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## **SPECIAL FINANCIAL ASSISTANCE DIVISION**

### **INSTRUCTIONS FOR ANNUAL STATEMENT OF COMPLIANCE FOR MULTIEMPLOYER PLANS THAT RECEIVE SPECIAL FINANCIAL ASSISTANCE**

## **General Information**

Multiemployer plans that have received special financial assistance (SFA) under section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's SFA regulation (29 CFR part 4262) are required under § 4262.16(i) to submit an Annual Statement of Compliance (ASOC) for each plan year through the last day of the last plan year ending in 2051.

The ASOC is due annually, no later than 90 days after the end of each plan year and addresses compliance during that plan year. However, if 6 months or fewer remain in the plan year after the month that includes the date the plan first received payment of SFA, then the first submission is due no later than 90 days after the end of the next plan year, and the ASOC must address compliance from the date the plan received payment of SFA through the next plan year. For example, if a calendar year plan received payment of SFA on November 15, 2023, the plan's first ASOC would be due by March 31, 2025, covering the period from November 15, 2023, through December 31, 2024.

The ASOC must be signed and dated by a trustee who is a current member of the plan's board of trustees and authorized to sign on behalf of the board of trustees, or by another authorized representative of the plan sponsor. Also, the ASOC must be submitted to PBGC electronically via the PBGC e-Filing Portal: <https://efilingportal.pbgc.gov>. These instructions and the e-Filing portal screens contain the information that is required to be filed.

These instructions help guide the pension plan practitioner in preparing the information to be filed. They are broken down into six parts:

- Part I. Plan information (required for all plans)
- Part II. Compliance with restrictions and conditions (required only for plans that are not merged plans)
- Part III. Compliance with restrictions and conditions required for all merged plans (as defined in 29 CFR 4231.2) following PBGC approval of a merger under § 4262.16(f)(1) of PBGC's SFA regulation
- Part IV. Compliance with the requirement to reinstate benefits and pay any make-up payments under section 4262(k) of ERISA and § 4262.15 of PBGC's SFA regulation (required for plans with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA)
- Part V. Required documents (required for all plans)
- Part VI. Certification (required for all plans)

## **Part I. Plan information (required for all plans)**

The e-Filing Portal guides the user to input the required plan information in part I, which includes the following:

1. Plan Name.
2. EIN.
3. PN.
4. Role of Filer.
5. Name of Filer.
6. Street Address of Filer.
7. City, State, Zip Code of Filer.
8. Email Address of Filer.
9. Telephone Number of Filer.

The e-Filing Portal also guides the user to input the following required plan information:

- A. Plan year(s) to which this ASOC applies. Provide two plan years only if this ASOC is the plan's first submission and six months or fewer remained in the plan year after the month in which the plan first received payment of SFA.
- B. Amount of SFA received by the plan (unless previously reported).
- C. Date of the plan's last actuarial valuation report.
- D. The current value of the plan assets in the SFA segregated account established in accordance with section 4262(l) of ERISA and § 4262.14(a) of PBGC's SFA regulation (hereinafter "SFA funds") as of the plan's last actuarial valuation report.
- E. Indicate whether the plan filed (1) an application for SFA and received SFA under the interim final rule (IFR) in effect before August 8, 2022, and has not yet filed a supplemented application. If checked, then the plan is an "IFR-only recipient" for purposes of this submission and should follow the IFR-only recipient instructions for responses on investment of SFA funds and the phased recognition of SFA to calculate withdrawal liability in parts II and III; or (2) an application for SFA or a supplemented application for SFA (under § 4262.4(g)(6) and using Addendum C) after August 8, 2022.
- F. Yes or no to indicate whether the plan is a "merged plan" (as defined in 29 CFR 4231.2) following PBGC approval of a merger under § 4262.16(f)(1) [i.e., a plan that resulted from a merger with any plan that has ever received SFA]. If yes, skip part II and complete part III. If no, complete part II and skip part III.

## **Part II. Compliance with restrictions and conditions (required only for plans that are not merged plans) (Plans that answered "yes" to part I.F should skip part II.)**

The e-Filing Portal guides the user to input the required information in part II, which includes the following:

The plan is required to comply with each of the restrictions and conditions under section 4262(l) of ERISA and §§ 4262.13 and 4262.14 of PBGC's SFA regulation.

- A. Use of SFA funds (section 4262(l) of ERISA):
  1. The plan must use the SFA funds only to pay benefits and administrative expenses.
  2. The plan must segregate the SFA funds from other plan assets.

3. The plan must invest the SFA funds only in permissible investments. *For IFR-only recipients, this condition (#3) refers to permissible investments allowed under § 4262.14 as it existed before August 8, 2022.*
4. The plan must meet the allocation restriction on return-seeking assets at each purchase and at least once in every rolling period of 12 consecutive months. *This condition (#4) does not apply to IFR-only recipients.*

(A1) Yes or no to indicate whether, during the plan year, the plan has complied with the applicable restrictions on the use of SFA funds listed in this part II.A. If no, attach an explanation of the plan's non-compliance and include any corrective action taken by the plan.

**B. Benefit increases (§ 4262.16(b))**

This term refers to benefit increases as described in section 4022A(b)(1) of ERISA without regard to the length of time the benefit or benefit increase has been in effect. Also, the condition on benefit increases does not apply to the reinstatement of benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA (as provided under § 4262.15) or the restoration of benefits under 26 CFR 1.432(e)(9)-1(e)(3).

In addition to the restrictions in section 305(f)(1) of ERISA:

1. The plan must not adopt a retrospective benefit or benefit increase attributable in whole or in part to service accrued or other events occurring before the adoption date of the amendment.
2. The plan must not adopt a prospective benefit or benefit increase, unless both of the following conditions apply:
  - i. The plan actuary certified that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to.
  - ii. Those increased contributions were not included in the determination of SFA.
3. Beginning 10 years after the end of the plan year in which it receives payment of SFA, a plan may apply for an exception to the condition on retrospective and prospective benefit increases. See § 4262.16(b)(3).

(B1) Yes or no to indicate whether, during the plan year, the plan adopted a retrospective benefit increase. If yes, attach (1) a statement that the plan received PBGC's approval for this adoption or that a request for approval is pending with PBGC, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

(B2) Yes or no to indicate whether, during the plan year, the plan adopted a prospective benefit increase. If yes, attach (1) a statement that the adoption met the required conditions listed above in B.2. (2) a statement that the plan received PBGC's approval (described in B.3) for this adoption or that a request for approval is pending with PBGC, or (3) an explanation of the non-compliance and include any corrective action taken by the plan.

C. Allocation of plan assets (§ 4262.16(c))

The plan's assets, including SFA funds, must be held in permissible investments that are investment grade fixed income, as described in § 4262.14(d) of PBGC's SFA regulation, sufficient to pay for at least 1 year (or until the date the plan is projected to become insolvent, if earlier) of projected benefit payments and administrative expenses, taking into account the limitations on derivatives and leverage in § 4262.14(h).

(C1) Yes or no to indicate whether, during the plan year, the plan complied with the conditions relating to allocation of plan assets listed in part II.C. If no, attach an explanation of the plan's non-compliance and include any corrective action taken by the plan.

D. Contribution decreases (§ 4262.16(d))

The contributions to the plan required for each contribution base unit must be not less than, and the definition of the contribution base units used must not be different from, those set forth in collective bargaining agreements or plan documents (including contribution increases to the end of the collective bargaining agreements) in effect on March 11, 2021.

Exception:

- The plan sponsor determined that the change lessens the risk of loss to plan participants and beneficiaries; and
- If the contribution reduction affects over \$10 million of annual contributions and over 10 percent of all employer contributions, the plan submitted a request for PBGC approval.

(D1) Yes or no to indicate whether, during the plan year, the plan experienced a contribution decrease. If yes, attach (1) an explanation of the plan sponsor's determination under the exception described and, if necessary, a statement that the plan received PBGC's approval for this contribution decrease, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

E. Allocating contributions and other practices (§ 4262.16(e))

An allocation of income or expenses must not decrease the proportion of income or increase the proportion of expenses allocated to the plan pursuant to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which the income or expenses are divided or are to be divided between the plan and one or more other employee benefit plans.

Exceptions. This prohibition does not apply to a good faith allocation of:

- Contributions pursuant to a reciprocity agreement;
- Costs of securing shared space, goods, or services, where such allocation does not constitute a prohibited transaction under ERISA or is exempt from such prohibited transaction provisions pursuant to sections 408(b)(2) or 408(c)(2) of ERISA, or pursuant to a specific prohibited transaction exemption issued by the Department of Labor under section 408(a) of ERISA;
- The actual cost of services provided to the plan by an unrelated third party;
- Contributions where the contributions to the plan required for each contribution base unit are not reduced, unless permitted under II.D above; or

- Reallocations between employee benefit plans described in § 4261.16(e)(2) for which the plan has applied for and obtained PBGC's prior approval no earlier than 5 years after the end of the plan year in which it receives payment of SFA.

(E1) Yes or no to indicate whether, during the plan year, the plan experienced a reallocation of expenses. If yes, attach (1) an explanation of why this reallocation did not violate the condition regarding reallocation of expenses, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

(E2) Yes or no to indicate whether, during the plan year, the plan experienced a reallocation of contributions. If yes, attach (1) an explanation of why this reallocation did not violate the condition regarding reallocation of contributions, including, if applicable, a statement that the plan received PBGC's approval, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

F. Transfer or merger (§ 4262.16(f))

The plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval.

(F1) Yes or no to indicate whether, during the plan year, the plan engaged in a transfer of assets or liabilities (including a spinoff) or merger.

(F2) If yes to F1, yes or no to indicate if the plan requested PBGC's approval of the transfer or merger. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan.

G. Withdrawal liability (UVB determination) (§§ 4262.16(g)(1) and 4262.16(g)(2))

In accordance with § 4262.16(g)(1) of PBGC's SFA regulation, the plan must use the interest assumptions under § 4044.54 of PBGC's regulation on Allocation of Assets in Single-Employer Plans to determine unfunded vested benefits (UVBs) of the plan under section 4213(c) of ERISA (for the purpose of determining withdrawal liability) beginning with the first plan year in which the plan receives payment of SFA and until the later of: (i) the 10th plan year after the first plan year in which the plan receives payment of SFA, or (ii) the last day of the plan year in which, according to the plan's projection, the plan will exhaust any SFA assets (extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the plan's SFA measurement date). A similar period applies for an IFR-only recipient, except that the duration of (ii) is determined under the terms of the IFR.

In accordance with § 4262.16(g)(2) of PBGC's SFA regulation, the plan must determine the amount of SFA that is phased in for withdrawal liability purposes each year over the projected life of the SFA assets. The applicable phase-in period is from the first plan year in which the plan receives payment of SFA through the end of the plan year in which, according to the plan's projections, it will exhaust any SFA assets (extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the plan's SFA measurement date). For a plan that received payment of SFA under the terms of the IFR and files a supplemented application, the first plan year of payment is the year in which it received SFA under the terms of the IFR. To calculate the amount of SFA assets excluded for each plan year during the phase-in period, the plan

must take the total amount of SFA paid to the plan and multiply that by a fraction, the numerator of which is the number of years remaining in the phase-in period as of the date that the UVBs are being determined, and the denominator is the total number of years in the phase-in period. For a plan that receives payment of SFA under the IFR and receives a supplemented payment under the final rule, the total amount (payment under the IFR and supplemental payment) will be included in the phased recognition of SFA assets in determining UVBs for withdrawals going forward.

(G1) Yes or no to indicate whether, during the plan year, the plan determined UVBs for the purpose of determining withdrawal liability for one or more employers that withdrew from the plan after the plan year in which the plan received payment of SFA. If yes, attach the withdrawal liability calculations. If no, skip to part II.H.

(G2) If G1 was yes, yes or no to indicate compliance with the condition in § 4262.16(g)(1) requiring use of the prescribed interest assumptions. If no, indicate whether the condition has expired for the plan. If no and the condition has not yet expired for the plan, attach an explanation of the non-compliance and include any corrective action taken by the plan.

(G3) If G2 was yes, yes or no to indicate compliance with the condition in § 4262.16(g)(2) regarding recognizing the amount of SFA over time. (*This condition does not apply to IFR-only recipients and IFR-only recipients should leave this question blank.*) If no, indicate whether the condition has expired for the plan. If no and the condition has not yet expired for the plan, attach an explanation of the non-compliance and include any corrective action taken by the plan.

H. Withdrawal liability settlement (§ 4262.16(h))

The plan must not, before receiving PBGC approval, make any settlement of withdrawal liability where the amount of the liability settled was more than \$50 million, calculated as the lesser of: (i) the allocation of UVB to the employer under section 4211 of ERISA; or (ii) the present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions under § 4281.13(a) of PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal.

(H1) Yes or no to indicate whether, during the plan year, the plan made any settlement of withdrawal liability of any amount. If yes, attach a copy of the withdrawal liability settlement agreement (unless previously submitted). If no, skip to part II.I.

(H2) Yes or no to indicate whether, during the plan year, the plan made any settlement of withdrawal liability of more than \$50 million. If no, skip to part II.I.

(H3) Yes or no to indicate whether, during the plan year, the plan complied with the condition to receive prior PBGC approval. If no, attach an attach an explanation of the non-compliance and include any corrective action taken by the plan.

I. Criminal violations

Yes or no to indicate whether there has been any violation of any Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the SFA funds. If yes, attach an attach an explanation of the violation or violations.

**Part III. Compliance with restrictions and conditions required for all merged plans (as defined in 29 CFR 4231.2) following PBGC approval of a merger under § 4262.16(f)(1) of PBGC’s SFA regulation (Plans that answered “no” to part I.F should skip part III.)**

The e-Filing Portal guides the user to input the required information in part III, which includes the following:

- A. Identify any conditions waived under § 4262.16(f)(4) as part of PBGC approval of a merger.
- Select all.
  - Retrospective benefit increase. If checked, skip part III.C.
  - Contribution decreases. If checked, skip part III.D.
  - Allocating contributions and other income. If checked, skip part III.E.
  - None.

B. Use of SFA funds (section 4262(l) of ERISA):

The plan is required to comply with each of the following restrictions and conditions under section 4262(l) of ERISA and §§ 4262.13 and 4262.14 of PBGC’s SFA regulation.

1. The plan must use the SFA funds only to pay benefits and administrative expenses.
2. The plan must segregate the SFA funds from other plan assets.
3. The plan must invest the SFA funds only in permissible investments. *For IFR-only recipients, this condition (#3) refers to permissible investment allowed under § 4262.14 as it existed before August 8, 2022.*
4. The plan must meet the allocation restriction on return-seeking assets at each purchase and at least once in every rolling period of 12 consecutive months. *This condition (#4) does not apply to IFR-only recipients.*

(B1) Yes or no to indicate whether, during the plan year, the plan has complied with the applicable restrictions on the use of SFA funds listed in this part III.B. If no, attach an explanation of the plan’s non-compliance and include any corrective action taken by the plan.

C. Retrospective benefit increases (§ 4262.16(b)(1))

(This term retrospective benefit increase refers to benefit increases described in section 4022A(b)(1) of ERISA without regard to the length of time the benefit or benefit increase has been in effect. Also, the condition on benefit increases does not apply to the reinstatement of benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA (as provided under § 4262.15) or the restoration of benefits under 26 CFR 1.432(e)(9)-1(e)(3).)

In addition to the restrictions in section 305(f)(1) of ERISA:

1. The plan must not adopt a retrospective benefit or benefit increase attributable in whole or in part to service accrued or other events occurring before the adoption date of the amendment. Absent a waiver, this condition continues to apply to participants in the SFA plan immediately before the merger.
2. Beginning 10 years after the end of the plan year in which the SFA plan receives payment of SFA, a plan may apply for an exception to the condition on retrospective benefit increases. See § 4262.16(b)(3). Absent a waiver, this condition continues to apply to participants in the SFA plan immediately before the merger.

(C1) Yes or no to indicate whether, during the plan year, the plan adopted a retrospective benefit increase for the participants in the SFA plan. If yes, attach (1) a statement that the plan received PBGC's approval for this adoption or that a request for approval is pending with PBGC, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

D. Contribution decreases (§ 4262.16(d))

The contributions to the plan required for each contribution base unit must be not less than, and the definition of the contribution base units used must not be different from, those set forth in collective bargaining agreements or plan documents (including contribution increases to the end of the collective bargaining agreements) in effect on March 11, 2021. Absent a waiver, this condition continues to apply to employers who had an obligation to contribute to the SFA plan.

Exceptions:

- The plan sponsor determined that the change lessens the risk of loss to plan participants and beneficiaries; and
- If the contribution reduction affects over \$10 million of annual contributions and over 10 percent of all employer contributions, the plan submitted a request for PBGC approval.

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(D1) Yes or no to indicate whether, during the plan year, the plan experienced a contribution decrease. If yes, attach (1) an explanation of the plan sponsor's determination under the exception described and, if necessary, a statement that the plan received PBGC's approval for this contribution decrease, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

E. Allocating contributions and other income (§ 4262.16(e))

An allocation of contributions or other income must not decrease the proportion of income or increase the proportion of expenses allocated to the plan pursuant to a written or oral agreement or practice (other than a written agreement in existence on March 11, 2021, to the extent not subsequently amended or modified) under which the income or expenses are divided or to be divided between the plan and one or more other employee benefit plans. Absent a waiver, this condition continues to apply to contributions or income relative to the SFA plan before the date of merger.

Exceptions: This prohibition does not apply to a good faith allocation of:

- Contributions pursuant to a reciprocity agreement;
- Contributions where the contributions to the plan required for each contribution base unit are not reduced, unless permitted under part III.D above; or
- Reallocations between employee benefit plans described in § 4261.16(e)(2) for which the plan has applied for and obtained PBGC's prior approval no earlier than 5 years after the end of the plan year in which it receives payment of SFA.

(E1) Yes or no to indicate whether, during the plan year, the plan experienced a reallocation of contributions. If yes, attach (1) an explanation of why this reallocation did not violate the condition regarding reallocation of contributions, or (2) an explanation of the non-compliance and include any corrective action taken by the plan.

F. Transfer or merger (§ 4262.16(f))

The plan must not engage in a transfer of assets or liabilities (including a spinoff) or merger except with PBGC's approval.

(F1) Yes or no to indicate whether, during the plan year, the plan engaged in a transfer of assets or liabilities (including a spinoff) or merger. If no, skip to part III.G

(F2) If F1 is yes, did the plan request PBGC's approval of the transfer or merger. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan. If yes, attach a statement that the plan received PBGC's approval for the transfer or merger.

G. Withdrawal liability condition (UVB determination) (§§ 4262.16(g)(1) and 4262.16(g)(2))

In accordance with § 4262.16(g)(1) of PBGC's SFA regulation, the plan must use the interest assumptions under § 4044.54 of PBGC's regulation on Allocation of Assets in Single-Employer Plans to determine UVBs that arose under the SFA plan before the date of the merger for purposes of allocating UVBs beginning with the first plan year in which the plan receives payment of SFA and until the later of: (i) 10th plan year after the first plan year in which the plan receives payment of SFA, or (ii) the last day of the plan year in which, according to the plan's projection, the plan will exhaust any SFA assets (extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the plan's SFA measurement date). A similar period applies for an IFR-only recipient, except that the duration of (ii) is determined under the terms of the IFR.

This condition applies for determining withdrawal liability for employers that participated in the SFA plan immediately before the merger.

In accordance with § 4262.16(g)(2) of PBGC's SFA regulation, to determine UVBs that arose under the SFA plan before the date of the merger the plan must determine the amount of SFA that is phased in for withdrawal liability purposes each year over the projected life of the SFA assets. The applicable phase-in period is from the first plan year in which the plan receives payment of SFA through the end of the plan year in which, according to the plan's projections, it will exhaust any SFA assets (extended by the number of years, if any, that the first plan year of payment is after the plan year that includes the plan's SFA measurement date). For a plan that received payment of SFA under the terms of the IFR and files a supplemented application, the first plan year of payment is the year in which it received SFA under the terms of the interim final rule. To calculate the amount of SFA assets excluded for each plan year during the phase-in period, the plan must take the total amount of SFA paid to the plan and multiply that by a fraction, the numerator of which is the number of years remaining in the phase-in period as of the date that the UVBs are being determined, and the denominator is the total number of years in the phase-in period. For a plan that receives payment of SFA under the IFR and receives a supplemental payment under the final rule, the total amount (payment under the IFR and supplemental payment) will be included in the phased recognition of SFA assets in determining UVBs for withdrawals going forward.

This condition applies for determining withdrawal liability for employers that participated in the SFA plan.

(G1) Yes or no to indicate whether, during the plan year, the plan determined UVBs for the purpose of determining withdrawal liability for one or more employers that participated in the SFA plan and that withdrew from the SFA plan after the year in which the plan received payment of SFA. If no, skip to part III.H. If yes, attach the withdrawal liability calculations.

(G2) If G1 is yes, yes or no to indicate whether the plan complied with the condition in § 4262.16(g)(1) requiring use of the prescribed interest assumptions for employers that participated in the SFA plan. If no, indicate whether the condition has expired for the plan. If no and the condition has not yet expired for the plan, attach an explanation of the non-compliance and include any corrective action taken by the plan.

(G3) If G2 is yes, yes or no to indicate whether the plan complied with the condition in § 4262.16(g)(2) regarding recognizing the amount of SFA over time for employers that participated in the SFA plan. If no, indicate whether the condition has expired for the plan. If no and the condition has not yet expired for the plan, attach an explanation of the non-compliance and include any corrective action taken by the plan. *This condition does not apply to IFR-only recipients, and IFR-only recipients should leave this question blank.*

#### H. Withdrawal liability settlement (§ 4262.16(h))

The plan must not, before receiving PBGC approval, make any settlement of withdrawal liability where the amount of the liability settled was more than \$50 million, calculated as the lesser of: (i) the allocation of UVBs to the employer under section 4211 of ERISA; or (ii) the present value of withdrawal liability payments assessed for the employer discounted using the interest assumptions under § 4281.13(a) of PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal.

(H1) Yes or no to indicate whether, during the plan year, the plan made any settlement of withdrawal liability of any amount. If no, skip to part III.I. If yes, attach a copy of the withdrawal liability settlement agreement (unless previously submitted).

(H2) Yes or no to indicate whether, during the plan year, the plan made any settlement of withdrawal liability of more than \$50 million. If no, skip to part III.I.

(H3) If H2 is yes, yes or no to indicate whether the plan complied with condition. If no, attach an explanation of non-compliance and include any corrective action taken by the plan.

#### I. Criminal violations

Yes or no to indicate whether there has been any violation of any Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the SFA funds. If yes, attach an attach an explanation of the violation(s).

**Part IV. Compliance with the requirement to reinstate benefits and pay any make-up payments under section 4262(k) of ERISA and § 4262.15 of PBGC’s SFA regulation required for plans with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA before receipt of SFA (Plans without suspended benefits should skip part IV.)**

- A. **NOTE: The following question is applicable only if the plan received SFA during the plan year. If inapplicable, skip part IV.A.**

The plan must reinstate suspended benefits (under sections 305(e)(9) or 4245(a) of ERISA) effective as of the first month in which the SFA was paid to the plan in accordance with IRS Notice 2021-38.

(A1) Yes or no to indicate whether the plan timely reinstated benefits of participants and beneficiaries in pay status at the time when the plan received SFA. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan.

- B. **NOTE: The following question is applicable only if the plan had participants or beneficiaries who entered pay status during the plan year. If inapplicable, skip part IV.B.**

As stated in IRS Notice 2021-38, any future payments by the plan of benefits to participants or beneficiaries must be made as if the amendment suspending benefits had never been adopted.

(B1) Yes or no to indicate whether the benefits of participants and beneficiaries who entered pay status during the plan year were based on their reinstated benefits. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan.

- C. **NOTE: The following question is applicable only if the plan was obligated to pay make-up payments during the plan year. If inapplicable, skip part IV.C.** The plan must pay make up payments in the amount of previously suspended benefits (under section 305(e)(9) or section 4245(a) of ERISA) to any participants and beneficiaries who are in pay status as of the date that SFA is paid to the plan, in accordance with IRS Notice 2021-38. The make-up payments must be paid either in the form of a lump sum or in the form of equal monthly installments over a period of 5 years. Make-up payments must be paid or commence within 3 months of the date that SFA is paid.

(C1) Yes or no to indicate whether the plan timely paid make-up payments in the form of a lump sum or equal monthly installments. Both “yes” answers may be checked for a plan that has used both forms of payment. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan.

- D. **NOTE: The following question is applicable only if the plan was obligated to send notices of reinstatement during the plan year. If inapplicable, skip part IV.D.** The plan must send notices of reinstatement to every participant and beneficiary as required by § 4262.15(c) and Addendum B – Instructions for Notice of Reinstatement.

(D1) Yes or no to indicate whether the plan sent timely notices of reinstatement to every participant and beneficiary as required by § 4262.15(c) and Addendum B – Instructions for Notice of Reinstatement. If no, attach an explanation of the non-compliance and include any corrective action taken by the plan.

**Part V. Required documents (required for all plans).** The e-Filing Portal guides the user to attach the required information in part V, which, in addition to any documentation required under part II, III, or IV, includes the following documents:

- Most recent audited financial statements of the plan;
- Most recent actuarial valuation report;
- Restatement of the plan document (if applicable) and all plan amendments adopted within the past plan year (if any);
- Account statements covering entire plan year in review (demonstrating segregation of SFA funds from other assets);
  - If transfers are made from SFA segregated account(s) to other account(s), the account statements of the transferred account(s) and/or support documentation tying out transferred amount are required.
- Most recent plan year-end investment/custodian account statement(s) (hardcopy **and** Microsoft Excel compatible worksheet) that shows an allocation to return-seeking assets that is less than or equal to 33% of all remaining SFA assets;
  - Additionally, for any period during which return-seeking assets are purchased, the associated investment/custodian account statement(s) (hardcopy **and** Microsoft Excel compatible worksheet), that shows an allocation to return-seeking assets that is less than or equal to 33% of all remaining SFA assets, are required;
- Microsoft Excel compatible worksheet that shows the allocation of the plan’s SFA investments to each of the following categories at the end of the most recent plan year:
  - Permissible fund vehicles invested predominantly in:
    - Investment grade fixed income securities, as further described in 29 CFR 4262.14(d)(2)
    - Publicly-traded equity securities, as further described in 29 CFR 4262.14(c)(2)
  - Investment-grade debt (144A securities)
  - Cash or cash equivalents
  - Common stock that is denominated in U.S. dollars and registered under section 12(b) of the Securities Exchange Act of 1934
  - High-yield debt (which was investment-grade at time of purchase)
  - Other (Assets in this “other” category are not permissible investments of SFA funds and must be reported. All permissible investments of SFA funds are covered in the preceding categories.);
- Most recent zone certification(s) of the plan-year under review; and
- Using [Template 4A](#) from the PBGC website, please provide an **Updated Cash Flow Projections Microsoft Excel Compatible Worksheet** through the earlier of a) SFA projection period or b) insolvency, with a summary of or reference to the actuarial assumptions and methods used in the projections attached. These projections should include the following:
  - Contributions
  - Withdrawal Liability Payments
  - Benefit Payments (both reinstated and recurring)
  - Administrative Expenses
  - Other Payments to Plan
  - SFA Investment Income
  - Non-SFA Investment Income

PBGC may request additional documents and information as needed for the plan to demonstrate compliance with the restrictions and conditions.

**Part VI. Certification (required for all plans)**

The e-Filing Portal guides the user to upload part VI (Certification). The Certification must be manually signed (in ink) and dated by a trustee who is a current member of the plan’s board of trustees and authorized to sign on behalf of the board of trustees, or by another representative of the plan sponsor.

Under penalty of perjury under the laws of the United States of America, I declare that I have examined this Annual Statement of Compliance, including accompanying documents, and, to the best of my knowledge and belief, the form contains all the relevant facts relating to the form; all statements of fact contained in the form are true, correct, and not misleading because of omission of any material fact; and all accompanying documents are what they purport to be.

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Signed \_\_\_\_\_ Date \_\_\_\_\_

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Printed name of signatory \_\_\_\_\_ Title of signatory \_\_\_\_\_

## Paperwork Reduction Act Notice:

This section provides information on the time and cost estimates for preparing and filing the required Annual Statement of Compliance (ASOC). The ASOC is necessary for PBGC to properly administer the Special Financial Assistance (SFA) program. PBGC uses the information it receives in the plan's ASOC to ensure that the plan is compliant with the restrictions and conditions imposed on the plan under section 4262 of ERISA and 29 CFR part 4262.

Information filed with PBGC under these requirements is confidential to the extent provided in the Freedom of Information Act and the Privacy Act. If PBGC receives a request for confidential information, it will notify the submitter of the records and afford them a reasonable period of time to object to the disclosure, pursuant to PBGC procedures and as required under Executive Order 12600. If PBGC decides not to sustain a submitter's objection in any request, it will provide the submitter with a written statement explaining why it has determined to disclose within a reasonable number of days before a specified disclosure date. PBGC will share the ASOC, including any supporting documents and information, with the U.S. Department of Labor and the Treasury Department (collectively the Agencies) to enable the Agencies to fulfill their responsibilities under ERISA.

PBGC estimates an average per plan hour burden of 2 hours of fund office time and an average cost burden of \$2,400 in contractor costs for work done by attorneys. These are estimates, and the actual time and cost per plan will vary depending on the circumstances of a given filing and the size of the plan. If you have any comments concerning the accuracy of these estimates or suggestions for making it simpler to submit the information, please send your comments to the Pension Benefit Guaranty Corporation, Regulatory Affairs Division, Office of the General Counsel, 445 12th Street SW, Washington, DC 20024-2101.

This collection of information has been approved by the Office of Management and Budget (OMB) under control number 1212-0074 (expires 5/31/27). Under the Paperwork Reduction Act, 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.