

in less than 120 days after filing the notice will cause harm to participants or beneficiaries of the plans involved in the transaction;

(2) The PBGC determines that the transaction complies with the requirements of section 4231 of ERISA; or

(3) The PBGC completes its review of the transaction.

[63 FR 24421, May 4, 1998, as amended at 68 FR 61356, Oct. 28, 2003]

§ 4231.9 Request for compliance determination.

(a) *General.* The plan sponsor(s) of one or more plans involved in a merger or transfer, or the duly authorized representative(s) acting on behalf of the plan sponsor(s), may file a request for a determination that the transaction complies with the requirements of section 4231 of ERISA. The request must contain the information described in paragraph (b) or (c) of this section, as applicable.

(1) *The place of filing.* The request must be delivered to the address set forth in § 4231.8(c).

(2) *Single request permitted for all de minimis transactions.* Because the plan solvency test for *de minimis* mergers and transfers is based on the most recent valuation (without adjustment for intervening *de minimis* transactions), a plan sponsor may submit a single request for a compliance determination covering all *de minimis* mergers or transfers that occur between one plan valuation and the next. However, the plan sponsor must still notify PBGC of each *de minimis* merger or transfer separately, in accordance with § 4231.8. The single request for a compliance determination may be filed concurrently with any one of the notices of a *de minimis* merger or transfer.

(b) *Contents of request.* (1) *General.* A request for a compliance determination concerning a merger or transfer that is not *de minimis* must contain—

(i) A copy of the merger or transfer agreement;

(ii) A summary of the required calculations, including a complete description of assumptions and methods, on which the enrolled actuary based each certification that a plan involved in the merger or transfer satisfied a

plan solvency test described in § 4231.6; and

(iii) For each significantly affected plan, other than a plan that is a significantly affected plan only because the merger or transfer involves a plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA, copies of all actuarial valuations performed within the 5 years preceding the date of filing the notice required under § 4231.8.

(2) *De minimis merger or transfer.* A request for a compliance determination concerning a *de minimis* merger or transfer must contain one of the following statements for each plan that exists after the transaction, certified by an enrolled actuary:

(i) A statement that the plan satisfies one of the plan solvency tests set forth in § 4231.6(a), indicating which test is satisfied.

(ii) A statement of the basis on which the actuary has determined that benefits under the plan are not reasonably expected to be subject to suspension under section 4245 of ERISA, including supporting data or calculations, assumptions and methods.

§ 4231.10 Actuarial calculations and assumptions.

(a) *Most recent valuation.* All calculations required by this part must be based on the most recent actuarial valuation as of the date of filing the notice, updated to show any material changes.

(b) *Assumptions.* All calculations required by this part must be based on methods and assumptions that are reasonable in the aggregate, based on generally accepted actuarial principles.

(c) *Updated calculations.* If the actual effective date of the merger or transfer is more than one year after the date the notice is filed with the PBGC, PBGC may require the plans involved to provide updated calculations and representations based on the actual effective date of the transaction.

PART 4245—NOTICE OF INSOLVENCY

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1426(e).

SOURCE: 61 FR 34115, July 1, 1996, unless otherwise noted.

§ 4245.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by title IV of ERISA, other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA.

§ 4245.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: employer, ERISA, IRS, multiemployer plan, non-forfeitable benefit, PBGC, person, plan, and plan year.

In addition, for purposes of this part:

Actuarial valuation means a report submitted to the plan in connection with a valuation of plan assets and liabilities, which, in the case of a plan covered by subparts C and D of part 4281, shall be performed in accordance with subpart B of part 4281.

Available resources means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

Benefits subject to reduction means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

Financial assistance means financial assistance from the PBGC under section 4261 of ERISA.

Insolvency benefit level means the greater of the resource benefit level or the benefit level guaranteed by the PBGC for each participant and beneficiary in pay status.

Insolvency year means insolvency year as described in section 4245(b)(4) of ERISA.

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Insolvent means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c) of ERISA, or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

Reasonably expected to enter pay status means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

Reorganization means reorganization under section 4241(a) of ERISA.

Resource benefit level means resource benefit level as described in section 4245(b)(2) of ERISA.

§ 4245.3 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of ERISA that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (e) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4245.4.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after it determines that the plan is or may become insolvent, as described in paragraph (a) of this section. However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Delivery to PBGC—(1) Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to