

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

Background

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

Amendment

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

“i. Effective as of the first month in which special financial assistance is paid to the Plan, the Plan shall reinstate all benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA.

ii. The Plan shall pay each participant and beneficiary that is in pay status as of the date special financial assistance is paid to the Plan the aggregate amount of their benefits that were not paid because of the suspension, with no actuarial adjustment or interest. Such payment shall be made [*choose whichever applies*: ‘in a lump sum no later than 3 months after the date the special financial assistance is paid to the Plan, irrespective of whether the participant or beneficiary dies after the date special financial assistance is paid’ or ‘in equal monthly installments over a period of 5 years, commencing no later than 3 months after the date the special financial assistance is paid to the Plan, with all installments to be paid irrespective of whether the participant or beneficiary survives to the end of the 5-year period’].”

[IN ACCORDANCE WITH 29 C.F.R. § 4262.7(e)(2), DO NOT EXECUTE OR DATE PRIOR TO SUBMISSION OF SPECIAL FINANCIAL ASSISTANCE APPLICATION TO PBGC. INSERT ONE SIGNATURE BLOCK FOR EACH TRUSTEE, EACH WITH A PRINTED NAME AND TITLE:]

[PRINTED NAME]
[TITLE]

[PRINTED NAME]
[TITLE]

[PRINTED NAME]
[TITLE]

[PRINTED NAME]
[TITLE]

Date: [DATE OF EXECUTION]