



# DISTRESS TERMINATION FILING INSTRUCTIONS

**This package contains:**

PBGC Form 600  
Schedule REP-D  
PBGC Form 601  
Schedule EA-D  
PBGC Form 602  
Instructions

<b>Paperwork Reduction Act Notice</b>	<b>Table of Contents</b>	<b>Page</b>
<p>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.</p> <p>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.</p> <p>PBGC estimates that the average time and cost of complying with these requirements is as follows for each of the categories listed below.</p> <p>Plans with 100 or Fewer Participants</p> <ul style="list-style-type: none"> <li>· Bankruptcy or Insolvency Proceeding: 6.3 hours and \$8,785</li> <li>· Other Distress Criteria: 9.2 hours and \$12,810</li> </ul> <p>Plans with More Than 100 Participants</p> <ul style="list-style-type: none"> <li>· Bankruptcy or Insolvency Proceeding: 55.7 hours and \$77,980</li> <li>· Other Distress Criteria: 58.6 hours and \$82,005</li> </ul> <p>These are estimates and the actual time will vary depending on the circumstances of a given plan.</p> <p>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, Legislative and Regulatory Department, 1200 K Street, NW, Washington, DC 20005-4026.</p>	<p>I. OVERVIEW 2</p> <p>II. DISTRESS TERMINATION PROCESS 3</p> <p style="padding-left: 20px;">A. Computation of Time; Filing and Issuance Rules 4</p> <p style="padding-left: 40px;">1. Filing with PBGC 4</p> <p style="padding-left: 40px;">2. Issuance to Affected Parties Other than PBGC 5</p> <p style="padding-left: 20px;">B. Administration of Plan During Termination Process 6</p> <p style="padding-left: 20px;">C. Notice of Intent to Terminate (NOIT) 7</p> <p style="padding-left: 20px;">D. PBGC Review of Form 600 8</p> <p style="padding-left: 20px;">E. Distress Termination Notice (Form 601) 9</p> <p style="padding-left: 20px;">F. Participant and Benefit Information 9</p> <p style="padding-left: 20px;">G. PBGC Determination of Distress 11</p> <p style="padding-left: 20px;">H. PBGC Determination of Plan Sufficiency/Insufficiency 12</p> <p style="padding-left: 20px;">I. Requests for Deadline Extensions 12</p> <p style="padding-left: 20px;">J. Forms and Instructions; Contacting Us 13</p> <p>III. GENERAL INSTRUCTIONS FOR DISTRESS TERMINATION FORMS 13</p> <p>IV. SPECIFIC INSTRUCTIONS FOR DISTRESS TERMINATIONS 14</p> <p style="padding-left: 20px;">A. Form 600 14</p> <p style="padding-left: 20px;">B. Schedule REP-D 18</p> <p style="padding-left: 20px;">C. Form 601 19</p> <p style="padding-left: 20px;">D. Schedule EA-D 20</p> <p style="padding-left: 20px;">E. Form 602 23</p> <p>Appendix A: Glossary of Terms 25</p> <p>Appendix B: Model NOIT 28</p> <p>Appendix C: Rules for Sufficient Distress Terminations 30</p> <p>Appendix D: Model Notice of State Guaranty Association Coverage of Annuities 33</p>	

## 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 tests. Briefly, the four statutory distress tests 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. These steps and deadlines are briefly summarized below and explained in more detail in sections II through IV of this package.

### Step 1:

- ▶ Select a proposed termination date.

### Step 2:

- ▶ Identify which of the four distress tests can be satisfied by each contributing sponsor and controlled group member.  
**Note:** *Each entity can satisfy a different test, but all must satisfy at least one test.*

### Step 3:

- ▶ 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. (See section II.C.)*

### Step 4:

- ▶ 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 Web site, [www.pbgc.gov](http://www.pbgc.gov), for

these regulations (click on "Resources" tab and select "Law & Regulations" on left menu bar).

### Step 5:

- ▶ 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 6:

- ▶ File participant and benefit information with PBGC by the later of (1) 120 days after the proposed termination date or (2) 30 days after receipt of PBGC's determination that the requirements for a distress termination have been satisfied. (*See* section II.F.)

**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.*

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.

**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(b) for the total amount of unfunded benefit liabilities under the plan.*

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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, because the standard termination process is faster and less costly for the plan. You must file Form 500 with Schedule EA-S and Form 501 with PBGC in order to terminate in a standard termination in accordance with the requirements of section 4041(b) and 29 CFR Part 4041, Subparts A and B. *See* PBGC's Web site for information on the standard termination process. At [www.pbgc.gov](http://www.pbgc.gov), go to the "Practitioners" page and click on "Plan Terminations" on left menu bar. If, after beginning the distress termination process, the plan administrator determines that the plan is sufficient for all benefit liabilities and would qualify for a standard termination, the plan administrator may be able to

convert from a distress termination to a standard termination. *See* page 9, section II.B.

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 Schedule REP-D (an optional form for designating an authorized representative); 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.

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

## 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 test; actuarial information; and detailed information about participants' benefits.

**NOTE:** Section 506 of the Pension Protection Act of 2006 (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 Web site, [www.pbgc.gov](http://www.pbgc.gov), for a detailed description of these disclosure obligations (for guidance go to the "Practitioners" page and click on "Plan Terminations" on left menu bar).

**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. For example, participant and beneficiary information including current addresses, the location and value of plan assets, and, in the case of a distress termination under the business continuation test (Test 3 on page 20), documents such as financial statements and business plans and projections of the plan sponsor.

**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* section IV, under Schedule EA-D).

**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 and Form 601 (including Schedule EA-D).

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#### **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 of 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, July 4, 2011 (a Federal holiday), your notice is timely if you issue it on Friday, July 1, 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 REP-D), Form 601 (including Schedule EA-D), and Form 602 (if required) by hand, mail, or commercial delivery service.

**Note:** Forms 600, 601, 602, and related schedules require original signatures. They may not be faxed or e-mailed to PBGC. Other filings relating to a distress termination (e.g., a request for an extension of a deadline) may be e-mailed or faxed, as well as filed by hand, mail, or commercial delivery service. Current information on how to file, including permitted filing methods, fax numbers, and mail and e-mail addresses is on PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) (at the "Practitioners" page, click on "Plan Terminations" on left menu bar).

**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 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 Web site, [www.pbgc.gov](http://www.pbgc.gov), lists those designated private delivery services (at the “Practitioners” page select “Contact Us” tab, “More contact information for practitioners” and then “Commercial 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, commercial delivery service or hand delivery (they may not be e-mailed or faxed; see “Filing Methods” at section II.A.1 above) to:

Pension Benefit Guaranty Corporation  
Distress Terminations  
Department of Insurance Supervision and Compliance  
Suite 270  
1200 K Street, NW  
Washington, DC 20005-4026

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

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

By fax: (202) 842-2643

## 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 Web site, [www.pbgc.gov](http://www.pbgc.gov) (click on “Resources” tab and select “Law & Regulations” on left menu bar).

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

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

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

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

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

You may prove an earlier 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 Web site, [www.pbgc.gov](http://www.pbgc.gov), lists those designated private delivery services (at the “Practitioners” page select “Contact Us” and then “Commercial 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 e-mail). If you comply with the request or otherwise resolve the problem (e.g., by providing advice that the recipient uses to open the attachment to your e-mail), within a reasonable time, your issuance date for the issuance (or portion) that the intended recipient asked you to resend is the date you provided your original issuance.

**Special Rule for Foreign Languages.** This rule applies

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

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

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

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

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## 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, the plan administrator determines that the plan is sufficient for all benefit liabilities and would qualify for a standard termination, he or she may be able to convert from a distress termination to a standard termination. In that event, please contact the PBGC representative assigned to your case.

**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:** *An NOIT must also be issued to a person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the 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.

*Example: Assume a proposed termination date of May 8, 2011 (a Sunday). For the NOIT to be timely, it must be issued no later than March 9, 2011, and no earlier than February 7, 2011. In counting backwards, start with May 7, 2011 (a Saturday), as day 1.*

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

**Note:** *To the extent information and documents required to be provided as part of Form 601 are readily available when Form 600 is submitted, PBGC requests that such information be submitted to PBGC with Form 600.*

**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.
- ▶ 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).

### **Special Rule for Spin-off/Termination Transactions.**

For a spin-off/termination transaction, the plan administrator must provide all participants, beneficiaries of deceased participants and alternate payees in the original plan who are (as

of the proposed termination date of the terminating plan) covered by the ongoing plan with —

1. A notice describing the transaction at least 60 days and no more than 90 days before the proposed termination date of the terminating plan; and
2. The same annuity information for the ongoing plan that is required for a terminated plan that is sufficient for at least guaranteed benefits (*i.e.*, identity of insurer, change in identity of insurer, statement that PBGC's guarantee ends after plan assets have been distributed, and information on state guaranty association coverage of annuities) no later than 45 days before an annuity is purchased for the person. (*See* Appendix C.)

The rules in section II.A.2 for method and date of issuance of notices to affected parties other than PBGC apply to these notices.

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### **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 non-compliance becomes effective because either the plan administrator does not request reconsideration or PBGC issues a decision upon reconsideration affirming its determination of non-compliance, 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. The Form 600 (see items 11 and 12) indicates that 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.*

Unless the enrolled actuary certifies that the plan is sufficient for at least guaranteed benefits, detailed participant and benefit information (see section II.F) must be submitted as part of the Form 601, or, if later, by 30 days after receipt of PBGC's determination, pursuant to 29 CFR § 4041.46(b), that the requirements for a distress termination have been satisfied. (See Appendix C for the requirements for submitting participant and benefit information for plans that are sufficient for at least guaranteed benefits.)

**Note:** *PBGC may void the termination if the plan administrator fails to provide complete and timely participant and benefit information.*

**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 an 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.*

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

**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. Participant and Benefit Information**

The plan administrator must provide PBGC with the amount and value of monthly benefits and plan benefits for each plan participant/beneficiary together with all information needed for the calculations and valuations. All information, benefit determinations, and benefit valuations must be as of the proposed termination date. The information is not required to be in any specific format; however, PBGC requests that this data be provided electronically. We will provide you with the format in which we would prefer the data if and when we determine that you satisfy the distress criteria. If you have any questions concerning this electronic data transfer

to PBGC, contact PBGC Customer Service Center for Plan Administrators and Plan Professionals at (800) 736-2444 and ask to be transferred to PBGC's Actuarial Services Division.

The following information, at a minimum, must be provided for each participant/beneficiary.

- 1. Participant categories.** Information must be provided by categories as follows: (a) retired participants, including any beneficiary receiving benefits from the plan; (b) inactive participants entitled to future benefits; (c) active participants with vested benefits; and (d) active participants without vested benefits.
- 2. Name of participant.** Denote each majority owner, as defined in ERISA section 4022(b)(5)(A), by entering an asterisk (\*) in front of the person's name, and enter in parentheses each person's highest percentage of ownership during the 60-month period ending on the proposed termination date.
- 3. Address.**
- 4. Social security number.**
- 5. Marital status** and, if available, the following information on spouses: name, social security number, and date of birth.
- 6. Sex.**
- 7. Date of birth.**
- 8. Beneficiaries.** If the participant is entitled to a benefit form that provides an annuity or lump sum death benefit to a surviving beneficiary, *e.g.*, a qualified joint and survivor or a certain and continuous benefit, provide the name of the beneficiary for that participant and the beneficiary's address, social security number, sex, and date of birth.
- 9. Retiree benefit information.** For each retiree, provide the benefit commencement date, form of benefit, and the type of benefit (normal, early, late, or disability).
- 10. Date employment began or, if different, date plan participation began.**
- 11. Date employment terminated, if earlier than proposed termination date.**
- 12. Credited service.** Provide the amount of all credited service as defined in the plan document. Show any break(s) in service between date of hire and date of termination of employment or proposed termination date.
- 13. Compensation.** If compensation is a factor in the benefit formula, provide the applicable compensation figure(s) as defined in the plan document. If the benefit formula provides that the past service benefit and the future service benefit are determined using different compensation figures, enter the compensation for the past service benefit in one column and the compensation for the future service benefit in another.
- 14. Monthly plan benefit.** This is the monthly plan benefit in the normal annuity form under the plan based on credited service as of the proposed termination date. If the monthly plan benefit is greater than the accrued benefit, show how the benefit was calculated. Provide any other information that is necessary to show the determination of each participant's plan benefit. The following are examples of the type of data to be provided:
  - a. If the plan is contributory, provide the total amount of each employee's contributions with and without interest credited by the plan and the portion of the normal retirement benefit attributable to employee contributions. If the plan credits interest at a rate (or rates) other than those specified in Code § 411(c)(2)(C)(iii), provide the amount of employee contributions plus interest computed in accordance with that Code provision.
  - b. If the accrued monthly benefit is integrated using an offset or excess method, provide the offset or the excess benefit and the data used in determining these amounts.
  - c. If, before retirement, the accrued monthly benefit is determined from the cash value of insurance or annuity contracts, provide the cash value.
- 15. Adjusted monthly plan benefit.** If, as of the proposed termination date, an individual is receiving or has elected to receive benefits in an optional form or at an early retirement age permitted by the plan, show the amount payable under that election.
- 16. Plan adjustment factors.** Provide any factors used by the plan to adjust benefits for payment in an optional form or as an early or late retirement benefit.
- 17. Value of adjusted monthly plan benefit.** Provide the estimated value of the plan benefit as of the proposed termination date, 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 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.

- 18. Vesting percentage.** The vesting percentage is to be calculated without regard to any increase in vesting due to the termination. For contributory plans, enter the percentage applicable to the portion of the accrued benefit provided by employer contributions.
- 19. Monthly vested adjusted plan benefit.** The portion of the adjusted monthly plan benefit provided by employer contributions is multiplied by the vesting percentage and this amount is added to the benefit, if any, provided by employee contributions.
- 20. Monthly guaranteed benefit.** This is the monthly vested adjusted benefit (number 19) reduced, if necessary, in accordance with PBGC regulations and limitations for single-employer plans. Provide the calculations, *i.e.*, phase-in, substantial owner limitation, or maximum guaranteeable benefit. These benefits should be calculated without regard to any asset allocation.
- 21. Value of monthly guaranteed benefit.** Estimated value of monthly guaranteed benefit as of the proposed termination date, calculated in accordance with 29 CFR Part 4044, Subpart B.
- 22. Title IV benefits.** If plan assets, when allocated in accordance with ERISA section 4044 and 29 CFR Part 4044, can provide benefits to any participant in excess of the monthly guaranteed benefit, compute the benefits that can be so provided.

*Note: All computations used in the completed allocation process should be furnished along with an explanation as to how the participant's Title IV benefits were determined including any adjustments made to the amount of the benefit for the annuity form and the age at which it is assumed to be payable, i.e., expected retirement age. Include any special schedules that were required to be prepared for the plan under Code § 414(l).*

- 23. Value of Title IV benefits.** Estimated value of Title IV benefits (number 22) as of the proposed termination date calculated in accordance with 29 CFR Part 4044, Subpart B.
- 24. Additional Information.** If PBGC needs additional participant and beneficiary information to pay benefits pursuant to ERISA § 4061 or § 4022(c), PBGC may require that additional information be submitted by requesting its submission in writing.

**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. Final regulations under § 436 were published in the Federal Register on October 15, 2009, 74 Fed. Reg. 53,004; *see* Treas. Reg. § 1.436-1.

## G. 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 and the plan administrator must submit the required participant and benefit information. *See* section II.F above. 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.

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

Upon receipt of the participant and benefit information described in section II.F, PBGC will determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination. 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 successor trustee of the plan.

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.)

**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 trusted 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.*

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### I. 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  
 Distress Terminations  
 Department of Insurance Supervision and Compliance  
 Suite 270  
 1200 K Street, NW  
 Washington, D.C. 20005-4026

E-mailed to: [distress@pbgc.gov](mailto:distress@pbgc.gov)

Faxed to: (202) 842-2643

## J. Forms and Instructions; Contacting Us

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

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

E-mail addresses:

Distress Terminations ([distress@pbgc.gov](mailto:distress@pbgc.gov)) –  
 Questions about distress terminations and missing participants in a distress termination.

Standard Terminations ([standard@pbgc.gov](mailto:standard@pbgc.gov)) –  
 Questions about standard terminations and missing participants in a standard termination.

Fax: (202) 842-2643

**Note:** Do not fax or e-mail Forms 600, 601, or 602 (and related schedules). See "Filing Methods" at section II.A.1 above.

## 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 REP-D.

**Schedule REP-D** is the Designation of Representative form

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

**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 information demonstrating satisfaction of the distress criteria and various plan, sponsor, and participant data. Form 601 includes Schedule EA-D.

**Schedule EA-D** is the Distress Termination Enrolled Actuary Certification that an enrolled actuary must use to certify 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 closes 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.

**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.**

**Submission of Documents with Forms.** Plan administrators may furnish information and documents to PBGC before required deadlines to assist PBGC in determining whether a distress termination is appropriate. Once such information or documents are submitted, they need not be submitted again. It is sufficient for the plan administrator to note that the required information or documents were already submitted and provide the date of the submission.

**Who Must File.** The plan administrator or the plan administrator's authorized representative must submit all filings required to be made to PBGC. Schedule REP-D (or another

form for designating a representative) must accompany the filing if it is made by a representative of the plan administrator.

**Note:** While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 600, Form 601, and (where required) Schedule REP-D 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. 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).

#### Part I. Identifying Information

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

2a-b Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

2c-d Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor named in 2a by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.

2e If the EIN or PN entered in items 2c or 2d is different from that used in earlier filings with PBGC (including premium and reportable event filings for this plan), enter the EIN(s) and PN(s) previously reported.

2f-g Enter the end date of the contributing sponsor's tax year

and the 6-digit industry code that you entered on your most recent PBGC premium filing.

3a-c Enter the name, address, telephone number, and e-mail address (3c is optional) of the individual, board, or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated, or is the same as 2a, enter "same." (Under section 3(16)(A)(ii) of ERISA, if an administrator is not designated by the plan, the plan sponsor is the administrator.)

3d-f Enter the name, address, telephone number and e-mail address (3f is optional) of person to be contacted for more information. If none is so designated or is the same as 3a, enter "same."

#### Part II. General Plan Information

4 The proposed termination date may not be earlier than the 60th day after Form 600 is filed with PBGC, nor later than the 90th day after the earliest date an NOIT is issued to any affected party. (See section II.A for rules on computation of time.)

5a For purposes of 5a(iii), "active participants, nonvested" includes both currently employed participants and separated, nonvested participants who are earning or retaining credited service under the plan.

6 Check statement(s) which describe(s) any change(s) in the organization or structure of the contributing sponsor associated with the plan's termination.

**Note:** These changes are not intended to correspond to the four statutory distress tests.

7a-e For currently employed participants, check whether you expect they will not be covered under a new plan (7a) or that they will be covered by one or more of the types of new or existing plans listed in items 7b-e (check all that apply).

8a-b For purposes of 8b, "multiple-employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.

9a-b If you checked "Yes" to either item 8a or 9a, attach a listing of the name, address, and EIN for each contributing sponsor and for each member of each contributing sponsor's controlled group as of the proposed termination date.

9c For each entity listed on the attachment for item 9b, at

tach a statement:

- identifying the distress test that you expect each entity will meet; and
- describing in detail why each entity meets the distress test that you have identified.

In addition, based on the distress test identified for each entity, include as attachments the “Required Information” listed below for each distress test. This information must be provided to prove that each entity satisfies the distress test identified for that entity.

PBGC recognizes the time and effort necessary to provide the statement and documents required by item 9c, and does not want these requirements to delay the filing of the Form 600. To facilitate the filing of the Form 600, the material required by item 9c may be filed separately. If filed separately, it must be filed within 60 days of filing the Form 600, unless extended by PBGC (*see* section II.I, Requests for Deadline Extensions).

**NOTE: Until PBGC receives the information required by item 9c, its ability to make a determination that the requirements for a distress termination have been met is limited.**

### The Four Distress Tests

**NOTE: Each entity must satisfy at least one of the four distress tests (described below), but not necessarily the same test.**

#### Liquidation Test:

**A. Description of Test:** A person 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) is 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 distress test, 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 test 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.)

**B. Required Information:** A copy of the filed petition showing the court docket number or a copy of any documents showing liquidation under federal or state law, foreclosure by a secured creditor, or an assignment for the benefit of creditors.

#### Reorganization Test:

##### A. Description of Test:

- (1) a person 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;
- (2) such case has not, as of the proposed termination date, been dismissed;
- (3) such person submits a copy of any requests for the approval of the plan termination to PBGC at the same time the motion for approval 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
- (4) 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 test cannot be met. However, the liquidation test may be met (*see* above).

**B. Required Information:** A copy of the filed petition showing the court docket number; a copy of the notification to the PBGC of the request for approval of the plan termination by the federal bankruptcy or other appropriate court; and a copy of the court order (if any)

approving the termination.

**Business Continuation Test:**

**A. Description of Test:** A person 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.

**B. Required Information:**

(1) Financial statements: Audited financial statements of the person for the 5 most recent fiscal years ending prior to the proposed termination date. If audited financial statements are not available, submit unaudited statements and include a brief statement explaining why audited statements are not available. The financial statements must be augmented as follows:

(a) Identify pension costs recorded in each year for the pension plan that is the subject of this application. Pension costs should include an estimate of the annual and quarterly minimum funding requirements for the year in progress at the time of the application and for the next 5 years.

In connection with this, provide copies of (1) minimum funding waivers approved by the IRS if the amounts waived have not been fully paid to the plan as of the date of this form; (2) a schedule showing the total amount waived for each plan year and the remaining amortized amount of the waiver(s); and (3) any requests for minimum funding waiver(s) pending before the IRS.

(b) If the person 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 5 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.

(c) 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.

(d) If financial statements are submitted that do not contain complete footnote disclosures, they must be augmented by a schedule identifying 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.

(e) Identify and explain any material changes in financial

position since the date of the last financial statement.

(2) Business plans and projections: Projections of future revenues, expenses, and cash flow for a minimum of 5 fiscal years in addition to the year in progress at the time of the distress application. Explicitly state all major strategic and economic assumptions made in development of the projections. 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 submission of 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 3 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.

(3) Any other relevant information.

(4) Certification by the chief executive officer that all of the information submitted is accurate and complete to the best of the individual's knowledge, and that the entity will not be able to continue in business unless the plan is terminated.

**Pension Costs Test:**

**A. Description of Test:** A person 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.

**B. Required Information:**



(1) The name and plan number (PN) of each single-employer defined benefit plan maintained by the contributing sponsor and each controlled group member.

(2) The latest Form 5500, Schedule B, filed for each plan named in (1).

(3) For each plan named in (1), a plan census showing total, active, and retired participants for the most recent 5 plan years ending prior to the proposed termination date (this data may be provided by submitting the relevant Form 5500, Schedule B).

(4) Audited financial statements for the person's most recent 5 fiscal years ending prior to the proposed termination date, updated to show any material changes, with a breakout of the contributing sponsor's total pension costs, including any defined contribution plans, as a percentage of the person's total wage costs and a statement of the total costs per plan. If audited financial statements are not available, submit unaudited statements and include a brief statement explaining why audited statements are not available.

(5) Reason(s) for the decline in workforce.

(6) Any other relevant information.

10 If you checked "Yes" in item 10, attach a statement describing each transaction that changed the composition of the contributing sponsor's controlled group. Include in the statement a listing of each member of the contributing sponsor's controlled group immediately prior to each transaction date and a listing of each member of the controlled group after the transaction.

11 If "No" is checked, attach a statement describing (a) the reason for non-payment, (b) the number of such participants/beneficiaries who are not being paid, (c) the total monthly amount not being paid to all such participants/beneficiaries, (d) the last date for which all participants/beneficiaries were paid and (e) the date on which benefits were last paid.

12 If "No" is checked, *i.e.*, the plan does not have sufficient liquid assets (cash, cash equivalents, and other liquid assets) available to pay estimated Title IV benefits when due for at least 180 days after the Form 600 is filed with PBGC, attach a statement describing (a) the nature and amount of the plan assets, including their liquidity, (b) the number of participants/beneficiaries owed benefits over that period, and (c) the total monthly amount that is owed to all participants/beneficiaries for each month

during that period.

13a-b Beginning on the proposed termination date, ERISA section 4041(c)(3)(D)(ii)(IV) and 29 CFR § 4041.42(c) require that the plan administrator reduce the benefits paid to the plan's participants and beneficiaries in pay status to the estimated benefit amounts determined in accordance with 29 CFR Part 4022, Subpart D.

If you checked "Yes" to 13a, you must take action to reduce benefit payments to estimated Title IV benefit levels as of the proposed termination date. If you checked "No" to 13b, attach a statement describing why no reduction is scheduled.

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

14 All documents described in item 14 and submitted to PBGC must be executed copies. Each document submitted must include the complete text as well as the signature page, and must indicate the effective date of the document and the date it was adopted. PBGC will accept clear photocopies.

14a If your plan was adopted and has been in effect for five or more years, submit the plan document(s) and amendment(s) showing the provisions of the plan adopted and effective at the beginning of the 5-year period ending on the proposed termination date. You must also submit any plan amendments adopted and effective during the period. For plans in effect fewer than five years, submit the document establishing the plan and each subsequent amendment to the plan adopted and effective before the proposed termination date. (Attach a statement giving all actuarial equivalence factors, including early retirement reduction factors, if these factors are not included in the plan documents.)

14b Attach each trust agreement and/or each group annuity or group insurance contract that provides for management of plan assets, plan administration, or payment of benefits under the plan.

14c Attach a copy of the latest available financial statement of the plan and include a complete listing of all assets.

14d Attach a copy of the most recent collective bargaining agreement (if any) that contains provisions relating to the plan.

14e Attach the most recent determination letter issued by

the IRS that relates to the establishment of the plan, amendments to the plan, or partial termination of the plan. Attach all determination letters that relate to disqualification of the plan, and any later re-qualification.

- 14f Attach a copy of the most recent actuarial valuation of the plan.
- 14g Attach copies of the Form 5500, Schedule B and Schedule SSA filed for the three plan years ending before the proposed termination date.
- 14h Attach a copy of the NOIT sent to affected parties other than PBGC.
- 14i Attach the following information relating to benefit limitations under Code § 436 (*see* Note at end of section II.F):
1. Copies of all AFTAP certifications (and the dates of those certifications), including any certification prepared for the 2007 plan year.
  2. An explanation of the periods in which any of the limits under Code § 436 applied to the plan, specifying the date(s) of any limitation for each of the following: unpredictable contingent event benefits (restriction under § 436(b)), plan amendments increasing liability (restriction under § 436(c)), accelerated benefit distributions (restriction under § 436(d)), and benefit accruals (restriction under § 436(e)).
  3. An explanation of any reasons why the Code § 436 limits were not applied despite the plan's having an AFTAP level or presumed underfunding below the specified threshold. Examples of reasons for not applying the § 436 limits would be:
    - deferral of § 436 limits due to collectively bargained status of plan
    - deferral of § 436 limits for first 5 plan years of the plan
    - retroactive effect of an AFTAP certification
    - a contribution under § 436(f)
    - plan frozen prior to September 1, 2005 (for purposes of not applying § 436(d))
    - exemption from § 436(c) because plan amendment did not increase funding target
    - form of payment was not a "prohibited payment" and thus not affected by § 436(d)
    - any other reason
- 14j Attach all documents required in response to item 9c.

15a-b Enter the name, address and telephone number of the person to be contacted for access to plan records. If such records are in the possession of more than one person, attach a listing with this information for each person who has possession of such records.

15c Enter the type of record(s) in the contact's possession.

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## B. Schedule REP-D

Schedule REP-D may be used to designate a person or persons to represent you before PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-D (or another form for designating a representative) must be filed simultaneously with Form 600 if Form 600 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-D at any time that you wish to designate a representative or representatives in connection with a distress termination. Schedule REP-D also may be used to revoke a prior designation.

### Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 600 that you filed, or are filing, with PBGC. If the plan covers the employees of more than one contributing sponsor, the EIN of the contributing sponsor with the greatest number of participants should be used.

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

- 3 The plan administrator must enter his or her name in item 3.
- 4a-b Enter the name, address, telephone number, and e-mail (this last item is optional) for up to two representatives.
- 5 If there are any matters relating to the termination of the plan that you wish to exclude from the representative's authorization to act on your behalf, list the matters in item 5.

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

If you want a previous designation for the **same** termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

### Part IV. Signature

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

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

## C. Form 601

Form 601 with Schedule EA-D and any required supplemental information must be filed simultaneously on or before the 120th day after the proposed termination date (*see* section II.A.1 for filing rules).

### Part I. Identifying Information

- 1a-b Enter the complete name of the plan as it appears in the plan document, and the name and address of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.
- 1c-d Enter the 9 digit employer identification number (EIN) assigned to the contributing sponsor named in 1b by the Internal Revenue Service for income tax purposes and the 3 digit plan number (PN) assigned by the plan sponsor.
- 2 Enter PBGC Case Number, which will be on PBGC's letter acknowledging receipt of the Form 600 for this plan.

### Part II. Specific Plan Information

- 3a The proposed termination date entered in item 3a may be later than the proposed termination date specified in the NOIT, but may not be later (except with PBGC approval) than the 90th day after issuance of the NOIT is begun, *i.e.*, the earliest date a NOIT is issued to any affected party.

*Example: The plan administrator begins issuing the NOIT on March 3, 2011, and completes the issuance to all affected parties (and files Form 600 with PBGC) on March 6, 2011, specifying a proposed*

*termination date of May 5, 2011(63 days after March 2, 2008). In item 3a, the plan administrator may specify a proposed termination date of any day from May 5, 2011 to and including June 1, 2011.*

- 4a Enter the **earliest** date any NOIT was issued to any affected party (other than PBGC; *see* section II.A.2 for issuance rules).
- 4b Enter the **latest** date any NOIT was issued to any affected party (other than PBGC).

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

- 5 ERISA section 4041(c)(2)(B) and 29 CFR § 4041.41(c) provide that a plan may terminate in a distress termination only if each contributing sponsor and each member of the sponsor's controlled group meet at least one of the distress tests.

If you checked "Yes" to item 5, attach a statement listing the name, address, and employer identification number of each contributing sponsor and each controlled group member, and identify the distress test met by each. If the distress test for any one of the contributing sponsors or members of their controlled group differs from that identified in response to item 9c on the Form 600, the information and documents required for the newly identified distress test must be attached.

If you checked "No" to item 5, the plan may not terminate in a distress termination. Unless PBGC determines that the plan can qualify for a standard termination or institutes an involuntary termination pursuant to ERISA section 4042(a), the plan is an ongoing plan.

- 6 If PBGC is advised, before issuance of a notice determining sufficiency or insufficiency pursuant to 29 CFR § 4041.47(b) or (c), that a formal challenge to the termination has been initiated, PBGC **will** suspend the termination proceeding and will so advise the plan administrator in writing. If PBGC is advised of such a challenge to the termination after the issuance of either notice but before the termination procedure is concluded, PBGC **may** suspend the termination proceeding and, if it does, will so advise the plan administrator in writing. (*See* 29 CFR § 4041.7.) For this purpose, the following definitions apply:

**Formal challenge to a termination** means the oc-

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

**Existing collective bargaining agreement** means a collective bargaining agreement that has not been made inoperative by judicial ruling and, by its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it. When a collective bargaining agreement no longer meets these conditions, it ceases to be an “existing collective bargaining agreement” whether or not any or all of its terms continue to apply by operation of law.

If you checked “Yes” to item 6, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.

- 7 If the plan does not have sufficient assets to provide all guaranteed benefits, the benefits of participants and beneficiaries currently receiving benefits must be reduced pursuant to ERISA section 4041(c) and 29 CFR § 4041.42(c), to the estimated benefit amounts determined in accordance with 29 CFR Part 4022, Subpart D, as of the proposed termination date.

If you checked “No” or “N/A” to 7, attach a statement describing why no reduction has occurred or why a reduction is not applicable.

**Note:** *If you need assistance, you may call the 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.*

- 8 Check “Yes” if the plan ever required employee contributions, even if the plan no longer does so.
- 9 Check “Yes” if you have or will file an application for a determination upon termination with the IRS. If you have already filed, enter the filing date.
- 10 Check “Yes” if there are amounts due and owing the plan pursuant to the minimum funding requirements of ERISA and the Code that (1) have not been paid to the plan and (2) for which no minimum funding waivers have been granted and no waiver requests are pending

before IRS. If “Yes” is checked, attach a schedule showing the amount of outstanding employer contributions owed for each plan year.

**Note:** *Controlled group members are jointly and severally liable for amounts that are required to be contributed to the plan pursuant to ERISA section 302 and Code § 412. All amounts owed the plan, including unpaid contributions, are plan assets and it is generally the plan administrator’s responsibility to attempt to collect such amounts.*

## D. Schedule EA-D

Schedule EA-D must be used 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 (1) insufficient to provide for all guaranteed benefits, (2) sufficient to provide for all guaranteed benefits but not sufficient for all benefit liabilities, or (3) sufficient to provide for all benefit liabilities.

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

If plan assets are sufficient (as of the proposed termination date) to provide at least all guaranteed benefits, and the plan is not trusted by PBGC, the plan administrator must distribute plan assets in accordance with ERISA section 4041(c)(3)(B)(ii) and 29 CFR § 4041.50. Distribution may be made only after PBGC issues a distribution notice. (See Appendix C for the distribution requirements.)

Please follow the instructions below when completing this form. If you have questions about how a particular item applies to your situation, contact the PBGC representative assigned to your case. 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 Customer Service Center for Plan Administrators and Pension Professionals at (800) 736-2444 and ask to be transferred to PBGC’s Actuarial Services Division.

### Part I. Identifying Information

- 1a-c Enter the complete name of the plan as it appears in the plan document, the 9 digit employer identification number (EIN) assigned to the contributing sponsor named in 1b by the Internal Revenue Service for income tax purposes and the 3 digit plan number (PN) assigned by the plan sponsor.

### Part II. Sufficiency Level as of Proposed

**Termination Date**

- 2 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.)
- 3a Enter the estimated fair market value, as of the proposed termination date, of the plan assets available to pay plan benefits, excluding contributions that are owed to the plan but unpaid. Plan assets available to pay for benefits include all plan assets remaining after subtracting all liabilities (other than the future benefit liabilities that will be provided when assets are distributed), *e.g.*, benefit payments due before the termination date, expenses, fees, and other administrative costs.
- 3b Enter the estimated total amount of contributions owed to the plan but unpaid as of the proposed termination date. The amount of unpaid contributions is the greater of (1) amounts required to be contributed to the plan pursuant to ERISA section 302 and Code § 412, or (2) amounts required to be contributed to the plan pursuant to commitments contained in plan or trust agreements or a collective bargaining agreement; less amounts actually contributed.
- 3c Enter the estimated value (as of the proposed termination date) of the amount of unpaid contributions included in item 3b that is estimated to be collectible, valued in the same manner as other receivables. If that amount cannot be valued, enter “0”.
- 3d Enter the sum of the amounts entered on lines 3a and 3c.
- 4 Enter the estimated present value of Title IV benefits. Title IV benefits are determined by allocating plan assets to plan benefits in accordance with ERISA section 4044 and Subpart A of 29 CFR Part 4044. Value Title IV benefits as of the proposed termination date in accordance with Subpart B of 29 CFR Part 4044.
- 5 Enter the estimated present value of all benefit liabilities, valued as of the proposed termination date 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.

**Part III. Sufficiency Level as of Proposed Distribution Date**

Complete this Part **only** if the plan is sufficient (as of the proposed termination date) for at least guaranteed benefits.

- 6 The proposed distribution date is 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. The proposed distribution date must be no earlier than the 61st day after the Form 601 is filed with PBGC.
- 7 In determining whether the plan’s assets are projected to be sufficient (as of the proposed distribution date) to provide for all guaranteed benefits or all benefit liabilities, take receivables (*e.g.*, due and unpaid employer contributions) into account only to the extent they are projected to be collected on or before the proposed distribution date. All plan assets must be allocated to plan benefits in accordance with ERISA section 4044 and 29 CFR Part 4044. Value of plan benefits includes:

**Value of Annuity Contracts.** The value of benefits that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such benefits (*see* instructions to item 6a of Form 602).

**Note:** *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 601 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before item 6 is completed.*

**Value of “non-annuity benefits” (excluding payments to PBGC for Missing Participants)****I. General**

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

**Caution:**

The rules of Code §§ 411(a)(11) and 417(e)(3) specify only minimum values for lump sums. Plans frequently also contain a second set of assumptions and provide that the benefit will be based on whichever set of assumptions yields the greater lump sum. In such cases,

each participant's or beneficiary's lump sum using the second set of assumptions must be compared to that participant's or beneficiary's minimum required lump sum, and the higher of the two lump sums must be paid. On audit, PBGC has found that some plans paid only the minimum required lump sum, improperly ignoring alternative plan provisions that would have resulted in a higher lump sum for a participant or beneficiary.

Sections II through IV below summarize the applicable rules based on Title IV of ERISA, the Code, and implementing regulations and other guidance. Plan administrators should always refer to these sources to ensure that they complete the distribution in accordance with applicable law.

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

For plans other than statutory hybrid plans (*see* III below for special rules for such plans), the minimum lump sum is the present value of the accrued benefit at the annuity starting date determined by using the "applicable interest rate" and the "applicable mortality table."

For plan years beginning on or after January 1, 2008, PPA 2006 amended the applicable interest rate and applicable mortality table as follows:

### *Applicable interest rate*

The applicable interest rate means the three segment rates derived from a corporate bond yield curve, similar to the rates used to determine minimum funding requirements under PPA 2006. For plan years beginning in 2008 through 2011, the segment rates are blended with 30-year Treasury yields to develop Transitional Segment Rates. The IRS publishes the relevant applicable interest rates monthly.

### *Applicable mortality table*

The applicable mortality table is the same table required for minimum funding purposes under PPA 2006, modified as appropriate (*e.g.*, to reflect unisex mortality), and based on the actual experience of pension plans and projected trends. *See* IRS Revenue Ruling 2007-67 for the adjusted applicable mortality table for annuity starting dates in 2008. For later years, *see* IRS Notice 2008-85 (Updated Static Mortality Tables for the Years 2009 Through 2013).

*See* PBGC Technical Updates 07-3 and 08-4 for guidance on calculating minimum lump sums in standard terminations, including in cases where the lump sum is paid in a year later than the year in which the termination date occurred. These Technical Updates can be found at

[www.pbgc.gov](http://www.pbgc.gov) (click on "Resources" and select "Other Guidance" on left menu bar).

### *Annuity starting date*

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

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

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

### **Caution:**

If the distribution is delayed beyond the date anticipated when the calculations were done, the calculations must be re-done to reflect the actual distribution date.

## **III. Special rule for statutory hybrid plans**

A statutory hybrid plan is not treated as failing to meet the present value requirements of § 417(e) of the Code or § 205(g) of ERISA if the plan provides that the present value of the accrued benefit of any participant is equal to the amount expressed as the balance in the participant's hypothetical account or as an accumulated percentage of the participant's final average compensation. *See* Note in section II.H. and §§ 411(a)(13)(A) of the Code or 203(f)(1) of ERISA.

### **Note regarding use of PBGC interest rates:**

The Retirement Protection Act of 1994 eliminated the former link between PBGC interest rates and

minimum lump sum amounts under § 417(e) of the Code. Some plans continue to pay lump sums based on PBGC interest rates where doing so would provide a greater lump sum than the minimum lump sum. See PBGC's Web site at [www.pbgc.gov](http://www.pbgc.gov) for information on PBGC lump sum interest rates (at the "Practitioners" page click on "Interest Rates & Mortality Factors" on left menu bar).

#### IV. Plan Amendments

In general, a plan amendment may not cut back accrued benefits (see Code § 411(d)(6)).

#### V. Post-Termination Plan Amendments (see 29 CFR § 4041.8)

**Plan Benefits.** A participant's or beneficiary's plan benefits are determined under the plan's provisions in effect on the plan's termination date. However, an amendment that is adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's plan benefits to the extent the amendment (1) does not decrease the value of the participant's or beneficiary's plan benefits under the plan's provisions in effect on the termination date; and (2) does not eliminate or restrict an optional form of benefit available to the participant or beneficiary on the termination date. Thus, for example, a post-termination amendment that eliminates an ancillary benefit, or that increases the dollar limit (subject to the dollar limit under § 411(a)(11) of the Code) for nonconsensual lump sums (lump sum payments that may be distributed without the consent of the participant or the participant's spouse in accordance with the plan's provisions for *de minimis* benefit amounts), would not be taken into account in determining a participant's or beneficiary's plan benefits.

**Permitted Decreases.** For this purpose, an amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits to the extent the decrease is necessary to meet a qualification requirement under Code § 401.

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

#### E. Form 602

The plan administrator must file Form 602, the Post-Distribution Certification, with PBGC within 30 days after the last distribution date for any affected party.

**Note:** A plan administrator must not distribute plan assets if the plan is insufficient for guaranteed benefits. If a plan is insufficient for guaranteed benefit, no plan assets will be distributed by the plan administrator and a Form 602 is not required to be filed.

If 2a on PBGC Schedule EA-D was checked "Yes," 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 2b or 2c on PBGC Schedule EA-D was checked "Yes," and PBGC has issued to the plan administrator a notice 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.

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 the Schedule MP (including attachments) with the Form 602.

#### Part I. Identifying Information

- 1a-c Enter the complete name of the plan as it appears in the plan document, the 9 digit employer identification number (EIN) assigned to the contributing sponsor named in 1b by the Internal Revenue Service for income tax purposes and the 3 digit plan number (PN) assigned by the plan sponsor.
- 2 Enter PBGC Case Number, which will be on PBGC's letter acknowledging receipt of the Form 600 for this plan.

#### Part II. Distribution Information

- 3a Enter the date on which the distribution of assets in satisfaction of guaranteed benefits or benefit liabilities was completed; do not enter the date that residual assets, if any, were distributed.

**Exception:** Enter the deemed distribution date if the plan is or will be paying designated benefits to PBGC for one or more missing participants.

- 3b 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.

- 4 Enter latest date that notices of benefit distribution were issued to participants or beneficiaries.
- 5 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.
- 6 If you are not able to locate all participants and beneficiaries, you must conduct a diligent search for any that you have not located. If any individuals still are not found after a diligent search, check "No" to item 6. Individuals not found after a diligent search are Missing Participants. You must either purchase an irrevocable commitment from an insurer for each Missing Participant or pay the Missing Participant's benefit to PBGC. You must submit a Schedule MP with the Form 602 if the plan has one or more Missing Participants (*see* the Schedule MP Package, on PBGC's Web site, [www.pbgc.gov](http://www.pbgc.gov); at the "Practitioners" page, click on "Forms" on the left menu bar.
- 7 If you checked "Yes" to item 7, 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 7, attach a statement explaining why a copy of the annuity contract, certificate, or written notice was not provided, your efforts to provide copies, and when copies were expected to be provided to any individuals who had not received them by the time you filed the Form 501.

- 8 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).
- 9 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.

10a In reporting the counts of participants or beneficiaries who received each form of distribution (or received no distribution), 10a, the "Annuities" count, must include in the count, the number of Missing Participants for whom annuities were purchased.

10b 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.

10c In the "Designated benefits paid to PBGC" count, enter the count of those Missing Participants whose designated benefits were paid to PBGC.

10a-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.

### Part III. Plan Administrator Certification

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



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**APPENDIX A: GLOSSARY OF TERMS**


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**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.

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

**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(c)(11)(B) or ERISA section 302(c)(11)(B), or for premiums under ERISA section 4007(e)(2), a controlled group also includes any group treated as a single employer under Code § 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 the last day of the period in which distribution may be made under 29 CFR Part

4041, or 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.

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

**Distribution date** means:

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

**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 or the District of Columbia.

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

**IRS** means the Internal Revenue Service.

**Majority owner** means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly,

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

**Notice of 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)).

**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).)

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

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

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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**

- The plan does not have sufficient funds to pay 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 pension benefits, but some people may lose certain benefits that are not guaranteed.

[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.
- 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.

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## APPENDIX C: RULES FOR SUFFICIENT DISTRESS TERMINATIONS

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This appendix applies to plans that are not trustee. If PBGC determines that a plan is sufficient for at least all guaranteed benefits, PBGC will issue a distribution notice to the plan administrator. 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. (In appropriate circumstances, PBGC may, upon request, permit a conversion of the distress termination to a standard termination.)*

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).

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### 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.

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### 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 Web site at [www.pbgc.gov](http://www.pbgc.gov) (at the “Workers & Retirees”

page click on “Benefits” on left menu bar and look for “State Life and Health Insurance Guaranty Association Offices”).

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.

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### 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.*

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### 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.

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### 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.

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

For any participant or beneficiary that a plan administrator is unable to locate, the plan administrator must conduct a diligent search. Any participants or beneficiaries not found after a diligent search are Missing Participants. The plan administrator must distribute the benefit for each Missing Participant either by purchasing an irrevocable commitment from an insurer or by paying the value of the Missing Participant's benefit to PBGC. The rules for distributing the benefits of Missing Participants are described in detail in a separate package of instructions and forms (Schedule MP Package). See PBGC's Web site for information, instructions, and forms concerning Missing Participants (at the "Practitioners" page click on "Plan Terminations" on left menu bar).

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## 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.

***Note:** A plan administrator who is distributing benefits for missing participants for whom designated benefits will be paid to PBGC must file the Form 602 within 30 days after the deemed distribution date rather than the last distribution date. (See Schedule MP Package for distribution and filing rules for missing participants.)*

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## 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 Web site, [www.pbgc.gov](http://www.pbgc.gov): click on "Resources" tab and select "Law & Regulations" on left menu bar).

***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.



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**APPENDIX D: MODEL NOTICE OF STATE GUARANTY ASSOCIATION COVERAGE OF ANNUITIES**

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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 Web site at [www.pbgc.gov](http://www.pbgc.gov) (at the “Workers & Retirees” page click on “Benefits” on left menu bar and look for “State Life and Health Insurance Guaranty Association Offices”).