

SUBCHAPTER E—PLAN TERMINATIONS

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

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Subpart A—General Provisions

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer plan in a standard or distress termination under section 4041 of ERISA, the exclusive means of voluntarily terminating a plan.

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, EIN, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan administrator, plan year, PN, single-employer plan, standard termination, termination date, and title IV benefit. In addition, for purposes of this part:

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

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.47(c) upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of section 414(b) and (c) of the Code) of—

- (1) An unincorporated trade or business;
- (2) The capital interest or the profits interest in a partnership; or
- (3) Either the voting stock of a corporation or the value of all of the stock of a corporation.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to § 4041.31 advising the plan administrator that the requirements for a standard termination

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have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by § 4041.24.

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.

Plan benefits means benefit liabilities determined as of the termination date (taking into account the rules in § 4041.8(a)).

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 standard or 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 § 4041.8(b)).

Standard termination notice means the notice filed with the PBGC pursuant to § 4041.25.

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.

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. A proposed termination date may be any day, including a weekend or Federal holiday.

(b) *Filing with the PBGC—(1) Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with the PBGC.

(2) *Where to file.* See § 4000.4 of this chapter for information on where to file.

(c) *Issuance to third parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of § 4041.23(c) or § 4041.24(f) is treated as an affected party.

(1) *Method and date of issuance.* The PBGC applies the rules in subpart B of part 4000 of this chapter to determine permissible methods of issuance under this part. The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that an issuance under this part was provided.

(2) *Omission of affected parties.* The failure to issue any notice to an affected party (other than any employee organization) within the specified time period will not cause the notice to be untimely if—

(i) *After-discovered affected parties.* The plan administrator could not reasonably have been expected to know of the affected party, and issues the notice promptly after discovering the affected party; or

(ii) *Unlocated participants.* The plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly in the event the affected party is located.

(3) *Deceased participants.* In the case of a deceased participant, the plan administrator need not issue a notice to