

§ 4041.45

29 CFR Ch. XL (7–1–12 Edition)

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate 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 notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of non-compliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (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.

§ 4041.45 Distress termination notice.

(a) *General rule.* The plan administrator must file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA-D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information—*(1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA-D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator must file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.46(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator must submit any information requested under this paragraph

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-

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