



STANDARD TERMINATION FILING INSTRUCTIONS

This package contains:
 PBGC Form 500
 Schedule EA-S
 Schedule REP-S
 PBGC Form 501
 Instructions

Paperwork Reduction Act Notice

The PBGC needs this information to ensure that a standard termination under section 4041(b) of ERISA is completed in accordance with statutory and regulatory requirements. Participants need the information so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination. You are required to provide this information pursuant to section 4041(b) of ERISA and 29 CFR Part 4041, Subparts A and B. The information provided to the PBGC may be subject to disclosure under the Freedom of Information Act or protected from disclosure by the Privacy Act, as applicable.

This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will take an average of 1.26 hours and \$1,050 to comply with standard termination paperwork requirements, including requirements for Missing Participants. These are estimates and the actual time will vary depending on the circumstances of a given plan.

If you have comments concerning the accuracy of these estimates or suggestions for making the forms simpler, please send your comments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005-4026.

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I. OVERVIEW

A plan administrator of a single-employer plan covered by the PBGC's termination insurance program that has sufficient assets to provide all plan benefits may voluntarily terminate the plan in a standard termination. The plan administrator must follow specific steps and meet specific deadlines. These steps and deadlines are briefly summarized below and explained in more detail in sections II through IV of this package.

Step 1:

- ▶ Select a proposed termination date.

Step 2:

- ▶ Issue a **Notice of Intent to Terminate (NOIT)** to affected parties (other than the PBGC) at least 60 days and not more than 90 days before the proposed termination date. Affected parties (see Appendix A) include participants, beneficiaries of deceased participants, alternate payees under qualified domestic relations orders, and employee organizations representing participants. (See section II.C.)

Step 3:

- ▶ Issue a **Notice of Plan Benefits** to participants, beneficiaries of deceased participants, and alternate payees no later than the time the plan administrator files the Standard Termination Notice (PBGC Form 500) with the PBGC. (See section II.D.)

Step 4:

- ▶ File a **Standard Termination Notice** (PBGC Form 500, including the Schedule EA-S) with the PBGC on or before the 180th day after the proposed termination date. (See section II.E.)

Note: *The PBGC has 60 days after receiving a complete Form 500 to review the termination for compliance with the law and regulations.*

Step 5:

- ▶ If any benefits may be distributed in an annuity form, provide a **Notice of Annuity Information** to affected parties other than the PBGC no later than 45 days before the distribution date. (See section II.C.)

Step 6:

- ▶ Distribute plan assets to satisfy all plan benefits by the distribution deadline. The distribution deadline is the later of (a) 180 days after expiration of the PBGC's 60-day review period, or (b) 120 days after receipt of a favorable IRS determination letter provided that the plan administrator submits a valid request for an IRS determination letter by the time he or she files the Form 500 with the PBGC. (See section II.H.)

Step 7:

- ▶ If the plan has Missing Participants, follow the rules for distributing benefits of Missing Participants described in the PBGC Schedule MP package.

Step 8:

- ▶ Provide a **Notice of Annuity Contract** to participants receiving their plan benefits in the form of an annuity no later than 30 days after all plan benefits are distributed. (See section II.H.4.)

Step 9:

- ▶ File a **Post-Distribution Certification** (PBGC Form 501) with the PBGC no later than 30 days after all plan benefits are distributed. (See section II.I.)

Note: *The PBGC may assess a penalty for late filing of a Form 501. However, the PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1.*

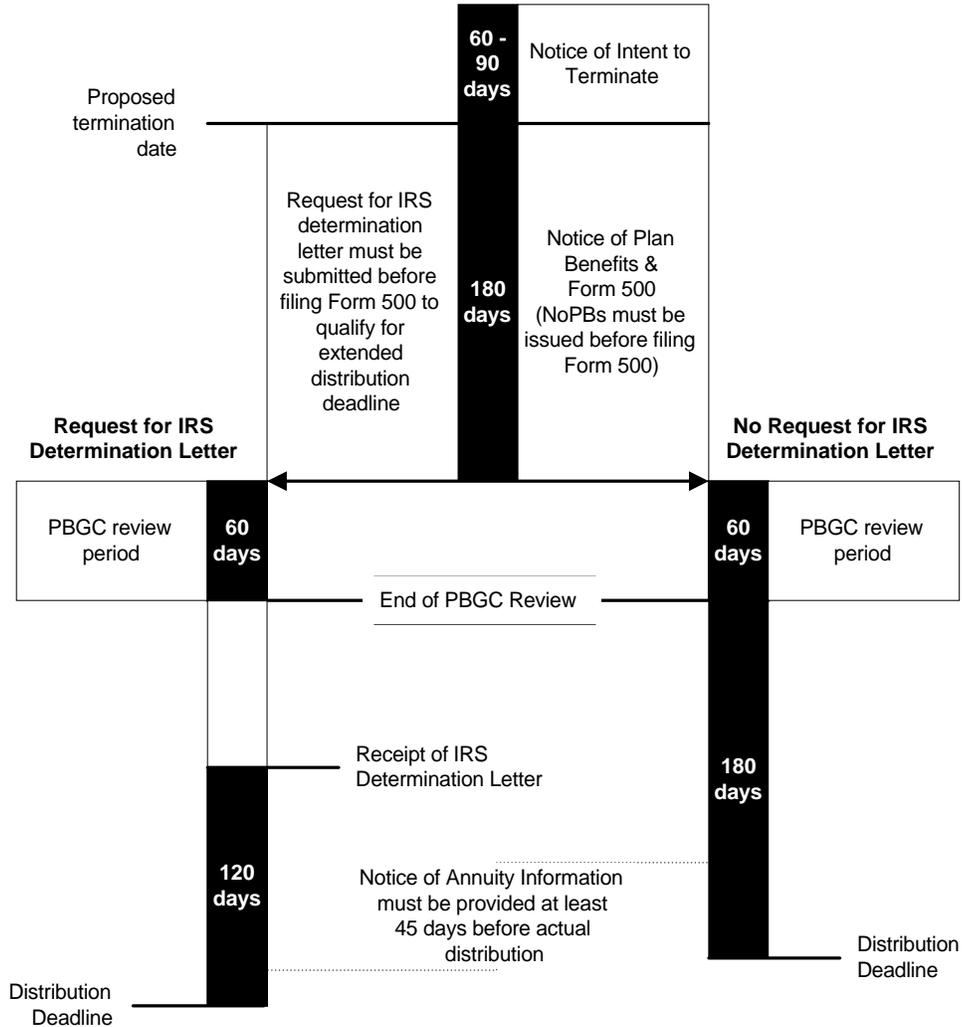
This package contains (1) a glossary of terms used in the standard termination process (see Appendix A); (2) a model NOIT that the plan administrator may use or adapt (see Appendix B); (3) information on state guaranty association coverage of annuities (see section II.C and Appendix C); (4) a model commitment to make the plan sufficient for plan benefits (see Appendix D); (5) PBGC Form 500, which includes the Schedules REP-S (an optional form for designating an authorized representative) and EA-S (the required enrolled actuary certification); and (6) PBGC Form 501 (the post-distribution certification), along with detailed instructions for completing the forms (see section IV). The Missing Participant Program forms and instructions are in a separate PBGC Schedule MP package.

The specific rules for terminating a single-employer plan in a standard termination are set forth in sections 4041(a), 4041(b) and 4050 of the Employee Retirement Income Security Act (ERISA) and in the PBGC's regulations on Termination of Single-Employer Plans, 29 CFR Part 4041, Subparts A and B, and Missing Participants, 29 CFR Part 4050.

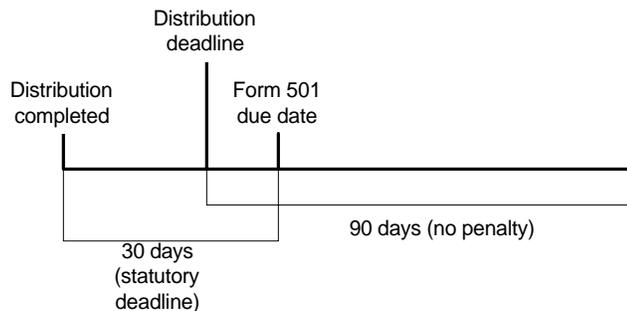
See the PBGC's Web site, www.pbgc.gov, for these regulations, along with FAQs about terminations and additional copies of termination forms and instructions for downloading.

Standard Termination Timeline: Notice of Intent to Terminate to Distribution Deadline

This timeline shows the key steps in the standard termination process. Certain deadlines may be extended as provided in PBGC regulations.



Standard Termination Timeline: Post-Distribution Certification



II. STANDARD TERMINATION PROCESS

To terminate a plan in a standard termination, the plan administrator, within specified timeframes, must notify participants of the proposed termination; provide participants with detailed information on their plan benefits; file certain information, including actuarial information, with the PBGC; and, if the PBGC does not issue a notice of noncompliance, distribute plan assets to satisfy all plan benefits under the plan.

Failure to Comply. Failure to comply with the standard termination requirements or failure to meet the deadlines may cause the proposed termination to be nullified. To avoid inadvertently missing deadlines, the plan administrator should, early in the termination process, review the rules for computing due dates (see section II.A.) and begin collecting the data necessary to complete a standard termination (e.g., participant and beneficiary information, including current addresses, and the location and value of plan assets).

Note: The PBGC may extend certain deadlines as discussed in section II.J. (see 29 CFR §4041.30).

Consequence of Nullification. If the termination is nullified, the plan administrator may not make a final distribution of assets and the plan is an ongoing plan for all purposes. If the plan administrator still intends to terminate the plan, he or she will have to start the process again, beginning with issuance of a new NOIT establishing a new proposed termination date for the plan.

Effect of Failure to Provide Required Information. If a plan administrator fails to provide any required information within the specified time limit, the PBGC may assess a penalty of up to \$1,100 a day for each day that the failure continues. Under the PBGC's penalty policy, the penalty rate is generally much lower - \$25 per day for the first 90 days and \$50 per day thereafter, with lower rates for small plans. The PBGC may also pursue any other equitable or legal remedies available to it under the law, including, if appropriate, the issuance of a Notice of Noncompliance (NONC). See 29 CFR §4041.6 and the PBGC's Statement of Policy on ERISA section 4071 penalties, 60 Fed. Reg 36837 (July 18, 1995).

Post-Termination Amendments. The plan administrator may take into account a plan amendment that is adopted after a plan's termination date only if certain conditions are met (see section II.H.3).

Conversion to a Defined Contribution (DC) Plan. Converting a defined benefit plan to a defined contribution plan is a voluntary termination of the defined benefit plan and is subject to all rules and requirements governing such terminations.

Cessation of Accruals. ERISA section 204(h) provides that a plan may not be amended to provide for a significant reduction in the rate of future benefit accruals unless, after adoption of the plan amendment and not more than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to participants, alternate payees, and employee organizations representing participants. If the plan terminates in accordance with Title IV of ERISA, section 204(h) is deemed to be satisfied as of the termination date. (See Treas. Reg. § 1.411(d)-6, Q&A-16(b).)

Note: An NOIT must include a statement concerning the cessation of accruals under the plan (see 29 CFR §4041.23(b)(4) and section II.C of these instructions). If the termination is not successfully completed, an NOIT does not serve as an ERISA section 204(h) notice unless the NOIT meets all section 204(h) requirements.

Making Plans Sufficient. To facilitate the termination of a plan and the distribution of assets in a standard termination, a contributing sponsor or controlled group member may make a commitment in writing to the plan to contribute, by the distribution date, the amount necessary to make the plan sufficient for all plan benefits (see the specific instructions to item 5, Schedule EA-S). In addition, majority owners (individuals owning 50 percent or more of the interest of the employer) may agree to forgo receipt of all or part of their plan benefits until the benefits of all other plan participants have been satisfied (see the specific instructions to item 6, Schedule EA-S).

IRS Determination Letter. Plan administrators who want to defer the final distribution of plan assets until 120 days after receipt of a favorable tax qualification (on termination) determination letter from the IRS must submit a valid request for the determination to the IRS by the time the standard termination notice is filed with the PBGC.

Voluntary Termination of an Insufficient Plan. A single-employer plan covered by the PBGC's termination insurance program that does not have sufficient assets to satisfy all plan benefits can terminate voluntarily only if the contributing sponsor(s) and each member of the contributing sponsor's controlled group satisfy the requirements for a distress termination pursuant to ERISA section 4041(c) and 29 CFR Part 4041, Subpart C. The distress termination rules are described in detail in a separate PBGC distress termination package, which also contains the necessary forms and instructions.

A. Computation of Time; Filing and Issuance Rules (see 29 CFR §4041.3)

In computing any period of time, begin counting on the day after the event occurs and count the last day of the period. If the last day is a weekend or Federal holiday, then the period runs until the next regular business day.

Note: A proposed termination date may be any day, including a Saturday, Sunday or Federal holiday.

1. Filing with the PBGC

The plan administrator may file PBGC Form 500 (including Schedules REP-S and EA-S) and Form 501 by mail, commercial delivery service or hand delivery. Other filings relating to a standard termination (e.g., a request for an extension of a deadline) may be made by electronic mail (e-mail) or facsimile transmission (fax), as well as by mail, commercial delivery service or hand delivery.

Filing Date. The date on which information shall be deemed filed is -

1. For United States mail: If the information is mailed with the U.S. Postal Service by first class mail postage prepaid to the PBGC, (a) the date of the legible postmark made by the U.S. Postal Service, (b) if there is no such legible postmark, the date of the legible postmark made by a private postage meter, provided that the PBGC receives the information not later than the date when information sent by first class mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date for filing the information, or (c) in any other case, the date that the plan administrator can establish the information was deposited in the mail before the last collection of mail from the place of deposit.
2. For commercial delivery service: The earlier of (a) the date that would be considered the postmark date under Internal Revenue Code §7502(f), or (b) the date the information is deposited for delivery with the commercial delivery service, provided it is received by the PBGC within two regular business days.

Internal Revenue Code §7502(f) generally provides that a document is considered filed on the date a "designated delivery service" records or marks as the date on which the document was given to that service for delivery. See the IRS's Web site, www.irs.treas.gov, for a list of designated private delivery services.

3. For electronic filings: The date on which the information is transmitted electronically to the PBGC provided that, if

there is reason to believe information was not delivered, the plan administrator promptly refiles the information in a manner reasonably calculated to ensure delivery. The plan administrator must refile the information using any means permissible initially to file the information. (For information refiled electronically, the plan administrator must again refile promptly if there is reason to believe the information was not delivered.)

4. For a filing not covered under (1), (2) or (3): The date on which the information is received by the PBGC.

Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

Where to File. By mail, commercial delivery service or hand delivery:

Processing and Technical Assistance Branch
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 930
Washington, DC 20005-4026

By e-mail: standard@pbgc.gov

By fax: (202) 326-4001

2. Issuance to Affected Parties Other than the PBGC

All notices must be readable and written in a manner calculated to be understood by the average plan participant. The plan administrator may provide additional information with a notice only if the information is not misleading.

The plan administrator must issue any notice to each affected party individually. The notice may be delivered -

1. By hand or by first class mail or commercial delivery service to the affected party's last known address; or
2. By electronic means, such as e-mail or fax, that is reasonably calculated to ensure that the person entitled to receive the notice will actually receive it.

Issue Date. The issue date is the date on which the notice is (1) handed to the affected party, (2) deposited in the mail or with a commercial delivery service, or (3) transmitted electronically to the affected party provided that, if there is reason to believe the notice was not delivered, the plan administrator promptly reissues the notice in a manner reasonably calculated to ensure delivery. The plan administrator must reissue the notice using any means permissible initially to issue the

notice. (For a notice reissued electronically, the plan administrator must again reissue promptly if there is reason to believe the notice was not delivered.)

Special Rule for Foreign Languages. This rule applies to (1) a plan that covers fewer than 100 participants at the beginning of a plan year in which 25% or more of all plan participants are literate only in the same non-English language; or (2) a plan that covers 100 or more participants in which 500 or more participants or 10% or more of all plan participants, whichever is less, are literate only in the same non-English language. The plan administrator of such a plan must, for any notice to affected parties, include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice, or provide the notice in that common non-English language to those affected parties literate only in that language.

Example: The plan administrator of a terminating plan in which 30% of the participants are literate only in Spanish must either (1) include on each notice a statement with the name, address and telephone number of an individual fluent in Spanish who may be contacted with questions concerning the notice, or (2) provide a copy of the notice in Spanish to those persons literate only in Spanish.

Omission of Affected Parties. If the plan administrator discovers additional affected parties after expiration of the deadline for issuance of any notice, the notice will be considered timely if (1) the plan administrator could not reasonably have been expected to know of the additional affected parties or the failure to notify was due to administrative error involving only a de minimis percent of affected parties, and the plan administrator promptly issues the notice to each additional affected party, or (2) the plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly when the affected party is located.

Note: *The plan administrator need not issue a notice to the estate of a deceased participant if the estate is not entitled to a distribution.*

B. Administration of Plan During Termination Process (see 29 CFR §4041.22)

A plan administrator may not distribute plan assets in connection with the termination until the PBGC's review period ends. The plan administrator must continue to carry out the normal operations of the plan during the termination process. These operations include, e.g., putting participants into pay status, collecting contributions due the plan, investing plan assets and making loans to participants in accordance with plan provisions.

However, during the period beginning on the first day the plan administrator issues a notice of intent to terminate until the last day of the PBGC's review period, the plan administrator, except as described below, must not:

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

Exception: The plan administrator may provide benefits attributable to employer contributions either through the purchase of an irrevocable commitment or in a form other than as 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.

Note: *A distribution, transfer, or allocation of assets to a participant, beneficiary or alternate payee, or to an insurer for the benefit of such a person, made in anticipation of plan termination may be a violation of Title IV of ERISA (see 29 CFR §4044.4(b)).*

If, after beginning the standard termination process, the plan administrator determines that the plan is insufficient for plan benefits, he or she should stop the termination process and notify the PBGC. (In very limited circumstances, the PBGC, upon request, may permit a conversion of a standard termination to a distress termination.)

C. Notice of Intent to Terminate (NOIT) (see 29 CFR §4041.23)

At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a written NOIT to each person (other than the PBGC) who is an affected party as of the proposed termination date. Affected parties include (1) participants, (2) beneficiaries of deceased participants, (3) alternate payees under applicable qualified domestic relations orders, (4) employee organizations currently representing participants and (5) for any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented the group within the 5-year period preceding issuance of the NOIT.

Note: *An NOIT must also be issued to a person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the distribution date. That NOIT will not be untimely, provided the "after-discovered affected parties" requirements described in section II.A.2 are satisfied.*

Proposed Termination Date. The proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

Example: Assume a proposed termination date of July 1, 2001 (a Sunday). For the NOIT to be timely, it must be issued no later than May 2, 2001, and no earlier than April 2, 2001. In counting backwards, start with June 30, 2001, as day 1.

Contents of NOIT. An NOIT must contain the information, including the Notice of Annuity Information, listed below. (See Appendix B for a model NOIT, which may be used or adapted by the plan administrator.)

- ▶ Each contributing sponsor's name and employer identification number (EIN).
- ▶ Plan name and plan number.
- ▶ Name, address and telephone number of a contact person.
- ▶ Statement that the plan administrator intends to terminate the plan in a standard termination.
- ▶ Proposed termination date.
- ▶ Statement that the plan administrator will notify the affected party if the proposed termination date changes or the termination does not occur.
- ▶ Statement that, in order to terminate, plan assets must be sufficient to provide all plan benefits.
- ▶ One of the following statements concerning the cessation of accruals under the plan, whichever applies:
 - Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;
 - A plan amendment has been adopted under which benefit accruals will cease, in accordance with ERISA section 204(h), as of [insert either the proposed termination date or a specified date before the proposed termination date, whichever applies], whether or not the plan is terminated; or
 - Benefit accruals ceased, in accordance with ERISA section 204(h), as of [insert specified date before the NOIT was issued].
- ▶ Statement that each affected party entitled to plan benefits will receive a written notification regarding his or her benefits.

- ▶ Statement explaining how an affected party entitled to receive the latest updated summary plan description (SPD) under ERISA §104(b) can obtain it.

Note: *Some affected parties (e.g., a union) are not entitled to receive a copy of the SPD under ERISA section 104. The plan administrator may, but need not, include this statement in the NOIT issued to any such affected parties. The plan administrator may impose a reasonable charge to cover the cost of furnishing the SPD to the extent allowed under regulations issued by the Department of Labor (see 29 CFR §2520.104b-30). The plan administrator may simply provide a copy of the SPD with the NOIT rather than including this statement in the NOIT.*

- ▶ For those persons who are in pay status as of the proposed termination date, a statement (as applicable) that their monthly (or other periodic) benefit amounts will not be affected by the plan's termination, or explaining how such benefit amounts will be affected under plan provisions.
- ▶ Statement that, after plan assets have been distributed to provide all plan benefits, either through the purchase of an annuity contract or in another form permitted by the plan, the PBGC's guarantee ends.

Notice of Annuity Information. The NOIT to an affected party entitled to plan benefits (other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum) must include the following annuity information –

If the identity-of-insurer information is known at the time the NOIT is issued:

- ▶ Name and address of each insurer from whom, or from among whom, the plan administrator intends to purchase annuity contracts.
- ▶ Statement that, if the plan administrator later decides to select a different insurer, the plan administrator will issue a supplemental notice no later than 45 days before the distribution date.
- ▶ Statement (concerning state guaranty association coverage of annuities) that:
 - Once the plan distributes a benefit in the form of an annuity purchased from an insurance company, the insurance company takes over the responsibility for paying that benefit;

- All states, the District of Columbia and the Commonwealth of Puerto Rico have established "guaranty associations" to protect policyholders in the event of an insurance company's financial failure;
- A guaranty association is responsible for all, part or none of the annuity if the insurance company cannot pay;
- Each guaranty association has dollar limits on the extent of its guaranty coverage, along with a general description of applicable dollar coverage limits;
- In most cases the policyholder is covered by the guaranty association for the state where he or she lives at the time the insurance company fails to pay; and
- The individual may obtain the addresses and telephone numbers of guaranty association offices from the PBGC by calling or writing the PBGC's Customer Service Center, 1200 K Street N.W., Washington D.C. 20005-4026, (202) 326-4000, or from the PBGC's Web site at www.pbgc.gov.

See Appendix C for a model notice providing this information, which may be used or adapted by the plan administrator.

If the identity-of-insurer information is not known at the time the NOIT is issued:

- ▶ Statement that annuity contracts may be purchased to provide some or all of the benefits under the plan, but the plan administrator has not yet identified the insurer or insurers from whom the plan may purchase the annuities.
- ▶ Statement that affected parties will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of each insurer from whom, or from among whom, the plan administrator intends to purchase annuity contracts.

Supplemental Notice of Annuity Information. If the NOIT did not include the identity of potential insurers, or if annuities will be purchased from insurers other than those identified in the NOIT (or a prior supplemental notice), the plan administrator must issue a Supplemental Notice of Annuity Information to -

1. Each affected party entitled to plan benefits (other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum) no later than 45 days before the affected party's distribution date; and
2. Each employee organization representing participants no later than 45 days before the earliest distribution date for any affected party represented by the employee organization.

The supplemental notice must include:

- ▶ Name and address of each insurer from whom (if known), or (if not) from among whom, the plan administrator intends to purchase annuity contracts.
- ▶ Statement that, if the plan administrator later decides to select a different insurer, the plan administrator will issue a written supplemental notice no later than 45 days before the distribution date.
- ▶ Unless the information on state guaranty association coverage of annuities described above was previously provided, that information and the statement that the PBGC's guarantee ends after plan assets have been distributed.

Special Rule for Spin-off/Termination Transactions.

For a spin-off/termination transaction, the plan administrator must provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date of the terminating plan) covered by the ongoing plan with -

1. A notice describing the transaction at least 60 days and no more than 90 days before the proposed termination date of the terminating plan; and
2. The same annuity information for the ongoing plan that is required as part of the NOIT for the terminated plan (*i.e.*, identity of insurer, change in identity of insurer, statement that the PBGC's guarantee ends after plan assets have been distributed and information on state guaranty association coverage of annuities) no later than 45 days before an annuity is purchased for the person.

The issuance rules in section II.A.2 apply to these notices. (See the instructions to item 18b, Form 500, for other requirements relating to spin-off/termination transactions.)

D. Notice of Plan Benefits (NOPB)

(see 29 CFR §4041.24)

The plan administrator must issue an NOPB to each affected party who is, as of the proposed termination date, a participant, a beneficiary of a deceased participant, or an alternate payee under an applicable qualified domestic relations order no later than the time the plan administrator files the standard termination notice with the PBGC (see section II.E).

Note: *An NOPB must also be issued to a person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the distribution date. (The NOPB will be saved from being untimely, provided the "after-discovered affected parties" requirements described in section II.A.2 are satisfied.)*

Contents of NOPB. An NOPB must contain both general information and specific additional information for three categories of participants: (1) persons in pay status as of the termination date; (2) persons not then in pay status but who, as of the termination date, have made valid benefit elections or for whom the plan administrator has determined that the benefit will be payable as a lump sum; and (3) all others.

General information:

- ▶ Contributing sponsor's name and employer identification number (EIN).
- ▶ Plan name and plan number (PN).
- ▶ Name, address and telephone number of a contact person for benefit questions.
- ▶ Proposed termination date given in the NOIT and, if any, the extended proposed termination date given in the standard termination notice (see section II.E.).
- ▶ If the amount of the plan benefits described in the NOPB is an estimate, a statement that the amount is an estimate and plan benefits paid may be greater than or less than the estimate.
- ▶ Except for a participant or beneficiary in pay status for more than one year as of the proposed termination date,
 - Personal data (if available) needed to calculate the person's plan benefits, *e.g.*, date of birth, date of hire, credited service, salary (if applicable);
 - Statement requesting that the affected party promptly correct any information he or she believes to be incorrect; and
 - If any of the personal data needed to calculate the affected party's plan benefits is not available, the best available data, along with a statement informing the affected party of the data not available and affording him or her the opportunity to provide it.

Note: *The plan administrator should highlight (e.g., bold or all capital letters) the requests for corrected or (if applicable) additional information.*

For persons in pay status as of the termination date:

- ▶ Amount and form of the participant's or beneficiary's plan benefits payable as of the proposed termination date.
- ▶ Amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary.

- ▶ Amount and date of any increase or decrease in the benefit that has already occurred or is scheduled to occur after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision.

For persons who, as of the termination date, have validly elected a form and starting date, or for whom, as of such date, the plan administrator has determined that the benefits will be paid in a nonconsensual lump sum:

- ▶ Amount and form of the participant's or beneficiary's plan benefits payable as of the projected benefit starting date, and what that date is.
- ▶ Amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary.
- ▶ Amount and date of any increase or decrease in the benefit that has already occurred or is scheduled to occur after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provisions.
- ▶ If the plan benefits will be paid in any form other than a lump sum, and the age at which, or the form in which, the plan benefits will be paid differs from the normal retirement benefit, the age or form stated in the plan for the normal retirement benefit and the age or form adjustment factors.
- ▶ If the plan benefits will be paid in a lump sum:
 - Explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;
 - Description of the mortality table used to convert to the lump sum benefit (*e.g.*, the mortality table published by the IRS in Revenue Ruling 95-6, 1995-1 C.B. 80) and a reference to the pertinent plan provision;
 - Description of the interest rate to be used to convert to the lump sum benefit (*e.g.*, the 30-year Treasury rate for the third month before the month in which the lump sum is distributed), a reference to the pertinent plan provision, and (if known) the applicable interest rate;
 - Explanation of how interest rates are used to calculate lump sums;
 - Statement that use of a higher interest rate results in a smaller lump sum amount; and
 - Statement that the applicable interest rate may change before the distribution date.

For all other persons not in pay status as of the termination date (or for whom a portion of the person's benefit is not in pay status):

- ▶ Amount of the participant's or beneficiary's plan benefits payable at normal retirement age in any one form permitted under the plan, and a description of that form.
- ▶ Availability of any alternative benefit forms, including those payable to a beneficiary upon the participant's death, either before or after benefits commence.
- ▶ If the participant or beneficiary is or may become entitled to a benefit payable before normal retirement age, amount and form of benefit that would be payable at the earliest benefit commencement date (or, if more than one such form is payable at the earliest benefit commencement date, any one of those forms) and whether the benefit commencing on such date would be subject to future reduction.
- ▶ If the plan benefits may be paid in a lump sum:
 - Explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;
 - Description of the mortality table used to convert the annuity form to the lump sum benefit (*e.g.*, the mortality table published by the IRS in Revenue Ruling 95-6, 1995-1 C.B. 80) and a reference to the pertinent plan provision;
 - Description of the interest rate to be used to convert to the lump sum benefit (*e.g.*, the 30-year Treasury rate for the third month before the month in which the lump sum is distributed), a reference to the pertinent plan provision, and (if known) the applicable interest rate;
 - Explanation of how interest rates are used to calculate lump sums;
 - Statement that use of a higher interest rate results in a smaller lump sum amount; and
 - Statement that the applicable interest rate may change before the distribution date.

Special Rule for Spin-off/Termination Transactions.

For a spin-off/termination transaction, the plan administrator must provide an NOPB containing the information described above to all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date of the terminating plan) covered by the ongoing plan. The NOPB must be issued no later than the time the plan administrator files the standard termination notice for any terminating plan.

E. Standard Termination Notice (Form 500)
(see 29 CFR §4041.25)

The plan administrator must file with the PBGC a Form 500, Standard Termination Notice, with Schedule EA-S, the standard termination certification of sufficiency, completed in accordance with the instructions to the form (see sections III and IV). Form 500 must be filed on or before the 180th day after the proposed termination date.

***Note:** Plan administrators who want to defer the final distribution of plan assets until 120 days after receipt of a favorable tax qualification determination letter from the IRS must submit a valid request for the determination to the IRS by the time the standard termination notice is filed with the PBGC.*

Proposed Termination Date. The plan administrator may select on PBGC Form 500 a proposed termination date that is later than the date specified in the NOIT. The new termination date cannot be more than 90 days after the earliest date on which the plan administrator issued an NOIT to any affected party.

Contents of Standard Termination Notice. See the specific instructions to the PBGC Form 500 (section IV.A.) and the Schedule EA-S (section IV.B.).

F. PBGC Review (see 29 CFR §4041.26)

The PBGC has 60 days after receipt of a complete Form 500 filing at the address listed in section II.A to review the termination for compliance with the law and regulations. The PBGC will notify the filer in writing of the receipt date so that the filer can determine when the 60-day review period will expire. The review period may be extended if the PBGC and the plan administrator agree, in writing, to an extension before the expiration of the review period.

Incomplete Filing. If the Form 500 filing is incomplete, the PBGC may, based on the nature and extent of the omission, provide the plan administrator an opportunity to complete the filing. In such cases, the filing will be deemed complete (for purposes of determining the timeliness of the Form 500) as of the date originally filed, provided the plan administrator files the missing information by the later of (1) the 180th day after the proposed termination date or (2) the 30th day after the date of the PBGC notice that the filing was incomplete. The PBGC will determine, however, whether to begin its 60-day review period as of the date it receives the original filing or the missing information, and notify the plan administrator of its determination.

Additional Information. The PBGC may in any case require the submission of additional information relevant to the termination proceeding. This information must be submitted within 30 days after the date of a written request by the PBGC, or within a different time period specified by the PBGC in its request. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

A request for additional information suspends the running of the PBGC's 60-day review period. The review period begins running again on the day the required information is received and continues for the greater of (1) the number of days remaining in the review period or (2) five regular business days.

G. Notice of Noncompliance (NONC) (see 29 CFR §4041.31)

A NONC ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan.

During the PBGC's Review Period. The PBGC will issue a NONC within its 60-day (or extended) review period whenever the PBGC determines that -

1. The plan administrator failed to properly issue the notice of intent to terminate to all affected parties other than the PBGC (see section II.C. and 29 CFR §4041.23);
2. The plan administrator failed to properly issue a notice of plan benefits to all affected parties entitled to plan benefits (see section II.D. and 29 CFR §4041.24);
3. The plan administrator failed to properly file the standard termination notice (see section II.E. and 29 CFR §4041.25);
4. As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all plan benefits under the plan (see section II.H. and 29 CFR §4041.28); or
5. In the case of a spin-off/termination transaction, the plan administrator failed to properly issue any required notice (see sections II.C. and II.D. and 29 CFR §§ 4041.23, 4041.24 and 4041.27).

The PBGC may decide not to issue a NONC based on a failure to meet a notice requirement described in paragraphs (1), (2), (3) or (5) above if the PBGC determines that issuance of the NONC would be inconsistent with the interests of participants and beneficiaries.

After the PBGC's Review Period. The PBGC may issue a NONC or suspend a termination proceeding for a failure to meet a requirement described in (1) through (5) above after expiration of its 60-day (or extended) review period, including after a PBGC audit, if the PBGC determines such action is necessary to carry out the purposes of Title IV.

The PBGC may issue a NONC at any time if the plan administrator fails to properly complete the final distribution of plan assets (*e.g.*, by failing to satisfy any of the requirements for providing all plan benefits in the form of an irrevocable commitment or other permitted form, or by failing to complete the distribution before the distribution deadline).

Request for Reconsideration. A plan administrator may request reconsideration of a NONC. Any request for reconsideration, if submitted timely and in accordance with the rules prescribed in the PBGC's regulation on *Administrative Review* (29 CFR Part 4003), automatically stays the effectiveness of the NONC until the PBGC issues its decision on reconsideration. Note also that, once a NONC is issued, the running of all time periods relating to the termination will be suspended and the plan administrator can take no further action to terminate the plan (except by initiation of a new termination) unless and until the NONC is revoked pursuant to a decision by the PBGC on reconsideration.

Notice to Affected Parties. If a NONC becomes effective because either the plan administrator does not request reconsideration or the PBGC issues a decision upon reconsideration affirming issuance of the NONC, the plan administrator must notify affected parties other than the PBGC (and persons who received notice because the proposed termination is part of a spin-off/termination transaction) in writing that the plan is not going to terminate or, if applicable, that the termination was invalid and that a new NOIT is being or will be issued.

Correction of Errors. The PBGC will not issue a NONC based solely on the plan administrator's inclusion of erroneous information (or omission of correct information) in a notice required to be provided to any person if:

1. The PBGC determines that the plan administrator acted in good faith in connection with the error;
2. The plan administrator corrects the error no later than:
 - a. In the case of an error in the NOPB under 29 CFR §4041.24, the latest date an election notice may be provided to the person; or
 - b. In any other case, as soon as practicable after the plan administrator knows or should know of the error, or by any later date specified by the PBGC; and

3. The PBGC determines that the delay in providing the correct information will not substantially harm any person.

H. Closeout of Plan (see 29 CFR §4041.28)

Unless the PBGC issues a NONC, the plan administrator must complete the distribution of plan assets by purchasing annuity contracts that are irrevocable commitments, or by otherwise providing all plan benefits (see section II.H.2 for the rules governing distribution of plan benefits).

A distribution of assets by the purchase of annuity contracts occurs when the obligation for providing the plan benefits passes irrevocably from the plan to the insurer.

A distribution of assets in a manner other than by the purchase of an annuity contract occurs on the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt).

1. Distribution Deadline

The plan administrator must complete the distribution of plan assets in satisfaction of plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) by the later of (a) 180 days after the PBGC review period ends (*i.e.*, generally by no later than 240 days after the PBGC's receipt of a complete and valid Form 500 filing), or (b) 120 days after the plan's receipt of a favorable IRS determination letter. The IRS determination letter deadline described in (b) above is available only if, on or before the time the plan administrator files the Form 500 with the PBGC, the plan administrator submits to IRS a valid request for a determination letter with respect to the plan's tax-qualification status upon termination. This deadline does not apply to a distribution of residual assets, whether to the employer or to participants and beneficiaries.

Note: *Failure to distribute the assets timely may cause the termination to be nullified.*

A plan administrator may request an extension of the time to file for an IRS determination letter to qualify for the IRS determination letter distribution deadline in accordance with the rules described in section II.J of these instructions and 29 CFR §4041.30. Such a request 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 60-day (or extended) review period. The PBGC will notify the plan administrator in writing of the date it receives the request.

Extensions of Distribution Deadline. The 180-day distribution deadline or the IRS determination letter distribution deadline described above may be extended only under the circumstances described below. (If more than one extension applies, the deadline is extended to the latest applicable date.)

A. Revocation of Notice of Noncompliance. If the PBGC revokes a NONC, the distribution deadline is extended until the 180th day after the date of revocation.

B. PBGC Discretion. The PBGC may extend the distribution deadline to a later date in accordance with the rules described in section II.J of these instructions and 29 CFR §4041.30.

Note: *If, late in the distribution process, the plan administrator (1) locates a participant or beneficiary who was thought to be missing or (2) learns that a participant or beneficiary whom the plan administrator thought was located is, in fact, missing, the plan administrator should request a discretionary extension of the distribution deadline.*

2. Distributing Plan Benefits

Except for Missing Participants (see section II.H.5), each participant must be offered all optional forms of benefits for which he or she is eligible under the terms of the plan. Plan benefits may be distributed in a form other than an annuity (*e.g.*, an immediate lump sum) only if the plan provides for such a distribution and (1) the participant elects the alternative form in writing, with the written consent of his or her spouse, or (2) for participants not already in pay status, the present value of the participant's benefit (valued in accordance with the rules described under "Valuation of Other Benefits" in the instructions to item 6 of Schedule EA-S), is at or below the plan's de minimis cashout level, which may not exceed \$5,000.

Note: *For an election of a lump sum to be valid, the participant must have the opportunity to commence an annuity immediately (see 26 CFR §1.417(e)-1).*

If plan benefits are not payable in an optional form under the conditions described above, plan benefits must be distributed by the purchase from an insurer of an annuity contract that is an irrevocable commitment. The plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA. Unless the participant is already in pay status, or has both elected to retire and elected a particular benefit form, the irrevocable commitment (annuity contract) must preserve all benefit options under the plan in accordance with Code section 411 and the regulations thereunder.

Note: *Spousal consent is required for married participants for all options (other than a qualified joint and survivor annuity) if the present value of the participant's*

plan benefit is more than the plan's de minimis cashout level, which may not exceed \$5,000.

Participating Annuities. A participating annuity contract may be purchased to provide the plan benefits if all plan benefits will be guaranteed under the annuity contract as the unconditional, irrevocable, and noncancellable obligation of the insurer. For a plan in which any residual assets will be distributed to participants, (1) the additional premium for the participation feature must not be paid from the residual assets allocable to participants, and (2) the amount of residual assets must be determined using the price of the annuities for all plan benefits without the participation feature. If these requirements are not satisfied, a nonparticipating annuity contract must be purchased to close out the plan.

3. Post-Termination Amendments (see 29 CFR §4041.8)

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. However, 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 an optional form of benefit available to the participant or beneficiary on the termination date. Thus, for example, a post-termination amendment that eliminates an ancillary benefit, or that increases the dollar limit (subject to the \$5,000 maximum) for nonconsensual lump sums, would not be taken into account in determining a participant's or beneficiary's plan benefits.

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 of the residual, is determined under the plan's provisions in effect on the termination date. However, an amendment adopted after the termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets only to the extent the amendment does not decrease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

Permitted Decreases. 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 Code section 401; (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.

4. Providing the Annuity Contract (see 29 CFR §4041.28(d))

If the plan administrator distributed plan benefits to any participant or beneficiary through the purchase of annuity contracts, either the plan administrator or the insurer must, within 30 days after it is available, provide each such participant and beneficiary (other than a Missing Participant) with a copy of the annuity contract or a certificate showing the insurer's name and address and clearly stating the insurer's obligation to provide the participant's or beneficiary's plan benefits.

If such a contract or certificate is not provided to the participant or beneficiary by the date on which the Form 501 is required to be filed to avoid the assessment of penalties (see section II.I), the plan administrator must, no later than that date, provide the participant and beneficiary with a notice stating:

1. That the obligation for providing the plan benefits has transferred to the insurer;
2. The name and address of the insurer;
3. The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and
4. That the participant or beneficiary will receive from the plan administrator or the insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly stating the insurer's obligation to provide the participant's or beneficiary's plan benefits.

5. Missing Participants (see 29 CFR Part 4050)

If the plan administrator is unable to locate a participant or beneficiary after a diligent search, the plan administrator must distribute the plan benefits of the Missing Participant either by purchasing an annuity contract from an insurance company or paying the value of the Missing Participant's benefit to the PBGC. The rules for distributing the benefits of Missing Participants are described in detail in a separate package of instructions and forms (Schedule MP package).

I. Post-Distribution Certification (Form 501) (see 29 CFR §4041.29)

The plan administrator must file a completed PBGC Form 501 with the PBGC within 30 days after the last distribution date for plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) for any affected party. The due date for the Form 501 is unaffected by the timing of any distribution of residual assets, whether to the employer or to participants and beneficiaries.

Note: A plan administrator who is distributing benefits for Missing Participants for whom designated benefits will be paid to the PBGC must file the Form 501 within 30 days after the deemed distribution date rather than the last distribution date. (See Schedule MP Package for distribution and filing rules for Missing Participants.)

The PBGC may assess a penalty for late filing of a Form 501. However, the PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1. Note that the plan administrator may want to file the Form 501 before the end of this penalty-free zone to ensure that, if the plan is audited, the audit will take place within a reasonable time period. As required by ERISA section 4003(a), the PBGC audits a statistically significant number of plans terminating in standard terminations. The PBGC periodically selects plans to audit from among those plan terminations for which the PBGC has recently received the Form 501. Therefore, if you want your plan to be included in an audit pool as soon as possible, you should file the Form 501 as soon as possible.

J. Requests for Deadline Extensions

(see 29 CFR §4041.30)

The PBGC may in its discretion extend a deadline for taking a required action 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.

Note: The PBGC will not extend the following statutory deadlines: (1) that the NOIT be issued not less than 60 days before the proposed termination date, (2) that the NOPB be issued by the time the plan administrator files the standard termination notice with the PBGC, and (3) that the post-distribution certification be filed with the PBGC within 30 days after the last distribution date. (Although the PBGC may assess a penalty for late filing of a post-distribution certification, it will do so only to the extent the post-distribution certification is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1.)

If the plan administrator files a request for an extension with the PBGC later than the 15th day before the applicable deadline, the plan administrator must include a justification for not filing the request earlier.

Requests for extensions must be in writing and -

Addressed to:
Manager
Processing and Technical Assistance Branch
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 930
Washington, D.C. 20005-4026

E-mailed to: standard@pbgc.gov; or

Faxed to: (202) 326-4001.

K. Maintaining Plan Records

(see 29 CFR §4041.5)

Each contributing sponsor and the plan administrator of a terminated plan must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and 29 CFR Part 4041 for six years after the date the Form 501 is filed with the PBGC. A record may be maintained in any format that reasonably ensures the integrity of the original information and that allows the record to be converted to hardcopy.

Note: If a contributing sponsor or the plan administrator maintains information in accordance with this requirement, the other(s) need not maintain that information.

These records include the plan documents and all underlying data, including worksheets prepared by or at the direction of the enrolled actuary, used in determining the amount, form, and value of the plan benefits of each individual.

The contributing sponsor or plan administrator, as appropriate, must make all such records available to the PBGC upon request for inspection and photocopying, and must submit the records to the PBGC within 30 days after receipt of the PBGC's written request or by a later date specified in the request. Unless the PBGC agrees to a different format, records must be submitted in hardcopy.

L. Forms and Instructions; Contacting Us

You may obtain forms and instructions from the PBGC's Web site at www.pbgc.gov.

If you have any questions or problems about standard terminations, distress terminations, or Missing Participants, or if you need copies of this package, the distress termination package, or the Schedule MP package, contact:

Customer Service Center
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 1050
Washington, D.C. 20005-4026

Telephone: (800) 736-2444
Hearing-impaired persons may telephone 1-800-877-8339, and give the communications assistant the customer service telephone number shown above.

E-mail: standard@pbgc.gov

Fax: (202) 326-4001

3. No additions or deletions may be made to the certifications required to be signed by the plan administrator or enrolled actuary.

The PBGC will accept the original pre-printed forms, photocopies of the forms, or downloaded forms. However, all forms must have an original signature.

Who Must File. The plan administrator or the plan administrator's authorized representative must submit all filings required to be made with the PBGC. Schedule REP-S (or another form for designating a representative) must accompany the filing if it is made by a representative of the plan administrator.

III. GENERAL INSTRUCTIONS FOR STANDARD TERMINATION FORMS

This part contains the following PBGC termination forms and instructions:

Form 500 is the Standard Termination Notice that the plan administrator must file with the PBGC pursuant to ERISA section 4041(b)(2) and 29 CFR §4041.25 to advise the PBGC of a proposed standard termination and to provide various plan data. Form 500 includes Schedule EA-S and Schedule REP-S.

Schedule EA-S is the Standard Termination Certification of Sufficiency that must be used by the enrolled actuary or, in certain situations, the plan administrator to certify that a single-employer plan terminating in a standard termination is projected to have sufficient assets to provide all plan benefits.

Schedule REP-S is the Designation of Representative form that the plan administrator may use to designate a representative or representatives to act on his or her behalf before the PBGC on some or all matters relating to the termination of a specified pension plan. Schedule REP-S also may be used to revoke a prior designation.

Form 501 is the Post-Distribution Certification that the plan administrator must file with the PBGC pursuant to ERISA section 4041(b)(3)(B) and 29 CFR §4041.29(a) to certify that the distribution of plan assets was completed in accordance with ERISA section 4041(b) and 29 CFR §4041.28.

How to Complete the Forms. The filer should ensure that an appropriate response is provided for each item, as follows:

1. If an item requests a numeric response, a number must be entered.
2. If an item provides a box or boxes to be checked, written responses are not acceptable.

***Note:** While an authorized representative may submit the filing and sign any cover letter, the plan administrator must sign the Form 500, Schedule REP-S or other designation (where the filing includes a designation), and Form 501 in all cases. If the designated plan administrator is a board (or similar group) composed of employer and employee representatives, then at least one employer representative and one employee representative must sign the forms. If the designated plan administrator is other than an individual or a board, the forms must be signed by an officer of the designated plan administrator who has the authority to sign on behalf of that entity. Schedule EA-S must be signed by an enrolled actuary unless the plan is a Code section 412(i) plan. In that case, the Schedule EA-S must be signed either by the enrolled actuary or by the plan administrator.*

IV. SPECIFIC INSTRUCTIONS FOR STANDARD TERMINATION FORMS

A. Form 500

Form 500 with Schedule EA-S and any required supplemental information must be filed simultaneously on or before the 180th day after the proposed termination date (see section II.A.1 for filing rules).

Part I. Identifying Information

- 1a Enter the complete name of the plan as it appears on the plan document.
- 2a Enter the name, address, and telephone number of the contributing sponsor. If the plan covers the employees of more than one contributing sponsor, enter the name of the contributing sponsor with the greatest number of participants.

- 2b Enter the 9-digit employer identification number (EIN) assigned to the contributing sponsor by the Internal Revenue Service for income tax purposes and the 3-digit plan number (PN) assigned by the plan sponsor.
- 2c If the EIN/PN entered in item 2b is different from that used in earlier filings with the PBGC (including premium and reportable event filings for this plan), enter the EIN/PN previously reported.
- 2d Enter the same 6-digit industry code that you entered on your most recent PBGC Form 1 (premium) filing.
- 3a Enter the name, address, and telephone number of the individual, board, or other entity, if any, specifically designated as plan administrator by the terms of the plan or trust agreement. If none is so designated or if the contributing sponsor is so designated, enter "same."

Part II. General Plan Information

- 4a If the plan administrator is filing for a tax qualification determination from the IRS and wants to defer the deadline for the final distribution of plan assets until 120 days after receipt of a favorable determination letter, the plan administrator should submit the determination request to the IRS by the time the Form 500 is filed with the PBGC. The IRS determination letter distribution deadline (see section II.H.1) is available to a plan that files with the IRS by the time the Form 500 is filed with the PBGC.
- 5a For this purpose, "multiple employer plan" means a single-employer plan maintained by two or more contributing sponsors that are not members of the same controlled group. Under such a plan, all plan assets are available to pay benefits to all plan participants and beneficiaries, regardless of employer.
- 7 Check whichever statement(s) best describe(s) any change in the organization or structure of the contributing sponsor that is associated with, or resulted in, the decision to terminate the plan.
- 8a For this purpose, "active participants" includes both currently employed participants and separated, nonvested participants who are earning or retaining credited service under the plan.
- 9 Any currently employed participant who you expect will be covered under more than one type of new or existing plan should be included in each item that applies.
- 11a The proposed termination date entered in item 11a may be later than the proposed termination date specified in the NOIT, but it may not be later than the 90th day after the earliest date an NOIT is issued to any affected party.

Example: The plan administrator begins issuing the NOIT on March 2, 2001, and completes the issuance to all affected parties on March 5, 2001, specifying a proposed termination date of May 4, 2001 (63 days after March 2, 2001). In item 11a, the plan administrator may specify a proposed termination date of any day from May 4, 2001, to and including May 31, 2001.

- 12a Enter the earliest date any NOIT was issued to any affected party (see section II.A.2 for issuance rules).

- 12b Enter the latest date any NOIT was issued to any affected party.

The "latest" date of issuance of any NOIT is the date when the last copy is issued to any affected party reasonably known or discovered during the 60-90 day period before the proposed termination date. The plan administrator is responsible for taking all necessary and appropriate steps under the circumstances to locate all affected parties.

- 13 Enter the latest date on which any NOPB was issued to any affected party other than any employee organization (see section II.A.2 for issuance rules).

The "latest" date of issuance of any NOPB is the date when the last notice is issued to each person reasonably identified as being entitled to an NOPB on or before the date of filing of Form 500. The plan administrator is responsible for taking all necessary and appropriate steps under the circumstances to locate all affected parties.

- 14a If the PBGC is advised, before the 60-day (or extended) period in 29 CFR §4041.26(a) ends, that a formal challenge to the plan termination has been initiated, the PBGC will suspend the termination proceeding and will so advise the plan administrator in writing. If the PBGC is advised of a challenge to the termination after the 60-day (or extended) period ends but before the termination procedure is concluded, the PBGC may suspend the termination proceedings and, if it does, will so advise the plan administrator in writing. (See 29 CFR §4041.7.) For this purpose, the following definitions apply:

Formal challenge to a termination means the occurrence of any of the following actions asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement: (A) the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement, or (B) the commencement of any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law.

Existing collective bargaining agreement means a collective bargaining agreement that has not been made inoperative by a judicial ruling and, by its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it. When a collective bargaining agreement no longer meets these conditions, it ceases to be an "existing collective bargaining agreement," whether or not any or all of its terms may continue to apply by operation of law.

- 14b If you checked "Yes" in item 14a, attach a copy of the formal challenge and a statement showing what action was initiated, who initiated the action, the date it was initiated, and the current status of the challenge.
- 15 PBGC premiums are due for each year up to and including the plan year in which assets are distributed pursuant to the termination.

Part III. Plans with Residual Assets

- 16 Section 4044(d) of ERISA permits a distribution of residual assets to the employer if (1) all liabilities of the plan to participants and their beneficiaries have been satisfied, (2) the distribution does not contravene any provision of law, and (3) the plan provides for such a distribution in these circumstances. In addition, in a plan that provided for mandatory employee contributions, the portion of the residual assets attributable to those contributions must be equitably distributed to the participants who made such contributions (see ERISA section 4044(d)(3)).
- 17 Under ERISA section 4044(d)(2), a plan provision permitting an employer to recover residual assets, or a plan amendment increasing the amount of such assets that may revert to the employer, may not be effective before the end of the fifth calendar year following the adoption of the amendment.

Exception: A plan provision providing for a reversion is not subject to the five-year rule described above if a plan that has been in effect for fewer than five years has contained such a provision since the effective date of the plan.

- 18b If a transfer of assets or liabilities is part of a spin-off/termination transaction, generally the termination would not be recognized and any attempt to recover residual assets would be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries, unless the requirements set forth in the Guidelines are satisfied as follows:

(1) All participants and beneficiaries in the original plan who are covered by the ongoing plan must be given advance notice of the transaction in similar time and manner

as if the entire original plan were being terminated (see sections II.C. and II.D.);

(2) The plan benefits under the ongoing plan of participants and beneficiaries described in (1) above must be fully vested as of the termination date of the terminating plan; and

(3) All plan benefits described in (2) above must be provided for by the purchase of annuity contracts that represent irrevocable commitments for the plan benefits of each participant or beneficiary.

B. Schedule EA-S

Schedule EA-S must be used to certify that a plan terminating in a standard termination is projected to have sufficient assets to provide all plan benefits as of the proposed distribution date, as required under ERISA section 4041(b)(2)(A).

The Schedule EA-S must be signed by the enrolled actuary, unless the plan is a Code section 412(i) plan. For a Code section 412(i) plan, either the enrolled actuary or the plan administrator must sign the Schedule EA-S.

Part I. Code Section 412(i) Plan

- 1 Check "Yes" if this is a plan described in Code section 412(i) and enter the name and address of the insurer in item 2.

Part II. Plan Sufficiency

- 3 Enter the proposed distribution date. The proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the filing date of the Form 500 (see section II.A.1).

Example: The plan administrator files the Form 500 on March 21, 2001. The earliest possible proposed distribution date is May 21, 2001. The latest possible proposed distribution date is November 16, 2001.

For the rules governing the time period in which the actual distribution date may fall, see section II.H.1. The actual distribution date need not match the proposed distribution date.

- 5 Enter the estimated fair market value of the plan assets available to pay for plan benefits, valued as of the proposed distribution date. Plan assets available to pay for plan benefits include all plan assets remaining after subtracting all liabilities (other than liabilities for future plan benefits that will be provided when assets are distributed). Liabilities include, *e.g.*, benefit payments due before the

distribution date; PBGC premiums for all plan years through and including the plan year in which assets are distributed; expenses, fees, and other administrative costs.

The enrolled actuary may include as a plan asset for this purpose the value of a commitment by a contributing sponsor or controlled group member to contribute any additional sums necessary to make a plan sufficient for all plan benefits, in accordance with the rules in 29 CFR §4041.21(b)(1). (See Appendix D for a model commitment to make a plan sufficient.)

- 6 Enter the estimated present value of plan benefits as of the proposed distribution date.

Value of Annuity Contracts. The value of plan benefits that will be provided through the purchase of annuity contracts is the cost quoted by an insurer to provide such plan benefits.

Note: *Because insurers may require that bids be exercised within a fairly short period of time, it may not be possible prior to filing the Form 500 to obtain a bid that would remain open until the proposed distribution date. Accordingly, the plan administrator is not required to actually obtain a bid before item 6 is completed and may enter an estimated cost in item 6.*

Value of Other Benefits (excluding payments to the PBGC for Missing Participants)

I. General

If a participant or beneficiary is to receive benefits as a lump sum, the lump sum must be at least the minimum determined in accordance with the rules of Code sections 411(a)(11) and 417(e)(3) and the regulations thereunder. (See also ERISA sections 203(e) and 205(g)(3).) Similar rules apply to other non-annuity forms of payment.

Caution:

The rules of Code sections 411(a)(11) and 417(e)(3) specify only minimum values for lump sums. Plans frequently also contain a second set of assumptions and provide that the benefit will be based on whichever set of assumptions yields the greater lump sum. In such cases, each participant's or beneficiary's lump sum using the second set of assumptions must be compared to that participant's or beneficiary's minimum required lump sum, and the higher of the two lump sums must be paid. On audit, the PBGC has found that some plans paid only the minimum required lump sum, improperly ignoring alternative plan provisions that would have resulted in a higher lump sum for a participant or beneficiary.

The discussion in II through III below is the PBGC's summary of the applicable rules based on Title IV of ERISA, the Code, and implementing regulations and other guidance. Plan administrators should always refer to these sources to ensure that they complete the distribution in accordance with applicable law.

II. Assumptions for Minimum Lump Sums

The plan must calculate the minimum lump sum value based on the annuity starting date, using both the interest rate and the mortality table specified in the Code.

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 (1) 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 (2) determining whether plan benefits will be paid in such other form. (See Appendix A for the definition of distribution date.)

Note: *For example, if the lump sum election form given to a participant does not specify the annuity starting date of a qualified joint and survivor annuity commencing immediately and there is no other evidence establishing an annuity starting date, the distribution date is the "annuity starting date" for the purposes described above.*

A. Interest Rates

(i) *Applicable Interest Rate.* The minimum lump sum value is calculated using the applicable interest rate, as determined by the IRS. The applicable interest rate is defined as the average interest rate on 30-year Treasury Constant Maturities for the applicable month (see (iii) below). This is a single rate.

(ii) *Where you can find the interest rates.* The applicable interest rates are published in the Internal Revenue Bulletin. The 30-year Treasury rates are:

1. Published weekly in Federal Reserve release H.15, and monthly in Federal Reserve release G.13.
2. Available by phone from the Public Information Department of the Federal Reserve Bank of New York at (212) 720-6130.
3. Available from the Federal Reserve Board's Web site at www.federalreserve.gov/releases.

Note: *The correct rate for a given month is the average of all of the daily rates for that month, and thus will not be available until that month is over.*

(iii) Time for determining the applicable interest rate. The applicable interest rate for a plan terminating in a standard termination is based on the annuity starting date. The annuity starting date, combined with the plan's "stability period" and "lookback month," determines the applicable interest rate. The "stability period" is the period during which the applicable interest rate is constant for all distributions during that period. This stability period must be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year. All distributions that take place during a stability period must use the same "lookback month" average interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period. The plan must specify both the stability period and the lookback month, and both must be applied uniformly to all participants and beneficiaries in a plan.

Example: Plan A's plan year begins on April 1. The plan provides that the stability period is the plan year, and the lookback month is the fourth full calendar month preceding the first day of the stability period. The following are the monthly rates and their respective stability periods: The December 2000 rate applies for the period from April 1, 2001, through March 31, 2002; the December 2001 rate applies for the period from April 1, 2002, through March 31, 2003; etc.

Caution:

On audit, the PBGC has found that incorrect dates were used to determine the applicable interest rate. This generally occurred either because the plan's termination date was used to determine the applicable interest rate, or because there was a delay until another stability period and the interest rate was not adjusted to reflect the delay.

B. Applicable Mortality Table. The plan must use the mortality table set forth in IRS Revenue Ruling 95-6 (1995-1 IRS Cumulative Bulletin 80). This table is based on the 1983 GAM table. The same table must be used for male and female participants and beneficiaries.

C. Age. The age (or ages, when valuing a joint and survivor benefit) used in the calculation of the lump sum value must be the age(s) as of the annuity starting date rather than as of the plan's termination date or as of the date of the participant's termination of employment. The plan may specify a reasonable method to deal with fractional ages.

Caution:

Some participants' and beneficiaries' ages will almost certainly change if the distribution is delayed beyond the date as of which calculations were done.

D. Normal Retirement Benefit. The present value of a lump sum cannot be less than the present value of the normal retirement benefit calculated using the applicable interest rate and the applicable mortality table. (See Treas. Reg. § 1.417(e)-1(d)(1).)

Note regarding use of PBGC interest rates: The Retirement Protection Act of 1994 eliminated the linkage between PBGC interest rates and minimum lump sum amounts under section 417(e) of the Code. Some plans continue to pay lump sums based on PBGC interest rates where that would provide a greater lump sum than the minimum lump sum calculated under the 30-year Treasury/GAM 83 structure. See the PBGC's Web site at www.pbgc.gov for information on PBGC lump sum interest rates and calculations based on these rates.

Caution:

Although a plan must provide for use of the 30-year Treasury/GAM 83 structure for lump sum distributions with annuity starting dates in plan years beginning on or after January 1, 2000, IRS allows a sponsor to delay amending the plan to so provide. However, the IRS requires that the amendment provide that with respect to distributions with annuity starting dates that are on or after the effective date of the amendment (*i.e.*, the first day of the first plan year beginning on or after January 1, 2000) but before the adoption date of the amendment, the minimum lump sum value be the greater of the value using the 30-year Treasury/GAM 83 structure and the value using the PBGC lump sum interest rate structure. See sections 1.03, 2.07 and 3.06 of Rev. Proc. 99-23, 1999-1 C.B. 920.

III. Plan Amendments

In general, a plan amendment may not cut back accrued benefits (see Code §411(d)(6)). For example, the anti-cutback rules would apply if the plan provided that the lump sum value was the greater of the values using the applicable 30-year Treasury rate and 5%, and the plan was amended to change 5% to 6%. There are also limited exceptions to the cutback rules that allow the plan to be amended to change the plan date for determining the interest rate if the old value is preserved for a one-year period. (See Treas. Reg. §1.417(e)-1(d)(10)(ii).)

Note: *The plan administrator may take into account a plan amendment that is adopted after a plan's termination date, only if certain conditions are met (see section II.H.3).*

Value of Designated Benefits Paid to the PBGC. The amount of designated benefits to be paid to the PBGC for Missing Participants is determined under 29 CFR §§ 4050.5 and 4050.12(c)(1).

Special Rule for Majority Owners. A majority owner may elect to forgo receipt of all or part of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits if (1) the majority owner's election is in writing; (2) in any case in which the plan would require the spouse of the majority owner to consent to distribution of the owner's plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election; (3) the election and consent occur during the time period beginning with the date of issuance of the first NOIT and ending with the date of the last distribution; and (4) neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in ERISA section 206(d)(3)). (See 29 CFR §4041.21(b)(2).)

An election to forgo receipt of plan benefits is permitted merely to facilitate a standard termination; if assets become available when final distribution occurs, such assets must be used to satisfy the plan benefits of the majority owner before any assets may revert to the contributing sponsor.

- 7 Enter the estimated total amount of residual assets.
- 8 Enter that portion of the amount in item 7 that will be distributed to the employer pursuant to ERISA section 4044(d).
- 9 Enter that portion of the amount in item 7 that will be distributed to participants. This amount includes the amount of the residual assets, if any, attributable to mandatory employee contributions. (The sum of the amounts in item 8 and item 9 must equal the amount in item 7.)
- 10 Check "Yes" if the plan has ever required that participants contribute to the plan.

If there are residual assets and the plan required employee contributions, the portion of the residual assets attributable to such employee contributions must be determined pursuant to ERISA section 4044(d)(3).

- 11 State the interest rate and mortality table that will be used to value the plan benefits that are to be distributed other than through the purchase of annuity contracts and the source, *e.g.*, that the interest rate is the rate specified in the plan as of the appropriate date (see instructions to item 6, above). If the interest rate is the PBGC rate, include the deferral factors or rate structure that will be used to value the benefits for participants who are not immediately eligible for an annuity.

C. Schedule REP-S

Schedule REP-S may be used to designate a person or persons to represent you before the PBGC on some or all matters relating to the termination of your pension plan. Schedule REP-S (or another form for designating a representative) must be filed simultaneously with Form 500 and Schedule EA-S if Form 500 is submitted by a representative or representatives of the plan administrator. However, you may file Schedule REP-S at any time that you wish to designate a representative or representatives in connection with a standard termination. Schedule REP-S also may be used to revoke a prior designation.

Part I. Identifying Information

The information entered in Part I should be the same as that entered in Part I of the Form 500 that you filed, or are filing, with the PBGC.

Part III. Retention/Revocation of Prior Designation(s)

If you wish a previous designation for the same termination to remain in effect, check "Yes" in items 7a and 7b and attach to this schedule a copy of the earlier designation(s) of representative that will remain in effect.

Part IV. Signature

The plan administrator must sign the Schedule REP-S. The PBGC will accept the original pre-printed forms, photocopies of the forms, or downloaded forms. However, all forms must have an original signature.

Note: *If the plan administrator is a board (or similar group) composed of employer and employee representatives, at least one employer representative and one employee representative must sign this form. If the plan administrator is other than an individual or a board, this form must be signed by an officer of the plan administrator who has the authority to do so.*

D. Form 501

The plan administrator must file the Post-Distribution Certification (Form 501) with the PBGC within 30 days after the last distribution date for any affected party. The PBGC may assess a penalty for late filing of a Form 501. However, the PBGC will do so only to the extent the Form 501 is filed more than 90 days after the distribution deadline (including extensions) described in section II.H.1. The distribution of plan assets in

satisfaction of plan benefits (through priority category 6 under ERISA section 4044 and 29 CFR Part 4044) must generally be completed by the later of (1) 180 days after the expiration of the PBGC's 60-day (or extended) review period for determining whether to issue a notice of noncompliance, or (2) the IRS determination letter distribution deadline described in section II.H.1 and 29 CFR §4041.28(a)(1)(ii). (See also section II.H.1 for rules for an extension of the distribution deadline.)

Note: *The plan administrator of a plan with one or more Missing Participants must file the Schedule MP (including attachments) with the Form 501. (See section II.H.5 and the Schedule MP Package.)*

Part I. Distribution Information

3 Enter the PBGC Case Number, which will be on the PBGC's letter acknowledging receipt of the Form 500 for this plan.

4a Enter the date on which the distribution of assets was completed (see II.H.5).

Exception: Enter the deemed distribution date if the plan is or will be paying designated benefits to the PBGC for one or more Missing Participants.

4b If your distribution deadline is the IRS determination letter distribution deadline described in section II.H.1, enter the date of receipt of the IRS determination letter with respect to the plan's tax-qualification status upon termination.

5 Check "Yes" if you provided the name and address of the insurer(s) no later than 45 days before the date of distribution to each individual other than: (1) an unlocated participant; or (2) an individual whose benefit was distributed as a nonconsensual lump sum.

6 If you are not able to locate a participant or beneficiary, you must either purchase an irrevocable commitment from an insurer for that participant or beneficiary or pay the Missing Participant's benefit to the PBGC.

If the plan has one or more Missing Participants, check "No" on line 6 and submit a Schedule MP with the Form 501.

7a Check "Yes" on line 7a if you provided a copy of the annuity contract, certificate, or written notice to each individual (other than a Missing Participant) for whom an annuity was purchased (see section II.H.4).

8 Enter the name and address of the insurer(s), if any, that made an irrevocable commitment to provide plan benefits under the plan. The name must be the full official name of record.

9 Enter the name, address, and telephone number of the person keeping the plan records. The contributing sponsor or plan administrator must keep records supporting the calculation and valuation of benefits and assets for at least six years after the date the Form 501 is filed with the PBGC.

10 In reporting values, use the actual cost to the plan of the distribution (*e.g.*, the amount of any lump sum distribution; the price paid for a nonparticipating annuity contract). Include annuities purchased for Missing Participants in "Annuities" and designated benefits paid to the PBGC in "Designated benefits paid to the PBGC for Missing Participants."

APPENDIX A: GLOSSARY OF TERMS

Affected party means, with respect to a plan--

- (1) Each participant in the plan;
- (2) Each beneficiary of a deceased participant;
- (3) Each alternate payee under an applicable qualified domestic relations order, as defined in ERISA section 206(d)(3);
- (4) Each employee organization that currently represents any group of participants;
- (5) For any group of participants not currently represented by an employee organization, the employee organization, if any, that last represented such group of participants within the 5-year period preceding issuance of the notice of intent to terminate; and
- (6) The PBGC.

If an affected party has designated, in writing, a person to receive a notice on behalf of the affected party, any reference to the affected party (in connection with the notice) shall be construed to refer to such person.

Benefit liabilities means the benefits of participants and their beneficiaries under the plan (within the meaning of Code section 401(a)(2)).

Code means the Internal Revenue Code of 1986, as amended.

Contributing sponsor means a person who is a contributing sponsor as defined in ERISA section 4001(a)(13).

Controlled group means, in connection with any person, a group consisting of such person and all other persons under common control with such person, determined under 29 CFR §4001.3 of this part. Notwithstanding the preceding sentence, for purposes of determining the persons liable for contributions under Code section 412(c)(11)(B) or ERISA section 302(c)(11)(B), or for premiums under ERISA section 4007(e)(2), a controlled group also includes any group treated as a single employer under Code section 414(m) or (o). Any reference to the controlled group of a plan means all contributing sponsors of the plan and all members of each contributing sponsor's controlled group.

Deemed distribution date means (1) the last day of the period in which a distribution may be made under 29 CFR Part 4041, or (2) if the plan administrator selects an earlier date that is no earlier than the date when all benefit distributions have been made under the plan except for distributions for Missing

Participants whose designated benefits are paid to the PBGC, such earlier date.

Distribution date means:

- (1) Except as provided in paragraph (2) -
 - (a) For benefits provided through the purchase of irrevocable commitments, the date on which the obligation to provide the benefits passes from the plan to the insurer; and
 - (b) For benefits provided other than through the purchase of irrevocable commitments, the date on which the benefits are delivered to the participant or beneficiary (or to another plan or benefit arrangement or other recipient authorized by the participant or beneficiary in accordance with applicable law and regulations) personally or by deposit with a mail or courier service (as evidenced by a postmark or written receipt); or
- (2) The deemed distribution date in the case of a designated benefit paid to the PBGC in accordance with 29 CFR Part 4050 (dealing with Missing Participants).

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Guidelines means the Joint Implementation Guidelines issued by the PBGC, the Department of the Treasury, and the Department of Labor on May 24, 1984, for processing defined benefit pension plan terminations involving asset reversions to the contributing sponsor.

Insurer means a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

Irrevocable commitment means an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

IRS means the Internal Revenue Service.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of Code section 414(b) and (c)) of --

- (1) An unincorporated trade or business;
- (2) The capital interest or the profits interest in a partnership; or
- (3) Either the voting stock of a corporation or the value of all of the stock of a corporation.

Mandatory employee contributions means amounts contributed to a plan by a participant which are required as a condition of employment, as a condition of participation in the plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living. (See the Schedule MP Package for rules for making distributions for Missing Participants.)

Notice of intent to terminate means the notice of a proposed termination of a single-employer plan, as required by ERISA section 4041(a)(2) and 29 CFR §4041.23 (in a standard termination) or §4041.43 (in a distress termination).

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to 29 CFR §4041.31 advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by 29 CFR §4041.24.

Participant means-

- (1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;
- (2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and
- (3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

Plan benefits means benefit liabilities determined as of the termination date (taking into account the rules in 29 CFR §4041.8(a)). (See section II.H.3.)

Proposed distribution date means the date chosen by the plan administrator as the tentative date for the distribution of plan assets pursuant to a standard termination. A proposed distribution date may not be earlier than the 61st day, nor later than the 240th day, following the day on which the plan administrator files the Form 500 with the PBGC.

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard termination notice.

Residual assets means the plan assets remaining after all plan benefits and other liabilities (*e.g.*, PBGC premiums) of the plan have been satisfied (taking into account the rules in 29 CFR §4041.8(b)). (See section II.H.3.)

Section 412(i) plan means a plan described in Code section 412(i) and the regulations thereunder.

Single-employer plan means any defined benefit plan (as defined in ERISA section 3(35)) that is not a multiemployer plan (as defined in ERISA section 4001(a)(3)) and that is covered by title IV of ERISA.

Spin-off/termination transaction means a transaction in which a single defined benefit plan is split into two or more plans and there is a reversion of residual assets to an employer upon the termination of one or more but fewer than all of the resulting plans.

Standard termination means the voluntary termination, in accordance with ERISA section 4041(b) and 29 CFR Part 4041, Subpart B, of a single-employer plan that is able to provide for all plan benefits when plan assets are distributed.

Standard termination notice means the notice filed with the PBGC pursuant to 29 CFR §4041.25.

State guaranty association means an association of insurers created by a State, the District of Columbia, or the Commonwealth of Puerto Rico to pay benefits and to continue coverage, within statutory limits, under life and health insurance policies and annuity contracts when an insurer fails.

APPENDIX B: MODEL NOTICE OF INTENT TO TERMINATE (NOIT)

(See section II.C for the requirements for an NOIT.)

Month/Day/Year

NOTICE OF INTENT TO TERMINATE [PLAN NAME]

The [plan administrator] intends to terminate the [plan name] in a standard termination. The law requires that we provide you with written notice of the proposed termination.

In order for this plan to terminate, plan assets must be sufficient to provide all plan benefits. If the proposed termination does not occur, the [plan administrator] will notify you in writing.

NAME OF CONTRIBUTING SPONSOR: [Name]

EIN/PN: [#####/###]

FOR CURRENT RETIREES: [Include whichever statement applies]

- The proposed termination will not affect your [monthly] benefit amount.
- The proposed termination will affect your [monthly] benefit amount as follows: [explain]

PROPOSED TERMINATION DATE: MM/DD/YY

We will notify you in writing if the proposed termination date is changed to a later date.

CONTACT PERSON: If you have any questions concerning the plan's termination, contact:

[Name, Address, Phone Number]

CESSATION OF ACCRUALS: [Include one of the following statements, whichever applies.]

- Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;
- A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of [insert either the proposed termination date or a specified date before the proposed termination date, whichever applies], whether or not the plan is terminated; or
- Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of [insert specified date before the NOIT was issued].

OBTAINING A SUMMARY PLAN DESCRIPTION:

- If you wish to obtain a copy of the summary plan description for your plan, you may [call or write. . .]

NOTIFICATION OF PLAN BENEFITS:

- The [plan administrator] will provide you, at a later date, written notification regarding your benefits.

IDENTITY OF INSURER(S): [For all participants and beneficiaries except those who will receive benefits in the form of a nonconsensual lump sum, include whichever statement applies.]

- If you will receive a benefit in the form of an annuity, the [plan administrator] intends to purchase the annuity contract for your benefit from (one of) the following insurer(s) listed below. If we decide to select a different insurer, we will notify you in writing no later than 45 days before we purchase the annuity.

[Insurer(s) Name and Address]

- If you will receive a benefit in the form of an annuity, the [plan administrator] intends to purchase an annuity contract for your benefit from an insurer to be selected at a later date. We will notify you in writing of the name and address of the insurer(s) from whom, or from among whom, we intend to purchase the annuity at least 45 days before we make the purchase.

END OF PBGC GUARANTEE:

- After plan assets have been distributed to provide all of your benefit, either through the purchase of an annuity contract or in another form permitted by the plan, the PBGC's guarantee of your benefit ends.

STATE GUARANTY ASSOCIATION COVERAGE: [Required only first time insurer(s) are identified]

- See enclosed notice.

**APPENDIX C: MODEL NOTICE OF STATE GUARANTY
ASSOCIATION COVERAGE OF ANNUITIES**

Your pension plan may pay you your pension benefit in the form of an annuity purchased from a licensed insurance company. Once the plan purchases an annuity for you, the insurance company will be responsible for paying your benefit.

All states, Puerto Rico and the District of Columbia have "guaranty associations." The purpose of a guaranty association is to protect policyholders, up to specified limits, in the event the insurance company is financially unable to meet its obligations.

If you receive your pension benefits in the form of an annuity and the insurance company becomes unable to pay, a guaranty association may be responsible for all, part or none of your annuity. Generally, where you live at the time the insurance company is unable to pay determines which guaranty association is responsible. In certain circumstances, other factors, such as where the insurance company is licensed to do business, determine which guaranty association may be responsible.

Each guaranty association has dollar limits on the extent of its coverage. In many states, guaranty association coverage limits are \$100,000 for individual annuities and \$300,000 for all insurance contracts with the same insurance company combined. However, state laws vary and can change over time, and different states may calculate the value of annuities differently.

This notice is to help you understand the general nature of the guaranty association protection of the annuity you may receive. It is only a summary. If you need information now or in the event the insurance company fails, a list of the addresses and telephone numbers of guaranty association offices is available by contacting the PBGC's Customer Service Center at 1200 K Street N.W., Washington, D.C. 20005-4026 (telephone #: (202) 326-4000) or by visiting the PBGC's Web site at www.pbgc.gov.

**APPENDIX D: MODEL COMMITMENT TO MAKE A PLAN
SUFFICIENT FOR PLAN BENEFITS**

This agreement, by and between [name of company] (the "Company") and [name of plan] (the "Plan") shall be effective as of the last date executed.

Whereas, the Plan is an employee pension benefit plan as described in section 3(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001-1461; and

Whereas the Company is [describe entity, *e.g.*, corporation, partnership]; and

Whereas, the Company is a contributing sponsor of the Plan, or a member of the contributing sponsor's controlled group, as described in section 4001(a) (13) and (14) of ERISA, 29 U.S.C. 1301(2) (13) and (14); and

Whereas, the Plan is covered by the termination insurance provisions of Title IV of ERISA, 29 U.S.C. 1301-1461; and

Whereas, the Plan administrator has issued or intends to issue to each affected party a notice of intent to terminate the Plan, pursuant to section 4041(a)(2) of ERISA, 29 U.S.C. 1341(a)(2); and

Whereas, the Company wishes the Plan to be sufficient for plan benefits, as described in section 29 CFR §4041.2; and

Whereas, the parties understand that if the Plan is not able to satisfy all its obligations for plan benefits, it will not be able to terminate in a standard termination under section 4041(b) of ERISA, 29 U.S.C. 1341(b); and

Whereas, the Company is not a debtor in a bankruptcy or other insolvency proceeding.

[Alternative Paragraph]

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and the court before which the proceeding is pending approves this commitment.

Whereas, the Company is a debtor in a bankruptcy or other insolvency proceeding and this commitment is unconditionally guaranteed, by an entity or person not in bankruptcy, to be met at or before the time distribution of assets is required in this standard termination.

Now Therefore, the parties hereto agree as follows:

1. The Company promises to pay to the Plan, on or before the date prescribed for distribution of Plan assets by the Plan administrator, the amount necessary, if any, to ensure that, on the date the Plan administrator distributes the assets of the Plan, the Plan is able to provide all plan benefits.
2. For the sole purpose of determining whether the Plan is sufficient to provide all plan benefits, an amount equal to the amount described in paragraph 1 shall be deemed a Plan asset available for allocation among the participants and beneficiaries of the Plan, in accordance with section 4044 of ERISA, 29 U.S.C. 1344.
3. This Agreement shall in no way relieve the Company of its obligations to pay contributions under the Plan.

Date: _____

Date: _____

By: _____

By: _____

Company: _____

Plan: _____