

## SUBCHAPTER F—LIABILITY

### PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

#### § 4061.1 Cross-references.

See part 4022 of this chapter regarding benefits payable under terminated single-employer plans and §4281.47 of this chapter regarding financial assistance to pay benefits under insolvent multiemployer plans.

### PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1362-1364, 1367, 1368.

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

#### § 4062.1 Purpose and scope.

The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. This part also sets forth rules for determining the amount of liability incurred under section 4063 of ERISA pursuant to the occurrence of a ces-

sation of operations as described by section 4062(e) of ERISA. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c) of ERISA is issued or proceedings to terminate under section 4042 of ERISA are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

#### § 4062.2 Definitions.

The following terms are defined in §4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, guaranteed benefit, multiple employer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and termination date.

In addition, for purposes of this part, the term *collective net worth of persons subject to liability in connection with a plan termination* means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of ERISA and §4062.4 of this part.

#### § 4062.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability*—(1) *General rule*. Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of ERISA) to all participants and beneficiaries under the plan, together with

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interest calculated from the termination date in accordance with § 4062.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits.* In any distress termination proceeding under section 4041(c) of ERISA and part 4041 of this chapter in which (as described in section 4041(c)(3)(C)(ii) of ERISA), after a determination that the plan is sufficient for benefit liabilities or for guaranteed benefits, the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 4062.9(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The PBGC may make alternative arrangements, as provided in § 4062.9(b).

[61 FR 34079, July 1, 1996, as amended at 71 FR 34822, June 16, 2006]

#### § 4062.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 4062.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 4062.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Partnerships and sole proprietorships.* In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* A person's net worth is equal to its fair market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly traded, the price of such stock on or about the net worth record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances,