

§ 4041.8

29 CFR Ch. XL (7–1–06 Edition)

without first requesting updated information from the plan administrator pursuant to § 4041.45(c).

(e) *Final resolution of challenge.* A formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(f) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.8 Post-termination amendments.

(a) *Plan benefits.* A participant's or beneficiary's plan benefits are determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment that is adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's plan benefits to the extent the amendment—

(1) Does not decrease the value of the participant's or beneficiary's plan benefits under the plan's provisions in effect on the termination date; and

(2) Does not eliminate or restrict any form of benefit available to the participant or beneficiary on the plan's termination date.

(b) *Residual assets.* In a plan in which participants or beneficiaries will receive some or all of the plan's residual assets based on an allocation formula, the amount of the plan's residual assets and each participant's or beneficiary's share thereof is determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets to the extent the amendment does not de-

crease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

(c) *Permitted decreases.* For purposes of this section, an amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits or allocation of residual assets to the extent—

(1) The decrease is necessary to meet a qualification requirement under section 401 of the Code;

(2) The participant's or beneficiary's allocation of residual assets is paid in the form of an increase in the participant's or beneficiary's plan benefits; or

(3) The decrease is offset by assets that would otherwise revert to the contributing sponsor or by additional contributions.

(d) *Distress terminations.* In the case of a distress termination, a participant's or beneficiary's benefit liabilities are determined as of the termination date in the same manner as plan benefits under this section.

Subpart B—Standard Termination Process

§ 4041.21 Requirements for a standard termination.

(a) *Notice and distribution requirements.* A standard termination is valid if the plan administrator—

(1) Issues a notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(2) Issues notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(3) Files a standard termination notice with the PBGC in accordance with § 4041.25;

(4) Distributes the plan's assets in satisfaction of plan benefits in accordance with § 4041.28(a) and (c); and

(5) In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), issues the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2) in accordance with such sections.

(b) *Plan sufficiency—(1) Commitment to make plan sufficient.* A contributing sponsor of a plan or any other member of the plan's controlled group may make a commitment to contribute any

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additional sums necessary to enable the plan to satisfy plan benefits in accordance with § 4041.28. A commitment will be valid only if—

- (i) It is made to the plan;
- (ii) It is in writing, signed by the contributing sponsor or controlled group member(s); and
- (iii) In any case in which the person making the commitment is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.41(c)(1) or (c)(2), the commitment is approved by the court before which the liquidation or reorganization proceeding is pending or a person not in bankruptcy unconditionally guarantees to meet the commitment at or before the time distribution of assets is required.

(2) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits in accordance with § 4041.28. Any such alternative treatment of the majority owner's plan benefits is valid only if—

- (i) The majority owner's election is in writing;
- (ii) In any case in which the plan would require the spouse of the majority owner to consent to distribution of the majority owner's receipt of his or her plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election;
- (iii) The majority owner makes the election and the spouse consents during the time period beginning with the date of issuance of the first notice of intent to terminate and ending with the date of the last distribution; and
- (iv) Neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.22 Administration of plan during pendency of termination process.

(a) *In general.* A plan administrator may distribute plan assets in connection with the termination of the plan only in accordance with the provisions of this part. From the first day the

plan administrator issues a notice of intent to terminate to the last day of the PBGC's review period under § 4041.26(a), the plan administrator must continue to carry out the normal operations of the plan. During that time period, except as provided in paragraph (b) of this section, the plan administrator may not—

- (1) Purchase irrevocable commitments to provide any plan benefits; or
- (2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than an annuity.

(b) *Exception.* The plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments or in a form other than an annuity if—

- (1) The participant has separated from active employment or is otherwise permitted under the Code to receive the distribution;
- (2) The distribution is consistent with prior plan practice; and
- (3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

§ 4041.23 Notice of intent to terminate.

(a) *Notice requirement—(1) In general.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a notice of intent to terminate to each person (other than the PBGC) that is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(2) *Early issuance of NOIT.* The PBGC may consider a notice of intent to terminate to be timely under paragraph (a)(1) of this section if the notice was early by a *de minimis* number of days and the PBGC finds that the early issuance was the result of administrative error.

(b) *Contents of notice.* The PBGC's standard termination forms and instructions package includes a model