR DISTRESS TERMINATION FORMS

A. Instructions for Form 600

Form 600 must be filed with PBGC at least 60 days and not more than 90 days before the proposed termination date, and it may not be filed before the NOIT is issued to all other affected parties (*see* section II.A for filing and issuance rules).

Section A. Plan Information

1. *Plan Name.* Report the full name of the plan as shown in the plan document.
2. *Contributing Sponsor’s Name.* See Appendix A: Glossary of Terms.
3. *EIN/PN.* Report 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 to the plan by the plan sponsor.
4. *Proposed Termination Date.* The date on which the plan administrator proposes to terminate the plan. This date must be at least 60 days and (except with PBGC approval) no more than 90 days after the plan administrator issues a notice of intent to terminate to each affected party.
5. *Filing Date of this Notice.* Generally, the filing date is the date on which you send the notice if you meet the requirements in PBGC’s rules (*see* 29 CFR § 4000). You may view these rules (and the rules on how PBGC determines your issuance date) on PBGC’s website, www.pbgc.gov (at the “Employers & Practitioners” page select “Laws & Regulations”).

Section B. Plan Administrator Information

1. *Name of Plan Administrator.* Enter the full name of the plan administrator as specified in the plan document. If not specified in the plan document, ERISA provides that the plan administrator is the plan sponsor.
- 2-5. Enter the name and title, mailing address, phone number, and email address of the person whom PBGC should contact for information regarding the PBGC Form 600 if different from the plan administrator.

Section C. Plan Administration during Termination Process (see 29 CFR § 4041.42)

The plan administrator must 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, and investing plan assets. However, during the period beginning on the first day a notice of intent to terminate is issued, the plan administrator shall 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 (*i.e.*, no lump sum payments).

Beginning on the proposed termination date, ERISA section 4041(c)(3)(D)(ii)(IV) and 29 CFR § 4041.42 require that the plan administrator reduce the benefits paid to a plan's participants and beneficiaries in pay status to the estimated benefit amounts determined in accordance with 29 CFR Part 4022, Subpart D.

NOTE: *If you need assistance, you may call PBGC's Corporate Finance and Restructuring Department at (202) 326-4070 and ask for help with a distress termination filing.*

If PBGC determines that the plan is sufficient for guaranteed benefits or benefit liabilities, PBGC may advise the plan administrator to take actions required under 29 CFR §4041.47(c).

Section D. Plan Administrator's Representative (if different from plan administrator)

If the plan administrator chooses 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, provide the contact information for the designated representative(s) in Section D. Notify PBGC in writing to revoke a prior designation.

Section E. Contributing Sponsor and Controlled Group Information

A *controlled group* generally consists of all trades or businesses under common control (generally 80 percent or greater common ownership; see 29 CFR §4001.3). Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

Section F. Plan Administrator Certification

This section should be completed and signed by the plan's administrator.

NOTE: *Schedule P and Schedule F* must be filed with this notice. See Instructions for Schedule P and Schedule F below.

B. Instructions for Schedule P

Section A. Basic Plan Information

1. *Plan Name.* Report the full name of the plan as shown in the plan document.
2. *EIN/PN.* Report 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 to the plan by the plan sponsor.
3. *Effective Date of Plan.*
4. *Last Day of Plan Year.*
5. *Date Frozen, if applicable.*

Section B. Additional Plan Information and Documents

All information and documents listed in Section B of Schedule P, if applicable, must be attached to Schedule P. Check the box on the form to indicate if the item is attached.

NOTE: *If you have questions about any of the information and documents listed in Section B of Schedule P, please call PBGC's Corporate Finance and Restructuring Department at (202) 326-4070 or send an email to distress@pbgc.gov.*

C. Instructions for Schedule F

Submit a separate Schedule F for *each* contributing sponsor and *each* controlled group member identified in Section E of Form 600.

What to report

Section A. Identity of Contributing Sponsor or Controlled Group Member

1. *Name of Entity.* Report name of the entity, either the contributing sponsor or controlled group member, for whom the information on this schedule applies to.
2. *Contact Person and Title.* Provide the name and title of the person to whom questions regarding information submitted on this schedule should be directed to.
3. *Address.* Provide the address of the contact person listed on this schedule.
4. *Phone.* Provide the phone number of the contact person listed on this schedule.
5. *Email.* Provide the email address of the contact person listed on this schedule.

Section B. Distress criteria satisfied by entity. Check the appropriate box indicating which distress criteria the entity will satisfy. Also indicate if the entity is a de minimis entity without significant operations, assets, or employees.

1. *Distress Criterion 1: Liquidating in a federal or state proceeding.* The entity listed on the schedule has filed, or had filed against it, as of the proposed termination date, a petition seeking liquidation in a case under Title 11, United States Code, or under any similar federal law or law of a State or political subdivision of a State, or a reorganization case (described below) has converted to a liquidation case, and such case has not, as of the proposed termination date, been dismissed.

ERISA section 4041(c)(2)(B)(i) and 29 CFR § 4041.41(c)(1) refer explicitly only to liquidation under federal bankruptcy or similar federal law or to liquidation under state insolvency law, and require that the liquidation case, as of the proposed termination date, not be dismissed. In determining whether a person meets the liquidation criterion, the PBGC will consider (1) a case in which liquidation was completed under Chapter 7 (Liquidation) or Chapter 11 (Reorganization) prior to the proposed termination date, or was achieved through (a) a foreclosure by secured creditors (as a result of which the person ceased operations and had all of its assets seized by such secured creditors) or (b) an assignment of all of the person's assets for the benefit of creditors, and (2) a case in which

the debtor is unambiguously liquidating (under Chapter 7 or Chapter 11) as of the proposed termination date. (In any such case, however, the PBGC will find the liquidation criterion is met only if it concludes that there is no indication that a principal purpose of the liquidation is to evade liability with respect to the plan or the PBGC or otherwise to abuse the termination insurance program.)

2. *Distress Criterion 2: Reorganizing in a federal or state proceeding.* The entity listed on the schedule satisfies this criterion if it
 - a. has filed, or had filed against it, as of the proposed termination date, a petition seeking reorganization in a case under Title 11, United States Code, or under any similar law of a State or political subdivision of a State;
 - b. such case has not, as of the proposed termination date, been dismissed;
 - c. such person submits a copy of any motion for the approval of the plan termination to PBGC at the same time the motion is filed with the bankruptcy court (or other appropriate court in a case under such similar law of a State or political subdivision) including any documents filed in support of the motion; and
 - d. the bankruptcy court (or other appropriate court) determines that, unless the plan is terminated, such person will be unable to pay all of its debts pursuant to a plan of reorganization and will be unable to continue in business outside the Chapter 11 reorganization process and approves the termination.

If a reorganization proceeding becomes a liquidation proceeding, such as after Court approval of sale of all assets, and there is no intention for the person to reorganize and continue in business, this reorganization criterion cannot be met. However, the liquidation criterion may be met (*see above*).

3. *Distress Criterion 3: Unable to (1) pay debts when due and (2) continue in business.* The entity listed on the schedule satisfies this criterion if it demonstrates to the satisfaction of PBGC that, unless a distress termination occurs, such person will be unable to pay its debts when due and will be unable to continue in business.
4. *Distress Criterion 4: Unreasonably burdensome pension costs solely due to decline in covered employment.* The entity listed on the schedule satisfies this criterion if it demonstrates to the satisfaction of PBGC that the costs of providing pension coverage have become unreasonably burdensome to such person, solely as a result of a decline in its workforce covered as participants under all single-employer pension plans for which the person is a contributing sponsor.
5. *De Minimis Entity.* If a controlled group member has no operations, employees, or significant assets, PBGC may disregard it in its evaluation of whether each contributing

sponsor, and all members of each contributing sponsor's controlled group, satisfy one of the four statutory distress criteria.

Section C. Additional Information

Provide copies of documents listed in Section C based on the distress criterion marked in Section B of the Schedule F or if De Minimis Entity box was marked. Provide a brief explanatory note if the item is not available. Indicate if any of the information was provided with another Schedule F. It is not necessary to duplicate information.

For Distress Criterion 1, a copy of the petition for liquidation filed with the court.

For Distress Criterion 2, a copy of the motion requesting court approval of the termination, if already filed with the court.

For Distress Criteria 2, 3, and 4, attach the following:

1. Tax returns, with all schedules and attachments, for the most recent four years available;
2. Audited financial statements (income statement, balance sheet, cash flow statement, and notes) for the most recent four years. If audited financial statements were not prepared, then provide unaudited financial statements and a statement explaining why audited statements are not available;

The financial statements must be augmented as follows:

- (a) Identify the cash contributions to the pension plan in each year and the pension expense recorded in each year for the pension plan that is the subject of this application.
- (b) Identify all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments, interest rate, collateral, significant covenants, and whether the loan is in default.
- (c) Identify and explain any material changes in financial position since the date of the last financial statement.
- (d) If the entity has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the three years covered by the financial statement for only that portion of the business that is currently expected to continue. State the significant assumptions made about the allocation of joint costs.
- (e) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

3. Projected financial statements (income statement, balance sheet, cash flow statement) for the current year and the four following years as well as the key assumptions underlying those projections and a justification for the reasonableness for each of those key assumptions;

Explain the reasons for any material changes from historical to projected results. If the company has or intends to obtain a line of credit with borrowing availability based on the amount of eligible collateral, include in the projections of cash flow a projection of the amount available under the line of credit and the amount of borrowing against that availability. The projections must include, or be augmented by, the projected cost of meeting minimum funding standards and, alternatively, the cost of plan termination based on payment of projected plan termination liabilities. The business plans and projections must be further augmented by documents or information as follows:

- (a) All business or operating plans prepared by or for management, including all explanatory text and schedules.
- (b) All financial submissions, if any, made within the prior three years to a financial institution, government agency, or investment banker in support of possible outside financing or sale of the business.
- (c) All recent financial analyses done by an outside party with a certification by the company's chief executive officer that the information on which each analysis is based is accurate and complete.
- (d) Any other relevant information.

4. Description of events leading to the current financial distress;
5. Description of financial and operational restructuring actions taken to address financial distress, including cost cutting measures, employee count or compensation reductions, creditor concessions obtained, and any other restructuring efforts undertaken. Also, indicate whether any new profit-sharing or other retirement plan has been or will be established or if benefits under such existing plan will be increased.

For Distress Criterion 4, also include an explanation of why the costs of providing pension coverage have become unreasonably burdensome solely as a result of a decline in the workforce, along with supporting documents.

For De Minimis Entities, provide the same information requested for Distress 2, 3, and 4 cases, if available. In addition, attach a statement explaining why the entity is de minimis.

PBGC may request information, in addition to that specified above, as needed for our review.

D. Certification of chief executive officer (or other authorized officer) to the accuracy of financial information submitted

This section should be completed and signed by the entity's chief executive officer or equivalent officer.

D. Instructions for Form 601

Section A. Plan Information

1. *Plan Name.* Enter the full name of the plan as shown in the plan document.
2. *EIN/PN.* 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 to the plan by the plan sponsor.
3. *Proposed Termination Date.* The date on which the plan administrator proposes to terminate the plan. This date must be at least 60 days and (except with PBGC approval) no more than 90 days after the plan administrator issues a notice of intent to terminate to each affected party.
4. *Filing Date of this Notice.* Generally, the filing date is the date on which you send the notice if you meet the requirements in PBGC's rules (see 29 CFR § 4000). You may view these rules (and the rules on how PBGC determines your issuance date) on PBGC's website, www.pbgc.gov (at the "Employers & Practitioners" page select "Laws & Regulations").

Section B. Additional Information

1. Indicate by checking the appropriate box whether a formal challenge to the termination has been initiated under an existing collective bargaining agreement.
2. Indicate by checking the appropriate box whether benefits of participants and beneficiaries in pay status have been reduced to the estimated Title IV benefits pursuant to 29 CFR § 4022, Subpart D.
3. Indicate by checking the appropriate box whether you filed, or will file, with the Internal Revenue Service an application for a determination letter on the termination of the Plan.

NOTE: *The plan administrator of a plan that is terminating as a distress termination must determine such benefits in accordance with all applicable requirements under the Code and ERISA, including:*

- *Statutory hybrid plans. The Pension Protection Act of 2006 (PPA 2006) added §§ 411(a)(13) and 411(b)(5) to the Code, and sections 204(b)(5) and 204(f)(1) to ERISA, for statutory hybrid plans, such as cash balance plans. See IRS final regulations and IRS Notice 2007-6 (transitional guidance).*
- *USERRA. Plan administrators must comply with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). See 20 CFR Part 1002.*
- *Benefit restrictions. For plan years beginning in 2008, plan administrators must comply with the requirements of Code § 436, which places restrictions on certain benefit accruals, plan amendments and payments based on the plan's adjusted funding target attainment percentage. See Treas. Reg. § 1.436-1.*

Section C. Plan Administrator Certification

This section should be completed and signed by the plan administrator.

NOTE: Trusteeship Information - *If PBGC determines that the requirements for a distress termination have been satisfied and notifies the plan sponsor of the determination, PBGC personnel will contact the plan sponsor to collect information needed to complete trusteeship of the plan. Following is a list of information the plan sponsor should be prepared to provide PBGC within 30 days of receiving notice from PBGC that the requirements for a distress termination have been satisfied. If the enrolled actuary has certified on Form 601 - Schedule EA-D that the plan is sufficient for guaranteed benefits or benefit liabilities the following information may not be required by PBGC. However, in that case, Form 602 Post-Distribution Certification for Distress Termination must be filed and PBGC may request other information.*

Plan Information

1. All past and present executed plan documents and amendments.
2. Documents that identify current or former plan administrator(s), plan fiduciary(ies), plan trustee(s), and member(s) of the board of directors if applicable, including:
 - A list of names and addresses of those individuals
 - Resolutions of appointment or removal
 - Letters of appointment or resignation
 - All related documents for the last three years, including relevant records and minutes
3. All executed trust agreements, amendments to the trust agreements, and all related documents.

4. Documents indicating the name and address of the person who is custodian of plan records and documents.
5. Documents indicating the address where plan records and documents are located.
6. Documents indicating the name and address of all accountants or actuaries who have performed services for the plan for the last three years.
7. All Actuarial Valuation Reports for the plan for the past three plan years, including copies of all communications to and from the plan actuaries regarding the plan.
8. Documents relating to the plan, including but not limited to, all letters or correspondence to or from:
 - Plan
 - Plan participants
 - PBGC
 - Internal Revenue Service
 - Department of Labor
 - Company
 - Company's Board of Directors
 - Bank
 - Sponsors

Participant Information

9. Check registers from the month prior to the date of plan termination (DOPT) or Benefit Petition Date (BPD) through the date of the interim paying agent's last payment.
10. Documents reflecting whether any plan participants have received lump sum distributions for all or part of their benefits for the last three years and the amount of any such distributions.
11. Documents reflecting whether there are any plan participants currently eligible for early or normal retirements who are not receiving benefits from the plan, and the amount of any such entitlements.
12. Listing of participant benefits (annuities) that were purchased in the past.
13. Documents related to participant benefits under the plan for the past three years.
14. Documents related to applications for benefits under the plan, and waivers of joint and survivor benefits under the plan.
15. Copies of personnel and pension records for all plan participants, reflecting name, address, telephone number, age, marital status, date of birth, date of hire, employment termination date (if any), breaks in service (if any), retirement date, and all other information relating to the calculation of benefits under the plan.
16. A sample file for an individual from each of the standard participant categories (as applicable under the plan):
 - Retirees
 - Active participants (both vested and non-vested)

- Terminated participants (both vested and non-vested)
17. The application for benefits under the plan for the owners and all related documents, including documents reflecting whether any of the former or current directors and/or officers are, or were, vested plan participants
 18. Documents related to payment of benefits under the plan.

Asset Information

19. Documents relating to the trust funds and plan assets, including, but not limited to, the name and address of all persons that held or had custody of trust funds, all persons currently holding or having custody of trust funds, and the account numbers for any current trust fund accounts for the last three years.
20. Documents reflecting whether trust funds have been loaned or distributed to any person or participant for the last three years. If so, copies of:
 - Loan agreements
 - Repayment schedules
 - 1099's
 - Documents relating to receipts and disbursements from the plan, including the amount of the receipt or disbursement, the date received or made, the identity of the payor and/or payee, and the reason for the receipt or disbursement for the last three years.
21. Documents relating to the "funding policy and method" for the plan as described in the plan.
22. All annual reports of the trustee of the plan for the last three years.
23. All fidelity bonds and fiduciary liability insurance policies for the plans in effect at any time during the last three years.

Other Documents

24. Documents relating to any request for a minimum funding waiver from the Internal Revenue Service for the last three years and, if granted, copies of documents reflecting the terms of the waiver(s).
25. Documents relating to contributions to the plan for the last three years.

Corporate Information

26. Documents, including corporate stock record books, indicating the name(s) and address(es) of all former and current members of sponsor's "controlled group," as that term is currently defined by section 4001(a)(14) of ERISA, 29 U.S.C. §1301(a)(14) for the last three years.
27. Financial records of the owner(s)/sponsor(s), including audited and unaudited financial statements and personal tax returns for the last three fiscal years.

28. Corporate federal income tax returns of all controlled group members(s), including all schedules, attachments, and amendments for the last three tax years.
29. A list of all shareholders and the number of voting and non-voting shares held by each at any time during the last three years, including sponsor's stock transfer records and sponsor's corporate minute books with all corporate resolutions for the last three years.
30. All shareholder agreements, agreements to buy, sell or transfer sponsor's stock, and all documents related to any sponsor's shareholder agreements and/or buy, sell or transfer agreements for sponsor's stock entered into, dated, or in effect at any time during the last three years.
31. All asset sale or transfer agreements for assets, and all documents related thereto, for the sale or transfer of assets entered into, dated or in effect at any time during the last three years.
32. All documents relating to the cancellation, non-performance of, or closing on, any agreements described in #30 and #31.
33. All insurance policies or contracts providing liability coverage for officers, directors, agents and employees or sponsor in effect at any time during the last three years.

Adjusted Funding Target Attainment Percentage (AFTAP) Information

34. Copies of all AFTAP certifications and other AFTAP calculations (which may not require certification) applicable for plan years beginning in 2008 through the year in which the plan was trustee. AFTAP certifications and calculations include:
 - Certifications of the actual AFTAP for a plan year.
 - Range certifications.
 - Certified changes in a previous certified AFTAP.
 - Updated AFTAPs, which may or may not require recertification.
 - Optional recertifications of AFTAPs.
 - Calculations of an inclusive presumed AFTAP.
 - Calculations of a modified presumed AFTAP.
 - A certified AFTAP must:
 - Be a written statement that is clearly meant to be the certification of the AFTAP.
 - As of 10/15/2009, include the plan assets and liability information used in determining the AFTAP.
 - Be signed and dated with the month, day and year by an enrolled actuary (EA). Note that the actual signature date may be material to the application of the §436 limitations.
35. Copies of AVRs for each plan year beginning in 2008 through the year prior to trusteeships that clearly include the AFTAP for the year. (An AVR may be acceptable in place of an actual AFTAP certification if it was clearly meant to be an AFTAP

certification. As of 01/01/2010, an AVR can only be accepted as an AFTAP certification if it meets all of the certification requirements.)

36. If the plan was maintained pursuant to one or more collective bargaining agreements (CBA) ratified before 1/1/2008:

- A copy of the executed (signed and dated) CBA(s).
If a copy of the executed CBA(s) is not available:
- Written confirmation from the plan administrator, plan sponsor, or appropriate bargaining unit official: (1) Of the ratification date and expiration date of the CBA(s) *without regard to any extension agreed upon after 08/17/2006*. (2) Whether the plan applied the CBA exception in 26 CFR §1.436-1(k)(2) that deferred the effective date of IRC §1.436, and if so, to which benefits and when.
- Confirmation from the plan administrator, plan sponsor, or appropriate bargaining unit official of the ratification date and expiration date of the CBA(s) (without regard to any extension agreed upon after 08/17/2006).
- Confirmation whether plan applied CBA limits, to which benefits, and when.
- If the plan covered bargaining unit and non-bargaining unit employees, confirmation that at least 25% of the covered employees or 50% of the participants were members of the bargaining unit(s).

37. Plan amendments effective on or after the first day of plan year 2008 addressing application of the §436 limitations.

38. Any other information documenting the plan's application of §436, for example:

- Copies of correspondence sent to plan participants describing the impact of any §436 limitation. Plans generally must provide such notice within 30 days of the effective date of the limitation.
- Written elections by the plan sponsor to reduce the prefunding balance or standard carryover balance to avoid or terminate a §436 limitation.
- Specification of a contribution as a current year contribution to avoid or terminate a §436 limitation.
- Written elections by the plan sponsor to defer applying MAP-21 interest rates until 2013 for §436 while using MAP-21 rates for other purposes in 2012 or to retroactively apply a 2012 AFTAP certification/recertification based on MAP-21 rates.

If you have any questions about the plan information listed above, call PBGC at (202) 326-4070.

E. Instructions for Schedule EA-D

Schedule EA-D to Form 601 must be completed to certify the funding level of a plan terminating in a distress termination. An enrolled actuary must certify whether, as of the proposed termination date, the value of plan assets is –

- (A) insufficient to provide for all guaranteed benefits,
- (B) sufficient to provide for all guaranteed benefits but not sufficient for all benefit liabilities, or
- (C) sufficient to provide for all benefit liabilities.

For the purpose of determining if a plan is sufficient for guaranteed benefits, you must include any nonguaranteed benefits that a participant is entitled to receive because of the allocation of assets priorities in ERISA section 4044 and 29 CFR Part 4044, Subpart A. This means that you must include all nonguaranteed benefits to which assets are allocated. (To determine what benefits are guaranteed benefits, see 29 CFR Part 4022, Subparts A and B.)

The estimated present value of all benefit liabilities as of the proposed termination date should be calculated in accordance with 29 CFR Part 4044, Subpart B. With respect to a participant who, as of the proposed termination date, is not receiving benefits and has not made a valid benefit election, the value of the participant's benefit must include the value of all optional forms of benefits for which he or she is eligible under the terms of the plan.

The plan administrator must file the completed Schedule EA-D together with the Form 601. The Schedule EA-D must be signed by an enrolled actuary. The following information must be provided:

1. *Plan Name.* Report the full name of the plan as shown in the plan document.
2. *Name of Actuarial Firm.* Report the full name of the plan's actuarial firm.
- 3-7. *Name, enrollment number, address, phone number, and email of Enrolled Actuary* whom PBGC should contact regarding Schedule EA-D.
8. *Sufficiency of plan.* Check box that best describes sufficiency of plan (check only one box).

PBGC may request information supporting the certification of the plan's funding level. If you have any questions on determining or valuing guaranteed benefits, or on determining the amount of due and unpaid employer contributions, call PBGC's Corporate Finance and Restructuring Department ("CFRD") at (202) 326-4070.

F. Instructions for Form 602

NOTE: Form 602 is required to be filed by the plan administrator **only if** the plan is sufficient for guaranteed benefits or benefit liabilities and the plan administrator will distribute plan assets.

If Box A on Schedule EA-D was checked, or PBGC determined that the plan was insufficient for guaranteed benefits, or PBGC was unable to determine that the plan is sufficient for guaranteed benefits, the plan administrator must not distribute plan assets.

If either Box B or Box C on Schedule EA-D was checked and PBGC has issued a notice to the plan administrator that the plan is sufficient for guaranteed benefits or for benefit liabilities, the distribution of plan assets must generally be completed by the later of (1) 180 days after the day on which the plan administrator completes the issuance of the notices of benefit distribution, or (2) 120 days after receipt of a favorable determination by IRS.

The plan administrator must file Form 602, the Post-Distribution Certification, along with any required attachments (see item 9 below), 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 602. However, PBGC will do so only to the extent the Form 602 is filed more than 90 days after the distribution deadline (including extensions) described in Appendix C.

NOTE: The plan administrator of a plan with one or more missing participants must file with the Form 602 the Schedule MP (including attachments) if the plan terminated before January 1, 2018, or the Form MP-100 (including applicable schedules) if the plan terminated on or after January 1, 2018.

Section A. Plan Information

1. *Plan Name.* Enter the full name of the plan as shown in the plan document.
2. *EIN/PN.* 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 to the plan by the plan sponsor.

Section B. Distribution Information

1. Enter the last distribution date (see definition of “distribution date” in Appendix A)
2. If your distribution deadline is the IRS determination letter distribution deadline described in Appendix C, enter the date of receipt of the IRS determination letter with respect to the plan’s tax-qualification status upon termination.
3. Enter latest date that notices of benefit distribution were issued to participants or beneficiaries.

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 any participants or beneficiaries are missing, check “No” to item 5. Note that the definition of “missing,” as well as the rules related to search requirements, differ depending on when the plan terminates. If the date of plan termination is:
 - Before January 1, 2018, see [PBGC’s ERISA section 4050 regulations as in effect prior to the 2018 amendments](#), or
 - On or after January 1, 2018, see [PBGC’s ERISA section 4050 regulations](#).

If any participants or beneficiaries are missing, you must submit a Missing Participants Filing (i.e., Schedule MP for terminations before 2018 or Form MP-100 for terminations after 2017).

6. If you checked “Yes,” 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 602.

7. Enter the name(s) and address(es) of the insurer(s), if any, which have made an irrevocable commitment to provide 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 602 is filed with PBGC.
9. a In reporting the counts of participants or beneficiaries who received each form of distribution (or received no distribution), 9a, the “Annuities” count, must include in the count both non-missing and missing participants for whom annuities were purchased.
9. b Two counts should be entered in the Lump sums section: in line (1), the number of participants and beneficiaries who received consensual lump sums, and in line (2), number of participants and beneficiaries who received nonconsensual lump sums.
9. c Enter the number of participants or beneficiaries whose benefits were transferred to PBGC under the Missing Participants Program.

9. a-c Values. In reporting the values for each form of distribution follow the same rules as for the counts, e.g., the value of annuities purchased must include the value of annuities purchased for Missing Participants. For 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.

The following documents must be attached to the Form 602:

- For each individual for whom an annuity was purchased (this includes non-missing and missing participants), a copy of the annuity contract, certificate, and/or written notices to the participant, identifying -
 - contact information for the annuity provider
 - group contract numbers for that annuity provider
 - a list of participants entitled to annuities from that annuity provider
- For each individual who received a lump sum distribution, a copy of the cancelled check or bank statement with the individual's name and distribution amount.

Section C. Plan Administrator Certification

This section 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) The 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.

Bankruptcy Filing Date (or Bankruptcy Petition Date) means the date a bankruptcy case is begun by, or against, a plan sponsor. For a detailed description of how a plan sponsor's bankruptcy can affect participants, click [How The Bankruptcy Date Rule Can Affect Your Benefits](#) or go to PBGC's website and enter "bankruptcy date" in the search window.

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

Benefit Determination Date means, with respect to a plan that terminates on or after January 1, 2018, the date as of which the amount to be transferred to PBGC under the Missing Participants Program is determined. This term has no meaning with respect to a plan that terminates before January 1, 2018.

Cash Balance Plan means a defined benefit plan that defines a participant's benefit in terms of a hypothetical account balance based generally on a formula using pay credits and interest credits, which may be converted to a benefit payable as an annuity. A cash balance plan is a type of statutory hybrid plan.

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 § 412(b)(2) or ERISA section 302(b)(2), or for premiums under ERISA section 4007(e)(2), a controlled group also includes any group treated as a single employer under Code § 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, with respect to a plan that terminates before January 1, 2018, — (1) the last day of the period in which distribution may be made under 29 CFR Part 4041, or (2) an earlier date selected by the plan administrator of a terminating plan that is on or after 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. This term has no meaning with respect to a plan that terminates on or after January 1, 2018.

Distress termination notice means the notice filed with PBGC pursuant to 29 CFR § 4041.45.

Distribution date means:

- 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; or
- For benefits transferred to PBGC's Missing Participants Program:
 - The "deemed distribution date," if the date of plan termination is before January 1, 2018, or
 - The "benefit determination date," if the date of plan termination is on or after January 1, 2018; or
- For all other benefits, 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).

Distribution notice means the notice issued to the plan administrator by PBGC pursuant to 29 CFR § 4041.47(a), upon PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits. The notice instructs the plan administrator to distribute all plan assets in accordance with ERISA section 4044 and details the requirements for filing the post-distribution certification with PBGC.

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

Guaranteed benefit means a benefit that is guaranteed by PBGC under ERISA section 4022(a) and (b) and 29 CFR § 4022, Subparts A and B.

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 as defined under section 3(10) of ERISA.

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,

- (1) the entire interest in an unincorporated trade or business,
- (2) in the case of a partnership, 50 percent or more of either the capital interest or the profits interest in such partnership, or
- (3) in the case of a corporation, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation, taking into account the constructive ownership rules of Code §§ 1563(e) (other than paragraph (3)(C)) and of 414(c).

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 that, in the case of a plan that terminates:

- Before January 1, 2018, meets the definition of missing provided in Section 4050.2 of [PBGC's ERISA section 4050 regulations as in effect prior to the 2018 amendments](#); or
- On or after January 1, 2018, meets the definition of missing provided in Section 102 of [PBGC's ERISA section 4050 regulations](#).

Notice of benefit distribution means the notice to each participant and beneficiary, as required under 29 CFR § 4041.48, describing the benefit to be distributed to him or her.

Notice of intent to terminate (NOIT) means the notice of a proposed termination of a single-employer plan, as required by ERISA section 4041(a)(2) and 29 CFR § 4041.21 (in a standard termination) or § 4041.43 (in a distress termination).

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.

Person means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

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

PPA 2006 bankruptcy termination means a plan termination occurring during a bankruptcy proceeding, where the proceeding was initiated on or after September 16, 2006.

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a distribution notice from PBGC when plan assets are sufficient (as of the proposed termination date) for at least guaranteed benefits. A proposed distribution date may not be earlier than the 61st day following the day on which the plan administrator files the Form 601 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 distress 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)).

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.

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.

Statutory hybrid plan means, in general, a cash balance plan, a pension equity plan, or other

hybrid defined benefit pension plan under the terms of which the accumulated benefit of a participant (or any portion thereof) is expressed as the balance of a hypothetical account maintained for the participant or as the current value of an accumulated percentage of the participant's final average compensation.

Sufficient for benefit liabilities means that all benefit liabilities, as defined in ERISA section 4001(a)(18), are funded.

Sufficient for guaranteed benefits means that all guaranteed benefits, as defined in ERISA section 4001(a)(17), are funded.

Termination date means the date established pursuant to ERISA section 4048(a).

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to ERISA section 4044 and 29 CFR § 4044. (This does not include any benefit that may be payable pursuant to ERISA section 4022(c).)

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

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

Month/Day/Year

NOTICE OF INTENT TO TERMINATE [PLAN NAME]

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

PROPOSED TERMINATION DATE: [MM/DD/YY]

- We will notify you 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 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].

OBTAINING A SUMMARY PLAN DESCRIPTION:

- If you wish to obtain a copy of the summary plan description (“SPD”) 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.]

PLAN FUNDING LEVEL

- [Include one of the following statements, whichever applies.] The plan does not have

sufficient funds to pay all promised benefits nor the benefits guaranteed by law. / The plan has sufficient assets to pay at least all benefits guaranteed by law, but not all promised benefits.

The Pension Benefit Guaranty Corporation (PBGC), a federal government agency, will assure that you receive pension benefits that are guaranteed by law.

BENEFITS GUARANTEED BY PBGC: PBGC pays most people all of their accrued pension benefits. Some people's benefits are not guaranteed by law, for example because their benefits exceed the maximum amount that PBGC can guarantee. If there are insufficient plan assets or PBGC recovers to fund the non-guaranteed benefits, PBGC cannot pay them. You also may receive a portion of the benefits to which you are entitled under the terms of the plan in excess of benefits guaranteed by law.

[Include all of the following that may apply to this plan's benefits.]

- The maximum guaranteed benefit that PBGC can pay is set by law each year. For pension plans ending in 2011, for example, the maximum guaranteed amount is \$4,500 per month (\$54,000 per year) for a worker who retires at age 65 with a straight life annuity.
 - The maximum benefit will be reduced for an individual who begins receiving payments before age 65.
 - The maximum benefit also will be reduced if a pension includes benefits for a survivor or other beneficiary.
- PBGC does not guarantee benefits that are not vested when the plan terminates, usually because the individual has not worked enough years for the company.
- PBGC does not guarantee benefits for which an individual has not met all age, service, or other requirements at the time the plan terminates [for PPA 2006 bankruptcy terminations, substitute "as of [date], the bankruptcy filing date of the plan sponsor"].
- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when an individual becomes eligible for Social Security may not be guaranteed.
- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay are not guaranteed.
- PBGC generally does not pay lump sums exceeding \$5,000.
- PBGC may recoup any pension payments that exceed PBGC's guarantee.

APPENDIX C: RULES FOR SUFFICIENT DISTRESS TERMINATIONS

This appendix applies to plans that are not trusteeed. If PBGC determines that a plan is sufficient for at least all guaranteed benefits, PBGC will issue a distribution notice to the plan administrator. (For PPA 2006 bankruptcy terminations, the bankruptcy filing date is treated as the plan termination date for purposes of determining guaranteed benefits and priority category 3 benefits; however, the determination of sufficiency for both purposes is made as of the proposed termination date and proposed distribution date). If so, the plan administrator must comply with the notice requirements described below and complete the distribution of plan assets by purchasing annuity contracts that are irrevocable commitments, or by otherwise providing all Title IV benefits under the terms of the plan (*see* section D of this Appendix for the rules governing distribution of benefit liabilities).

***NOTE:** If, after beginning a distress termination proceeding, you determine that the plan is sufficient for **all** benefit liabilities, you must immediately notify PBGC. PBGC will advise you what actions to take under 29 CFR §4041.47(c).*

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing the benefit liabilities 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 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).

A. Notices of Benefit Distribution (*see* 29 CFR § 4041.48(a) and (b))

No later than 60 days after receiving the distribution notice, the plan administrator must issue notices of benefit distribution to affected parties (other than an employee organization or PBGC). The notices of benefit distribution must contain the same information as that required for the notices of plan benefits in a standard termination (*see* 29 CFR § 4041.24 and section II.D of the standard termination package), substituting (1) the term “Title IV benefits” for the terms “plan benefits” and “pension benefits” and (2) “termination date” for “proposed termination date.” No later than 15 days after the plan administrator completes the issuance of the notices of benefit distribution, he or she must file with PBGC a certification that the notices were issued.

B. Notice of Annuity Information (*see* 29 CFR § 4041.48(c))

The plan administrator must provide a notice with the following annuity information to:

1. Each affected party entitled to benefits, other than an affected party whose 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.

Annuity Information

- ▶ Name and address of each insurer from whom (if known), or (if not) 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 written supplemental notice no later than 45 days before the distribution date. (The supplemental notice must contain the same information as this notice, unless the information was previously provided.)
- ▶ Statement that, after plan assets have been distributed to provide all benefits, either through the purchase of an annuity contract or in another form permitted by the plan, PBGC's guarantee ends.
- ▶ 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 at PO Box 151750, Alexandria, VA 22315-1750 (telephone: 1-(800) 400-7242) or by visiting PBGC's website at www.pbgc.gov (on the "Workers & Retirees" tab click on "Benefits" and select "State Life and Health Insurance Guaranty Association Offices" on the bottom of the page).

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

C. Distribution Deadline (see 29 CFR § 4041.50)

The plan administrator must complete the distribution of plan assets by the later of (a) 180 days

after the plan administrator completes the issuance of the notices of benefit distribution or (b) 120 days after the plan's receipt of a favorable IRS determination letter. The IRS determination letter distribution deadline described in (b) above is available only if, by the time the plan administrator completes the issuance of the notices of benefit distribution, the plan administrator submits to the IRS a valid request for a determination letter with respect to the plan's tax-qualification status upon termination.

A plan administrator may request an extension of the time to file for an IRS determination letter in order to qualify for the IRS determination letter distribution deadline in accordance with the rules described in 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. PBGC will notify the plan administrator in writing of the date it receives the request.

PBGC Discretion. PBGC may extend the distribution deadline to a later date in accordance with 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.*

D. Distributing Benefits

Benefits may be distributed in a form other than an annuity (*e.g.*, an immediate lump sum or direct transfer) 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-D), including amounts previously distributed, is at or below the plan's *de minimis* cash out limit, which may not exceed the dollar limit under § 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 Treas. Reg. § 1.417 (e)-1(b)(1)).*

If benefits are not payable in an optional form under the conditions described above, benefit liabilities 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.

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 de minimis cash out limit.*

Participating Annuities. A participating annuity contract may be purchased to provide the benefits if all benefit liabilities will be guaranteed under the annuity contract as the unconditional,

irrevocable, and noncancellable obligation of the insurer. For a plan in which any portion of 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 benefit liabilities without the participation feature. If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

E. Providing the Annuity Contract (see 29 CFR § 4041.28(d))

If the plan administrator distributed benefits to any participant or beneficiary (other than a missing participant) 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 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 benefit.

If such a contract or certificate is not provided to the participant or beneficiary by the date on which the date the Form 602 is required to be filed to avoid the assessment of penalties (see section G of this Appendix), the plan administrator must, no later than that date, provide each participant and beneficiary with a written notice stating:

1. That the obligation for providing the benefit has transferred to the insurer;
2. The name and address of the insurer;
3. The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and
4. 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 benefit.

F. Missing Participants (see 29 CFR Part 4050)

The plan administrator must distribute the plan benefits of Missing Participants either by purchasing an irrevocable commitment from an insurer or by paying the value of the Missing Participant's benefit to PBGC. The rules related to Missing Participants differ depending on when the plan terminates.

For pre-2018 terminations, the rules are described in detail in a separate package of instructions and forms (Schedule MP Package). For post-2017 terminations, the rules are described in detail in the instructions for Form MP-100. Both sets of instructions are available on [PBGC's Forms for Practitioners webpage](#).

G. Post-Distribution Certification (Form 602) (see 29 CFR § 4041.50(b))

The plan administrator must file a completed Form 602 with PBGC within 30 days after the last distribution date for benefits for any affected party. PBGC may assess a penalty for late filing of a Form 602. However, PBGC will do so only to the extent the Form 602 is filed more than 90 days after the distribution deadline (including extensions) described in section C of this Appendix.

***Exception:** If a plan with missing participants terminates before January 1, 2018, the due date for filing Form 602 is 30 days after the deemed distribution date rather than 30 days after the last distribution date. (See Schedule MP Package for more information).*

H. 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 602 is filed with PBGC. For rules on maintaining records electronically, see 29 CFR Part 4000, Subpart E (also available on the PBGC's website, www.pbgc.gov: at "Employers & Practitioners" page select "Law & Regulations").

***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 benefits of each individual.

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

APPENDIX D: 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 most states, guaranty association coverage limits are \$100,000 for individual annuities with an overall benefit “cap” for an individual life of \$300,000, though some states have maximums that are higher. 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 calling or writing the PBGC’s Customer Contact Center, P.O. Box 151750, Alexandria, VA 22315-1750 (telephone: 1-(800) 400-7242) or by visiting PBGC’s website at www.pbgc.gov (on the “Workers & Retirees” tab click on “Benefits” and select “State Life and Health Insurance Guaranty Association Offices” at the bottom of the page).