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and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(c) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(d) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under section 302(f)(4), section 307(e), or Title IV of ERISA;

(e) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system); and

(f) All electronic records exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

29 CFR Ch. XL (7-1-04 Edition)

§ 4000.54 May I dispose of original paper records if I keep electronic copies?

You may dispose of original paper records any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this subpart, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

(Approved by the Office of Management and Budget under control number 1212-0059)

PART 4001—TERMINOLOGY

Sec.

4001.1 Purpose and scope.

4001.2 Definitions.

4001.3 Trades or businesses under common control; controlled groups.

AUTHORITY: 29 U.S.C. 1301, 1302(b)(3).

SOURCE: 61 FR 34010, July 1, 1996, unless otherwise noted.

§ 4001.1 Purpose and scope.

This part contains definitions of certain terms used in this chapter and the regulations under which the PBGC makes various controlled group determinations.

§ 4001.2 Definitions.

For purposes of this chapter (unless otherwise indicated or required by the context):

Affected party means, with respect to a plan—

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;
- (3) Each alternate payee under an applicable qualified domestic relations order, as defined in section 206(d)(3) of ERISA;
- (4) Each employee organization that currently represents any group of participants;
- (5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year

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period preceding issuance of the notice of intent to terminate; and

(6) The PBGC.

If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

Annuity means a series of periodic payments to a participant or surviving beneficiary for a fixed or contingent period.

Basic-type benefit means a benefit that is guaranteed under part 4022 of this chapter or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 of this chapter did not apply.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).

Code means the Internal Revenue Code of 1986, as amended.

Complete withdrawal means a complete withdrawal as described in section 4203 of ERISA.

Contributing sponsor means a person who is a contributing sponsor as defined in section 4001(a)(13) of ERISA.

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under § 4001.3 of this part. For purposes of determining the persons liable for contributions under section 412(c)(11)(B) of the Code or section 302(c)(11)(B) of ERISA, or for premiums under section 4007(e)(2) of ERISA, a controlled group also includes any group treated as a single employer under section 414 (m) or (o) of the Code. Any reference to a plan's controlled group means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

Corporation means the Pension Benefit Guaranty Corporation, except where the context demonstrates that a different meaning is intended.

Defined benefit plan means a plan described in section 3(35) of ERISA.

Distress termination means the voluntary termination of a single-employer plan in accordance with section

4041(c) of ERISA and part 4041, subpart C, of this chapter.

Distribution date means:

(1) Except as provided in paragraph (2)—

(i) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and

(ii) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or

(2) The deemed distribution date (as defined in § 4050.2) in the case of a designated benefit paid to the PBGC in accordance with part 4050 of this chapter (dealing with missing participants).

ETIN means the nine-digit employer identification number assigned by the Internal Revenue Service to a person.

Employer means all trades or businesses (whether or not incorporated) that are under common control, within the meaning of § 4001.3 of this chapter.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Fair market value means the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Funding standard account means an account established and maintained under section 302(b) of ERISA or section 412(b) of the Code.

Guaranteed benefit means a benefit under a single-employer plan that is guaranteed by the PBGC under section 4022(a) of ERISA and part 4022 of this chapter, or a benefit under a multiemployer plan that is guaranteed by the PBGC under section 4022A of ERISA.

Insurer means a company authorized to do business as an insurance carrier

under the laws of a State or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

IRS means the Internal Revenue Service.

Mandatory employee contributions means amounts contributed to the plan by a participant that are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Mass withdrawal means:

(1) The withdrawal of every employer from the plan,

(2) The cessation of the obligation of all employers to contribute under the plan, or

(3) The withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw.

Multiemployer Act means the Multiemployer Pension Plan Amendments Act of 1980.

Multiemployer plan means a plan that is described in section 4001(a)(3) of ERISA and that is covered by title IV of ERISA.

Multiple employer plan means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group, under which all plan assets are available to pay benefits to all plan participants and beneficiaries.

Nonbasic-type benefit means any benefit provided by a plan other than a basic-type benefit.

Nonforfeitable benefit means a benefit described in section 4001(a)(8) of ERISA. Benefits that become nonforfeitable solely as a result of the termination of a plan will be considered forfeitable.

Normal retirement age means the age specified in the plan as the normal retirement age. This age shall not exceed the later of age 65 or the age attained after 5 years of participation in the

plan. If no normal retirement age is specified in the plan, it is age 65.

Notice of intent to terminate means the notice of a proposed termination of a single-employer plan, as required by section 4041(a)(2) of ERISA and § 4041.21 (in a standard termination) or § 4041.41 (in a distress termination) of this chapter.

PBGC means the Pension Benefit Guaranty Corporation.

Person means a person defined in section 3(9) of ERISA.

Plan means a defined benefit plan within the meaning of section 3(35) of ERISA that is covered by title IV of ERISA.

Plan administrator means an administrator, as defined in section 3(16)(A) of ERISA.

Plan sponsor means, with respect to a multiemployer plan, the person described in section 4001(a)(10) of ERISA.

Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept.

PN means the three-digit plan number assigned to a plan.

Proposed termination date means the date specified as such by the plan administrator of a single-employer plan in a notice of intent to terminate or, if later, in the standard or distress termination notice, in accordance with section 4041 of ERISA and part 4041 of this chapter.

Single-employer plan means any defined benefit plan (as defined in section 3(35) of ERISA) that is not a multiemployer plan (as defined in section 4001(a)(3) of ERISA) and that is covered by title IV of ERISA.

Standard termination means the voluntary termination, in accordance with section 4041(b) of ERISA and part 4041, subpart B, of this chapter, of a single-employer plan that is able to provide for all of its benefit liabilities when plan assets are distributed.

Substantial owner means a substantial owner as defined in section 4022(b)(5)(A) of ERISA.

Sufficient for benefit liabilities means that there is no amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA.

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Sufficient for guaranteed benefits means that there is no amount of unfunded guaranteed benefits, as defined in section 4001(a)(17) of ERISA.

Termination date means the date established pursuant to section 4048(a) of ERISA.

Title IV benefit means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to section 4044 of ERISA and part 4044 of this chapter.

Voluntary employee contributions means amounts contributed by an employee to a plan, pursuant to the provisions of the plan, that are not mandatory employee contributions.

[61 FR 34010, July 1, 1996, as amended at 61 FR 63989, Dec. 2, 1996; 62 FR 35342, July 1, 1997; 62 FR 60428, Nov. 7, 1997; 62 FR 67728, Dec. 30, 1997]

§ 4001.3 Trades or businesses under common control; controlled groups.

For purposes of title IV of ERISA:

(a)(1) The PBGC will determine that trades and businesses (whether or not incorporated) are under common control if they are “two or more trades or businesses under common control”, as defined in regulations prescribed under section 414(c) of the Code.

(2) The PBGC will determine that all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and all such trades and businesses shall be treated as a single employer.

(3) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of the Code.

(b) In the case of a single-employer plan:

(1) In connection with any person, a controlled group consists of that person and all other persons under common control with such person.

(2) Persons are under common control if they are members of a “controlled group of corporations”, as defined in regulations prescribed under section 414(b) of the Code, or if they are “two or more trades or businesses

under common control”, as defined in regulations prescribed under section 414(c) of the Code.

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

4002.1 Name.

4002.2 Offices.

4002.3 Board of Directors.

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4002.5 Quorum.

4002.6 Meetings.

4002.7 Place of meetings; use of conference call communications equipment.

4002.8 Alternate voting procedure.

4002.9 Amendments.

AUTHORITY: 29 U.S.C. 1302(f).

SOURCE: 61 FR 34011, July 1, 1996, unless otherwise noted.

§ 4002.1 Name.

The name of the Corporation is the Pension Benefit Guaranty Corporation.

§ 4002.2 Offices.

The principal office of the Corporation shall be in the Metropolitan area of the City of Washington, District of Columbia. The Corporation may have additional offices at such other places as the Board of Directors may deem necessary or desirable to the conduct of its business.

§ 4002.3 Board of Directors.

(a) The Board of Directors shall establish the policies of the Corporation and shall perform the other functions assigned to the Board of Directors in title IV of the Employee Retirement Income Security Act of 1974. The Board of Directors of the Corporation shall be composed of the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed by the Corporation for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Board. A person at the time of a meeting of the Board of Directors who is serving as Secretary of Labor, Secretary of the Treasury or Secretary of Commerce in an acting capacity, shall serve as a member of