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under section 302(d)(7)(C) of ERISA, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 4011.5 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the Participant Notice requirement for the first plan year for which the plan must pay premiums under parts 4006 and 4007 of this chapter.

§ 4011.6 Mergers, consolidations, and spinoffs.

In the case of a plan involved in a merger, consolidation, or spinoff transaction that becomes effective during a plan year, the plan administrator shall apply the requirements of section 4011 of ERISA and of this part for that plan year in a reasonable manner to ensure that the Participant Notice serves its statutory purpose.

§ 4011.7 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee under an applicable qualified domestic relations order (as defined in section 206(d)(3) of ERISA), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 4011.8 Time of notice.

The plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline (including extensions) for filing the annual report for the previous plan year (see § 2520.104a-5(a)(2) of this

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title). The plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 4011.10(b)(5) or a missed contribution under § 4011.10(b)(6). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 4011.9 Method and date of issuance of notice; computation of time.

(a) *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 Participant Notice. The Participant Notice may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

(b) *Issuance date.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date the Participant Notice was issued.

(c) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for issuances under this part.

[68 FR 61353, Oct. 28, 2003]

§ 4011.10 Form of notice.

(a) *General.* The Participant Notice (and any additional information under paragraph (d) of this section) shall be readable and written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in appendix A to this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice for a plan year shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the date (at least the month and year) on which the Participant Notice is issued, and the name,

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title, address and telephone number of the person(s) who can provide information about the plan's funding);

(2) A statement to the effect that the Participant Notice is required by law;

(3) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section, and the date as of which the Notice Funding Percentage is determined;

(4) A statement to the effect that—

(i) To pay pension benefits, the employer is required to contribute money to the plan over a period of years;

(ii) A plan's funding percentage does not take into consideration the financial strength of the employer; and

(iii) The employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a severe financial crisis or is in bankruptcy;

(5) If, for any of the five plan years immediately preceding the plan year, the plan has been granted a minimum funding waiver under section 303 of ERISA that has not (as of the end of the prior plan year) been fully repaid, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(6) For any payment subject to the requirements of this paragraph, a statement identifying the due date for the payment and noting that the payment has or has not been made and (if made) the date of the payment. Once participants have been notified (under this part or title I of ERISA) of a missed contribution that is subject to the requirements of this paragraph, the delinquency need not be reported in a Participant Notice for a subsequent plan year if the missed contribution has been paid in full by the time the subsequent Participant Notice is issued. The payments subject to the requirements of this paragraph are—

(i) Any minimum funding payment necessary to satisfy the minimum funding standard under section 302(a) of ERISA for any plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment (the latest date allowed under section 302(c)(10)) or the date of issuance of the Participant Notice; and

(ii) An installment or other payment required by section 302 of ERISA for a

plan year beginning on or after January 1, 1995, that was not paid by the 60th day after the due date for that payment;

(7) A statement to the effect that if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but some persons may lose certain benefits that are not guaranteed;

(8) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(9) A statement that further information about the PBGC's guarantee may be obtained by requesting a free copy of the booklet "Your Guaranteed Pension" from Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009. The Participant Notice may include a statement that the booklet may be obtained through electronic access via the World Wide Web from the PBGC Homepage at <http://www.pbgc.gov>.

(c) *Notice Funding Percentage*—(1) *General rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the "funded current liability percentage" (as that term is defined in section 302(d)(9)(C) of ERISA) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of ERISA for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in §4011.4(b).

(d) *Additional information.* The plan administrator may include with the Participant Notice any information not described in paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under §4011.7) covers the numbers or percentages specified in §2520.104b-10(e) of this title of participants literate only in the same non-English language, the plan administrator shall provide those participants either—

(1) An English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any

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procedures participants must follow to obtain such assistance, or

(2) A Participant Notice in that language.

[61 FR 34026, July 1, 1996, as amended at 65 FR 75165, Dec. 1, 2000]

§ 4011.11 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0050.

APPENDIX A TO PART 4011—MODEL PARTICIPANT NOTICE

The following is an example of a Participant Notice that satisfies the requirements of § 4011.10 when the required information is filled in (subject to §§ 4011.10(d)–(e), where applicable).

NOTICE TO PARTICIPANTS OF [PLAN NAME]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE (DETERMINED IN ACCORDANCE WITH § 4011.10(c))] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER § 4011.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not

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been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].

- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY ADD OR SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. FOR EXAMPLE, YOU MAY ADD OR SUBSTITUTE THE MAXIMUM BENEFIT FOR AGES 62 OR 60 FROM THE TABLE IN APPENDIX B. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE.]

[IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]

- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits.

[INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.

- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.

- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 years are only partly guaranteed.

- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.