

not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts).

(d) *Supplemental notice.* The plan administrator must provide a supplemental notice to an affected party in accordance with this paragraph (d) if the plan administrator did not previously notify the affected party of the identity of insurer(s) or, after having previously notified the affected party of the identity of insurer(s), decides to select a different insurer. A failure to provide a required supplemental notice to an affected party will be deemed to be a failure to comply with the notice of intent to terminate requirements.

(1) *Deadline for supplemental notice.* The deadline for issuing the supplemental notice is 45 days before the affected party's distribution date (or, in the case of an employee organization, 45 days before the earliest distribution date for any affected party that it represents).

(2) *Content of supplemental notice.* The supplemental notice must include—

- (i) The identity-of-insurer information in paragraph (b)(1) of this section;
- (ii) The information regarding change of identity of insurer(s) in paragraph (b)(2) of this section; and
- (iii) Unless the state guaranty association coverage information in paragraph (b)(3) of this section was previously provided to the affected party, such information and the extinguishment-of-guarantee information in § 4041.23(b)(9).

§ 4041.28 Closeout of plan.

(a) *Distribution deadline—(1) In general.* Unless a notice of noncompliance is issued under § 4041.31(a), the plan administrator must complete the distribution of plan assets in satisfaction of plan benefits (through priority category 6 under section 4044 of ERISA and part 4044 of this chapter) by the later of—

- (i) 180 days after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a); or
- (ii) If the plan administrator meets the requirements of § 4041.25(c), 120 days after receipt of a favorable determination from the IRS.

(2) *Revocation of notice of noncompliance.* If the PBGC revokes a notice of noncompliance issued under § 4041.31(a), the distribution deadline is extended until the 180th day after the date of the revocation.

(b) *Assets insufficient to satisfy plan benefits.* If, at the time of any distribution, the plan administrator determines that plan assets are not sufficient to satisfy all plan benefits (with assets determined net of other liabilities, including PBGC premiums), the plan administrator may not make any further distribution of assets to effect the plan's termination and must promptly notify the PBGC.

(c) *Method of distribution—(1) In general.* The plan administrator must, in accordance with all applicable requirements under the Code and ERISA, distribute plan assets in satisfaction of all plan benefits by purchase of an irrevocable commitment from an insurer or in another permitted form.

(2) *Lump sum calculations.* In the absence of evidence establishing that another date is the "annuity starting date" under the Code, the distribution date is the "annuity starting date" for purposes of—

- (i) Calculating the present value of plan benefits that may be provided in a form other than by purchase of an irrevocable commitment from an insurer (*e.g.*, in selecting the interest rate(s) to be used to value a lump sum distribution); and
- (ii) Determining whether plan benefits will be paid in such other form.

(3) *Selection of insurer.* In the case of plan benefits that will be provided by purchase of an irrevocable commitment from an insurer, the plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA.

(4) *Participating annuity contracts.* In the case of a plan in which any residual assets will be distributed to participants, a participating annuity contract may be purchased to satisfy the requirement that annuities be provided by the purchase of irrevocable commitments only if the portion of the price of the contract that is attributable to the participation feature—

Pension Benefit Guaranty Corporation

§ 4041.30

(i) Is not taken into account in determining the amount of residual assets; and

(ii) Is not paid from residual assets allocable to participants.

(5) *Missing participants.* The plan administrator must distribute plan benefits to missing participants in accordance with part 4050.

(d) *Provision of annuity contract.* If plan benefits are provided through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer must, within 30 days after it is available, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits; and

(2) If such a contract or certificate is not provided to the participant or beneficiary by the date on which the post-distribution certification is required to be filed in order to avoid the assessment of penalties under § 4041.29(b), the plan administrator must, no later than that date, provide the participant and beneficiary with a notice that includes—

(i) A statement that the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) A statement that the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits.

§ 4041.29 Post-distribution certification.

(a) *Deadline.* Within 30 days after the last distribution date for any affected party, the plan administrator must file with the PBGC a post-distribution certification consisting of the PBGC Form 501, completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* The PBGC will assess a penalty for late filing of a post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.30 Requests for deadline extensions.

(a) *In general.* The PBGC may in its discretion extend a deadline for taking action under this subpart to a later date. The PBGC will grant such an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC will consider—

(1) The length of the delay; and

(2) Whether ordinary business care and prudence in attempting to meet the deadline is exercised.

(b) *Time of extension request.* Any request for an extension under paragraph (a) of this section that is filed later than the 15th day before the applicable deadline must include a justification for not filing the request earlier.

(c) *IRS determination letter requests.* Any request for an extension under paragraph (a) of this section of the deadline in § 4041.25(c) for submitting a determination letter request to the IRS (in order to qualify for the distribution deadline in § 4041.28(a)(1)(ii)) will be deemed to be granted unless the PBGC notifies the plan administrator otherwise within 60 days after receipt of the request (or, if later, by the end of the PBGC's review period under § 4041.26(a)). The PBGC will notify the plan administrator in writing of the date on which it receives such request.

(d) *Statutory deadlines not extendable.* The PBGC will not—

(1) *Pre-distribution deadlines.* (i) Extend the 60-day time limit under § 4041.23(a) for issuing the notice of intent to terminate; or

(ii) Waive the requirement in § 4041.24(a) that the notice of plan benefits be issued by the time the plan administrator files the standard termination notice with the PBGC; or

(2) *Post-distribution deadlines.* Extend the deadline under § 4041.29(a) for filing