

## § 4041.46

within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

### **§ 4041.46 PBGC determination of compliance with requirements for distress termination.**

(a) *General.* Based on the information contained and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA-D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC will determine whether the requirements for a distress termination set forth in § 4041.41(c) have been met and will notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 4041.41(c) have been satisfied, it will so advise the plan administrator and will also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 4041.45(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 4041.41 have not been met, it will notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 4041.41(b)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC will advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the de-

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termination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

### **§ 4041.47 PBGC determination of plan sufficiency/insufficiency.**

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 4041.45 (b)(1) or (c), the PBGC will determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it will issue a "notice of inability to determine sufficiency" notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator must continue to administer the plan under the restrictions imposed by § 4041.42; and

(2) The termination will be completed under section 4042 of ERISA.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC will issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 4041.48;

(2) To close out the plan in accordance with § 4041.50;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 4041.50(b); and

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(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 4041.5.

(d) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of all or part of his or her plan benefits in connection with a distress termination. Any such alternative treatment—

(1) Is valid only if the conditions in § 4041.21(b)(2) (i) through (iv) are met (except that, in the case of a plan that does not distribute assets pursuant to § 4041.50, the majority owner may make the election and the spouse may consent any time on or after the date of issuance of the first notice of intent to terminate); and—

(2) Is subject to the PBGC's approval if the election—

(i) Is made after the termination date; and

(ii) Would result in the PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c).

### § 4041.48 Sufficient plans; notice requirements.

(a) *Notices of benefit distribution.* When a distribution notice is issued by the PBGC pursuant to § 4041.47, the plan administrator must issue notices of benefit distribution in accordance with the rules regarding notices of plan benefits in § 4041.24, except that—

(1) The deadline for issuing the notices of benefit distribution is the 60th day after receipt of the distribution notice; and

(2) With respect to the information described in § 4041.24 (b) through (e), the term “plan benefits” is replaced with “title IV benefits” and the term “proposed termination date” is replaced with “termination date”.

(b) *Certification to PBGC.* No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, the plan administrator must file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(c) *Notice of annuity information—(1) In general.* Unless all title IV benefits will be distributed in the form of non-

consensual lump sums, the plan administrator must provide a notice of annuity information to each affected party other than—

(i) An affected party whose title IV benefits will be distributed in the form of a nonconsensual lump sum; and

(ii) The PBGC.

(2) *Spin-off/termination transactions.* The plan administrator must provide the information in paragraph (c)(4) of this section to a person entitled to notice under § 4041.43(c), at the same time and in the same manner as required for an affected party described in paragraph (c)(1) of this section.

(3) *Selection of different insurer.* A plan administrator that decides to select a different insurer after having previously notified the affected party of the identity of insurer(s) under this paragraph must provide another notice of annuity information.

(4) *Content of notice.* The notice must include—

(i) The identity-of-insurer information in § 4041.27(b)(1);

(ii) The information regarding change in identity of insurer(s) in § 4041.27(b)(2); and

(iii) Unless the state guaranty coverage information in § 4041.27(b)(3) was previously provided to the affected party, such information and the extinguishment-of-guaranty information in § 4041.23(b)(9) (replacing the term “plan benefits” with “title IV benefits”).

(5) *Deadline for notice.* The plan administrator must issue the notice of annuity information to each affected party by the deadline in § 4041.27(d)(1).

(d) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii) (as modified and made applicable by § 4041.50(c)), the plan administrator must submit to the IRS a valid request for a determination of the plan's qualification status upon termination (“determination letter”) by the day on which the plan administrator completes the issuance of the notices of benefit distribution.

### § 4041.49 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under § 4041.50, the plan administrator must verify whether the plan's assets