

### § 4281.33

(1) The name of the plan.  
(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subpart B, of this chapter.

(5) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representative, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

[61 FR 34118, July 1, 1996, as amended at 68 FR 61457, Oct. 28, 2003]

### § 4281.33 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits be-

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fore adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in § 4281.32 (d)(1) through (d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor or its duly authorized representative, that the amendment has been adopted in accordance with this section.

## Subpart D—Benefit Suspensions

### § 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

### § 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to

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each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

### § 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of issuance to interested parties.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the notice of insolvency. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties, other than participants and beneficiaries who are in pay status when the notice is required to be delivered, by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance of the annual update to participants and beneficiaries. In addition to the methods permitted under subpart B of part 4000, the plan sponsor may notify interested parties by posting the notice at participants' work sites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

[61 FR 34118, July 1, 1996, as amended at 68 FR 61458, Oct. 28, 2003]

### § 4281.44 Contents of notices of insolvency and annual updates.

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under