

standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. A notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration under paragraph (d) of this section or, if reconsideration is requested, a decision by the PBGC upholding the notice. However, once a notice is issued, the running of all time periods specified in ERISA or this part relevant to the termination will be suspended, and the plan administrator may take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked. A plan administrator that still desires to terminate a plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) *Effect on plan administration.* If the PBGC issues a notice of noncompliance, the prohibitions in § 4041.22(a)(1) and (a)(2) will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of a decision on reconsideration upholding the notice of noncompliance.

(3) *Revocation of notice of noncompliance.* If a notice of noncompliance is revoked, unless the PBGC provides otherwise, any time period suspended by the issuance of the notice will resume running from the date of the revocation. In no case will the review period under § 4041.26(a) end less than 60 days from the date the PBGC received the standard termination notice.

(f) *If no notice of noncompliance is issued.* A standard termination is deemed to be valid if—

(1) The plan administrator files a standard termination notice under § 4041.25 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(a); and

(2) The plan administrator files a post-distribution certification under § 4041.29 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(b).

(g) *Notice to affected parties.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance or, if earlier, upon the plan administrator's decision not to request reconsideration, the plan administrator must notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.23(c), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

### Subpart C—Distress Termination Process

#### § 4041.41 Requirements for a distress termination.

(a) *Distress requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.43 at least 60 days and (except with PBGC approval) not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 4041.45 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (c) of this section.

(b) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (b)(2)(i) of this section, if the plan administrator does not satisfy all of the requirements for a distress termination, any action taken to effect the plan termination is null and void, and the plan is an ongoing plan. A plan administrator who still desires to terminate the plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (a)(1) or (a)(2) of this section if the PBGC believes that

it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

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

(c) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group must satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (e)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business

outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(d) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the contributing sponsor or controlled group member meets the distress test in paragraph (c)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (c)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (c)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(e) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the distress criteria contained in paragraph (c) of this section, rather than

## Pension Benefit Guaranty Corporation

## § 4041.43

for a reasonable business purpose, the PBGC will disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

(f) *Requests for deadline extensions.* The PBGC may extend any deadline under this subpart in accordance with the rules described in section § 4041.30, except that the PBGC will not extend—

(1) *Pre-distribution deadlines.* The 60-day time limit under § 4041.43(a) for issuing the notice of intent to terminate; or

(2) *Post-distribution deadlines.* The deadline under § 4041.50 for filing the post-distribution certification.

### § 4041.42 Administration of plan during termination process.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator must continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, and investing plan assets.

(b) *Prohibitions after issuing notice of intent to terminate.* The plan administrator may not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 4041.50, the plan administrator may not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator must reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 4041.44(c) or § 4041.46(c)(1), that the requirements for

a distress termination are not satisfied—

(1) The prohibitions in paragraph (b) of this section, other than those in paragraph (b)(1), will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 4041.44(e) and 4041.46(e) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section will be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 4022.81(c)(3) of this chapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.49(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.40(d), the prohibitions in paragraph (b) of this section will apply in accordance with § 4041.49(e).

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### § 4041.43 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and (except with PBGC approval) no more than 90 days before the proposed termination date, the plan administrator must issue a written notice of intent to terminate to each person who is an affected party as of the proposed termination date.

(2) The plan administrator must issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC must contain all of the information specified in paragraph (b) of this section.