

4233 of ERISA, as amended by MPRA, which requires that the partition process be conducted in accordance with regulations prescribed by PBGC.

Major Provisions of the Regulatory Action

This rule adds a new part 4233 to PBGC's regulations. Part 4233 prescribes the application process to ensure the timely processing of applications for partition and related notice requirements.

Background

PBGC and the multiemployer insurance program

This interim final rule provides necessary guidance to plan sponsors on the application and notice requirements under section 4233 of ERISA for partitions of eligible multiemployer plans. To understand the effect of a partition of a multiemployer plan under MPRA, however, it is first helpful to understand the structure and operation of PBGC's multiemployer insurance program.

PBGC is a Federal corporation created under title IV of ERISA to guarantee the payment of pension benefits earned by more than 41 million American workers and retirees in nearly 24,000 private-sector defined benefit pension plans. The purpose of PBGC and the title IV insurance program is (1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants; (2) to provide for the timely and uninterrupted payment of pension benefits under insured plans; and (3) to maintain premiums at the lowest level consistent with PBGC's obligations.

PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans. This interim final rule applies only to the multiemployer program. The multiemployer program protects the

benefits of approximately 10 million workers and retirees in approximately 1,400 plans. A multiemployer plan is a collectively bargained pension arrangement involving two or more

Under this formula, benefits in excess of \$3,960 per year are only partially guaranteed, and the maximum guarantee amount payable per year is capped at \$12,870 (applicable to a participant with 30 years of service and with an annual benefit in excess of \$15,840).²

Another important difference between the single-employer program and the multiemployer program is the manner in which PBGC pays guaranteed benefits. Under the multiemployer program, PBGC does *not* pay guaranteed benefit amounts directly to participants and beneficiaries. Rather, when a multiemployer plan becomes insolvent, PBGC provides financial assistance in the form of loans to the insolvent *plan* sufficient to pay guaranteed benefit amounts to participants and beneficiaries. Despite this difference, the receipt of guaranteed benefit amounts from an insolvent multiemployer plan receiving financial assistance from PBGC is considered the receipt of benefits guaranteed by PBGC under title IV of ERISA.

MPRA Changes to Partition Rules

Although many multiemployer plans are healthy, a significant minority of financially troubled plans are projected to become insolvent over the next two decades.³ PBGC's multiemployer insurance program is also projected to become insolvent within that timeframe. During 2013 and 2014, congressional committees held several hearings on the problems facing these plans and PBGC.

financially troubled multiemployer plans, and to improve the financial condition of PBGC's multiemployer insurance program. In addition to increased premiums, sections 121 and 122 of MPRA provide PBGC with new statutory authority to assist financially troubled multiemployer

Multiemployer plan partitions ó prior law

Before MPRA, PBGC could partition a multiemployer plan likely to become insolvent upon application by a plan sponsor or on its own accord. In either case, partition was only available in certain limited circumstances involving employer bankruptcies, and the liabilities transferred were restricted to the nonforfeitable benefits directly attributable to service with bankrupt employers, along with an equitable share of assets. The new plan created by the partition order was a successor plan under section 4022A of ERISA, and a terminated multiemployer plan to which section 4041A(d) applies.⁵ In addition, if the new plan did not have sufficient assets to pay the transferred benefits as of the date of the partition order, which generally was the case, it would be insolvent within the meaning of section 4245(b)(1) of ERISA. In such a case, PBGC provided financial assistance to the new plan so that it could make benefit payments to participants whose benefits had been transferred to the new plan, but reduced to the PBGC guarantee level. In contrast, participants in the ongoing plan continued to receive unreduced plan benefits. Due in part to the eligibility limitations for partition, PBGC had partitioned only a few plans prior to the enactment of MPRA.

Multiemployer plan partitions ó MPRA

Section 122 of MPRA replaced the rules for partition with a new framework of rules. One of the most obvious changes is that PBGC may approve a partition without requiring an employer bankruptcy and, therefore, the benefits subject to transfer in a partition are no longer limited to those attributable to service with a bankrupt employer. The statute imposes a number of new eligibility requirements, however, such as a requirement that the plan be in critical and

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if applicable, in combination with a partition), must be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency. Finally, section 305(e)(9)(D)(v) requires that in any case in which an application for suspension of benefits to Treasury is made in combination with an application for partition to PBGC, the suspension of benefits may *not* take effect prior to the effective date of the partition.

Given the interplay between MPRA's partition and suspension of benefits provisions, PBGC staff has consulted with staff of Treasury and the Department of Labor in developing this interim final rule. PBGC will continue to work closely with these agencies as part of the interagency consultative process required under section 305(e)(9) of ERISA.

The following is a summary of the new statutory framework for partitions under MPRA.

Partition application and notice requirements

Critical and declining status. In accordance with section 4233(b)(1), the plan must be in critical and declining status as defined in section 305(b)(6) of ERISA. As noted above, a plan is in critical and declining status if the plan satisfies the criteria for critical status under section 305(b)(2), and is projected to become insolvent within the meaning of section 4245 during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent). Section 305(b)(3)(A)(i) requires an annual certification from the plan actuary on whether a plan is or will be in critical and declining status for such plan year. Treasury has interpretative jurisdiction over the subject matter in section 305 of ERISA.

PBGC determination on reasonable measures. Under section 4233(b)(2) of ERISA, PBGC must determine, after consultation with the Participant and Plan Sponsor Advocate, that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including maximum benefit suspensions under section 305(e)(9) of ERISA, if applicable.

The term “maximum benefit suspensions” is not defined in section 305(e)(9) of ERISA.⁸ However, based on the structure and operation of section 305(e)(9)—specifically, the statutorily defined limitations and protections contained in section 305(e)(9)(D), which limits the maximum amount of a suspension so that the post-

Partition withdrawal liability rule

As noted above, unlike the partition rule under prior law, MPRA imposes a number of ongoing statutory obligations on the solvent, original plan and its contributing employers. For example, section 4233(d)(3) of ERISA prescribes a new withdrawal liability rule that applies for 10 years following the date of the partition order. Under the new withdrawal liability rule, if an employer withdraws from the original plan within 10 years following the date of the partition, withdrawal liability is computed under section 4201 with respect to the original plan and the successor plan. If, however, the withdrawal occurs more than 10 years after the date of the partition order, withdrawal liability is computed under section 4201 only with respect to the original plan (and not with respect to the successor plan). In either case, withdrawal liability is payable to the original plan (and not the successor plan).

Continuing payment obligation

Section 4233(e)(1) imposes an ongoing benefit payment obligation on the original plan with respect to each participant or beneficiary of the original plan whose guarantee amount was transferred to the successor plan pursuant to a partition order. With respect to these individuals, the original plan must pay a monthly benefit for each month in which such benefit is in pay status following the effective date of the partition in an amount equal to the excess of—

The monthly benefit that would be paid to such participant or beneficiary for such month under the terms of the plan (taking into account benefit suspensions under section 305(e)(9) and any plan amendments following the effective date of such partition) if the partition had not occurred, over

Special premium rule

Section 4233(e)(3) of ERISA imposes a special premium rule on the original plan, which requires it to pay the premiums for participants whose guarantee amounts were transferred to the successor plan for each year during the 10-

clear guidance from PBGC on the types of information, documents, data, and actuarial projections needed to complete an application for partition. A number of commenters suggested that whenever possible and consistent with statutory requirements, the application should be based on information that plans are already required to prepare, or information that plans could

Regulatory changes

Overview

To implement MPRA's changes to section 4233 of ERISA, PBGC is adding a new part 4233, Partitions of Eligible Multiemployer Plans, to its regulations. Part 4233 provides guidance to multiemployer plan sponsors on the process for submitting an application for partition, the information required

calculated under the terms of the original plan without reflecting any changes related to a benefit suspension under section 305(e)(9) of ERISA.

305(e)(9)(G), or a merger under section 4231 of ERISA). If applicable, it also requires the plan sponsor to submit a copy of its application for suspension of benefits under section 305(e)(9)(G) of ERISA (including all attachments and exhibits). In addition, consistent with section 4233(b)(2) of ERISA, the regulation requires the plan sponsor to provide a detailed description of all measures the plan sponsor has taken (or is taking) to avoid insolvency, as well as those measures the plan sponsor considered taking but did not take, including the factor(s) the plan sponsor considered in making these determinations.

actuarial certification, which should ordinarily be within the possession of the plan sponsor or plan actuary. Sections 4233.7(a)(3)-(8) of the regulation require the submission of certain actuarial and financial information specific to the proposed partition, which are necessary for PBGC to evaluate whether a partition is necessary for the plan to remain solvent.

Section 4233.8 of the regulation identifies the types of participant census data to include with an application for partition.

Section 4233.9 of the regulation requires the submission of certain information relevant to an application for financial assistance.

Initial review process

Section 4233.10 of the regulation prescribes an initial review process for the purpose of determining whether an application is complete under section 4233(a)(1) of ERISA. An application will not be deemed complete until PBGC has made an initial determination under the regulation. One of the RFI commenters noted that it would be helpful if guidance called for the trustees to be notified at the time an application is complete. Consistent with that comment, § 4233.10(c) provides that upon making a determination that an application is complete, PBGC will issue a written notice to the plan sponsor. Similarly, if PBGC determines that an application is incomplete, it will issue a written notice to the plan sponsor describing the information missing from the application.

Because PBGC's determination on whether an application is complete marks the beginning of the 270-day statutory review period under section 4233(a)(1) of ERISA and the 30-day notice period under section 4233(a)(2), § 4233.10(c) provides that the date of PBGC's written notice to a plan sponsor that an application is complete will mark the beginning of

PBGC's 270

interests of anyone involved for trustees to apply for a suspension without preliminary feedback from PBGC on the feasibility of partition.

Similarly, another commenter noted that guidance should encourage plans to contact PBGC before making any substantive decisions on how to approach a potential partition application. Given the many complexities and uncertainties involved in a partition, including the fact that PBGC's authority to order a partition will depend, in part, on whether the proposed partition would impair PBGC's ability to meet existing financial assistance obligations to other plans, PBGC agrees with these comments and encourages plans to contact PBGC and engage in informal discussions on these and other issues before making a formal application.

Notice requirements

Section 4233.11 describes the timing requirements applicable to furnishing the notice to interested parties under section 4233(b) of ERISA, and the information that must be included in the notice. Section 4233.11(a) of the regulation requires the plan sponsor to send the notice to interested parties not later than 30 days after receipt of a determination under § 4233.10(c), and provides a cross-reference to filing rules in PBGC's regulation on Filing, Issuance, Computation of Time

under section 305(e)(9) of ERISA with Treasury. Section 4233.13(a) describes the interagency coordination process applicable to such plans.

In response to RFI comments urging PBGC and Treasury to allow for a combined notice of application for benefit suspension and partition, § 4233.13(b) provides that a plan sponsor may combine the model notice provided at Appendix A with the model notice contained in Rev. Proc. 2015-34 to satisfy the notice requirements of this part.

Partition order

Section 4233.14 of the regulation describes the content of a PBGC partition order. It provides that the partition order will describe the liabilities to be transferred to the successor plan, and the manner in which financial assistance will be provided to the successor plan by PBGC. Section 4233.14(a) states that the partition order shall set forth PBGC's findings and conclusions on the application for partition, the effective date of partition, the obligations and responsibilities of the plan sponsor of the original plan and the successor plan, and such other information as PBGC may deem appropriate.

Section 4233.14(b) provides that the partition order will set forth the terms and conditions of the partition, and will incorporate by reference the applicable requirements under sections 4233(d) and 4233(e) of ERISA. Finally, § 4233.14(b) requires that the plan sponsor of the original plan and the successor plan amend the original plan and successor plan, respectively, to reflect the benefits payable to participants and beneficiaries resulting from the partition order. While the regulation does not require a plan sponsor to submit a draft amendment to the original plan or a draft successor plan document with an application for partition, PBGC will require the submission of these and other related documents pursuant to §4233.4(b) before it will issue a partition order.

Nature and operation of successor plan

Section 4233.15 of the regulation describes the nature and operation of the successor plan created by the partition order. Section 4233(d)(1) of ERISA states that the plan created by the partition order is a successor plan to which section 4022A of ERISA applies. The statutory cross-reference to section 4022A of ERISA makes clear that the portion of a participant's or beneficiary's benefit transferred to a successor plan is subject to and limited by section 4022A of ERISA. The aggregate amount of benefits subject to transfer is further limited by section 4233(c) of ERISA, which states that PBGC's partition order shall provide for a transfer of the "minimum amount of the [original] plan's liabilities necessary for the [original] plan to remain solvent." The statutory reference to successor plan status under section 4233(d)(1) is relevant under title IV for purposes of coverage determinations under section 4021 of ERISA, and for determining the period of time for which a benefit or a benefit increase has been in effect under section 4022A(b)(1) of ERISA.

Consistent with the statute, § 4233.15(a) of the regulation provides that the plan created by the partition order is a successor plan to which section 4022A applies. Although the statute does not reference section 4245 of ERISA or the solvency of the successor plan, § 4233.15(a) also

successor plan will be paid with PBGC financial assistance in an amount sufficient to enable the plan to pay such benefits under section 4261 of ERISA.

Section 4233.15(b) states that the successor plan is also treated as a terminated multiemployer plan to which section 4041A(d) of ERISA applies because

4022A, participants and beneficiaries whose guaranteed benefit amounts are transferred to a

any, is not subject to a separate guarantee, and any increase in the PBGC guarantee amount payable under the original plan will arise solely, if at all, due to an increase in the accrued benefit under a plan amendment following the effective date of the partition, or an additional accrual attributable to service after the effective date of the partition.

Section 4233.16(d) provides that subject to the conditions contained in section 4261 of ERISA, PBGC shall provide financial assistance to the successor plan in an amount sufficient to enable the successor plan to pay only the portion of the PBGC-guaranteed benefits transferred to the successor plan pursuant to the partition order, and reasonable and necessary administrative expenses if approved by PBGC. The receipt of benefits under a multiemployer plan receiving financial assistance from PBGC shall be considered the receipt of amounts from PBGC of guaranteed benefits.

Finally, section 4233.16(e) provides that the plan sponsors of an original plan and a

original plan and the successor plan to carry out the purposes, terms, and conditions of the partition order, section 4233 of ERISA, and the regulations thereunder. Section 4233.16(b) states that PBGC may, upon notice to the plan sponsor, make changes to the partition order in response to changed circumstances consistent with section 4233 of ERISA and Part 4233.

Request for Comments

In addition to the specific requests for comments identified above, PBGC encourages all interested parties to submit their comments, suggestions, and views concerning the provisions of this interim final rule, including the model notices. In particular, PBGC is interested in any area in which additional guidance may be needed.

Applicability

The amendments in this interim final rule are applicable to applications for partition submitted to PBGC on or after [insert date of publication in the Federal Register].

Compliance with Rulemaking Guidelines

Executive Order 12866 – Regulatory Requirements and *Executive Order 135785 – Improving Regulation and Regulatory Review*

Having determined that this rulemaking is a “significant regulatory action” under Executive Order 12866, the Office of Management and Budget has reviewed this proposed rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 12866 and 13563 require a comprehensive regulatory

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)) provides that notice and comment requirements do not apply when an agency, for good cause, finds that they are impracticable, unnecessary, or contrary to the public interest. MPRA was signed into law on December 16, 2014, and with respect to the amendments to section 4233 of ERISA, is effective for plan years beginning after December 31, 2014.

MPRA did not impose a deadline to issue regulations under section 4233 of ERISA. However, as explained above, the partition rule under section 4233 is inextricably linked to the benefit suspension rule under section 305(e)(9) of ERISA, which requires the Treasury Secretary, in consultation with PBGC and the Secretary of Labor, to publish appropriate guidance not later than 180 days after the date of the enactment of MPRA. While neither section 4233 nor section 305(e)(9) expressly requires a plan sponsor to file concurrent applications for partition and benefit suspensions, the statutory provisions were designed to act in tandem.

Under section 305(e)(9)(D)(v) of ERISA, in any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 4233 of ERISA, the suspension of benefits may *not* take effect prior to the effective date of such partition. In other words, for a plan that requires both benefit suspensions and partition to remain solvent, the benefit suspension cannot take effect prior to the effective date of the partition.

Similarly, the actuarial certification under section 305(e)(9)(C)(i) requires a plan actuary to take into account the proposed suspensions of benefits (and if applicable, a proposed partition of the plan under section 4233 of ERISA), for purposes of certifying that a plan is projected to avoid insolvency within the meaning of section 4245 of ERISA.

Finally, section 305(e)(9)(D)(iv) of ERISA provides that any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of ERISA), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

Most plans that will require a partition will also require a benefit suspension. The longer the delay, the more expensive the partition and the less likely that PBGC will be able to afford to provide assistance, resulting in greater harm to the public and the pension insurance system.

Accordingly, because regulatory guidance is required to implement section 4233, including the procedure for the plan sponsor to submit an application for partition and to provide notice to participants and beneficiaries, and because section 4233 is inextricably linked to the suspension of benefit rules under section 305(e)(9), which requires Treasury to publish appropriate guidance not later than 180 days after the date of the enactment of MPRA, PBGC has determined that prior notice and comment through the issuance of a notice of proposed rulemaking is impracticable and that the public interest is best served by making this interim final rule effective on [insert date of publication in Federal Register]. However, PBGC is requesting comments on this interim final rule and may make changes to the interim final rule in response to those comments.

For the same reasons, pursuant to section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d)(3)), PBGC is making this rule effective upon publication.

Regulatory Flexibility Act

Because PBGC is not publishing a general notice of proposed rulemaking under 5 U.S.C. 553, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The information requirements under this interim final rule — information to be reported to PBGC and information to be disclosed to participants — have been approved by the OMB under the Paperwork Reduction Act (OMB control number 1212-xxxx).

The following terms are defined in § 4001.2 of this chapter: ERISA, IRS, multiemployer plan, PBGC, plan, and plan sponsor. In addition, the following terms are defined for purposes of this part:

Advocate

the effective date of the partition, calculated under the terms of the original plan without reflecting any changes relating to a benefit suspension under section 305(e)(9) of ERISA. The payment of a successor plan benefit is subject to the limitations and conditions contained in sections 4022A(a)-(f) of ERISA.

§ 4233.3 Application filing requirements.

(a) *Method of filing.* PBGC applies the rules in part 4000, subpart A of this chapter to determine permissible methods of filing with PBGC under this part, and the rules in part 4000, subpart D of this chapter to determine the computation of time.

(b) *Who may file.* An application for partition under section 4233 of ERISA must be submitted by the plan sponsor. The application must be signed and dated by an authorized trustee who is a current member of the board of trustees, and must include the following statement under penalties of perjury: “Under penalties of perjury, I declare that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application, and such facts are true, correct, and complete.”

information PBGC may need to calculate or verify the amount of financial assistance necessary for a partition. Any additional information must be submitted by the date specified in PBGC's request.

(2) PBGC may suspend the running of the 270-day review period (described in § 4233.10) pending the submission of any additional information requested by PBGC, or upon the issuance of a conditional determination under § 4233.12(c).

(c) *Duty to amend and supplement application.* During any time in which an application is pending final action by PBGC, the plan sponsor must promptly notify PBGC in writing of any material fact or representation contained in or relating to the application, or in any supporting documents, that is no longer accurate, or any material fact or representation omitted from the application or supporting documents, that the plan sponsor discovers.

§ 4233.5 Plan information.

An application for partition must include the following information with respect to the plan:

(a) The name of the plan, Employer Identification Number (EIN), and three-digit Plan Number (PN).

(b) The name, address, and telephone number of the plan sponsor and the plan sponsor's

(e) The most recent summary plan description (SPD), and all summaries of material modification (SMM) issued since the effective date of the most recent SPD.

(f) The most recent rehabilitation plan (or funding improvement plan, if applicable), including all subsequent amendments and updates, and the percentage of total contributions received under each schedule of the rehabilitation plan for the most recent plan year available.

(g) A copy of the plan's most recent IRS determination letter.

(h) A copy of the plan's most recent Form 5500 (Annual Report Form) and all schedules and attachments (including the audited financial statement).

(i) A current listing of employers who have an obligation to contribute to the plan, and the approximate number of participants for whom each employer is currently making contributions.

(j) A schedule of withdrawal liability payments collected in each of the most recent five plan years.

§ 4233.6 Partition information.

An application for partition must include the following information with respect to the proposed partition:

(a) A detailed description of the proposed partition, including the proposed structure, proposed effective date, and any larger integrated transaction of which the proposed partition is a part (including, but not limited to, an application for suspension of benefits under section 305(e)(9)(G), or a merger under section 4231 of ERISA).

(b) A narrative description of the events that led to the plan sponsor's decision to submit an application for partition (and, if applicable, application for suspension of benefits).

(c) A narrative description of significant risks and assumptions relating to the proposed partition and the projections provided in support of the application.

(d) If applicable, a copy of the plan sponsor's application for suspension of benefits (including all attachments and exhibits). If the plan sponsor intends to apply for a suspension of benefits with Treasury, but has not yet submitted an application to Treasury, a draft of the application may be filed, which must be supplemented by filing a copy of the completed application within the timeframe established in §4233.10(d).

(e) A detailed description of all measures the plan sponsor has taken (or is taking) to avoid insolvency, and any measures the plan sponsor considered taking but did not take, including the factor(s) the plan sponsor considered in making these determinations. Include all relevant documentation relating to the plan sponsor's determination that it has taken (or is taking) measures to avoid insolvency.

(f) A detailed description of the estimated benefit amounts the plan sponsor has determined are necessary to be partitioned for the plan to remain solvent, including the following information:

(1) The estimated number of participants and beneficiaries whose benefits (or any portion thereof) would be transferred, including the number of retirees receiving payments (if any), terminated vested participants (if any), and active participants (if any).

(2) Supporting data, calculations, assumptions, and a description of the methodology used to determine the estimated benefit amounts.

(3) If applicable, a description of any classifications or specific group(s) of participants and beneficiaries whose benefits (or any portion thereof) the plan sponsor proposes to transfer, and the plan sponsor's rationale or basis for selecting those classifications or groups.

(g) A copy of the draft notice of application for partition described in § 4233.11.

assistance without a partition (using the interest and mortality assumptions applicable to the valuation of plans terminated by mass withdrawal as specified in §4281.13 of this chapter and

(a)

(i) If an actuarial increase for postponed retirement applies or if the form of annuity is a Social Security level income option, the monthly vested benefit payable at normal retirement age in normal form of annuity.

§ 4233.9

written notice from PBGC under paragraph (c) of this section. Such a plan is permitted, but not required, to issue a combined notice under § 4233.13(b).

(e) *Informal consultation.* Nothing in this subsection precludes a plan sponsor from contacting PBGC on an informal basis to discuss a potential partition application.

§ 4233.11 Notice of application for partition.

(a) *When to file.* Not later than 30 days after receipt of the written notice described in § 4233.10(c) that an application for partition is complete, the plan sponsor must provide notice of such application to each interested party and PBGC, in accordance with the rules in part 4000, subpart B of this chapter.

(b) *Form of notice.* The notice must be readable and written in a matter calculated to be understood by the average plan participant. The Model Notices in Appendix A to this part (when properly completed) are examples of notices meeting the requirements of this section.

(c) *Information required.* A notice of completed application for partition must include the following information:

(1) *Identifying information.* The name of the plan, the name, address, and phone number

(iii) If known, a brief statement on the proposed total estimated amount and percentage of liabilities to be partitioned.

(iv) If known, a brief statement summarizing the proposed class or classes of participants whose benefits would be partially or wholly transferred if the application for partition is granted, including a summary of the factors considered by the plan sponsor in preparing its application.

(7) *Contact information for plan sponsor.* The name, address, and telephone number of the plan sponsor or other person designated by the plan sponsor to answer inquiries concerning the application for partition.

(8) *Contact information for PBGC.* Multiemployer Program Division, PBGC, 1200 K Street, NW, Washington, DC 20005-4026, Multiemployerprogram@pbgc.gov.

(9) *Contact information for Participant and Plan Sponsor Advocate.* PBGC Participant and Plan Sponsor Advocate, 1200 K Street, NW, Washington, DC 20005-4026, Advocate@pbgc.gov.

(d) *Model notice.* The appendix to this section contains two model notices—one for plan sponsors that submit coordinated applications for partition with PBGC and for benefit suspensions with Treasury, and one for plans sponsors who apply for partition only. The model notices are intended to assist plan sponsors in discharging their notice obligations under section 4233(a)(2) of ERISA and this part. Use of the model notices is not mandatory, but will be deemed to satisfy the requirements of section 4233(a)(2) of ERISA and this part.

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(1) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or

(2) Provide the notice in that common non-English language to those interested parties literate only in that language.

§ 4233.12 PBGC action on application for partition.

(a) *Review period.* Except as provided in paragraph (c) of this section, PBGC will approve or deny an application for partition submitted to it under this part within 270 days after the date PBGC issued a notice to the plan sponsor of the completed application under § 4233.10(c).

(b) *Determination on application.* PBGC may approve or deny an application at its discretion. PBGC will notify the plan sponsor in writing of PBGC's decision on an application. If PBGC denies the application, PBGC's written decision will state the reason(s) for the denial. If PBGC approves the application, PBGC will issue a partition order under section 4233(c) of ERISA and § 4233.14.

(c) *Conditional determination on application.* At the request of a plan sponsor, PBGC may, in its discretion, issue a preliminary approval of an application conditioned on Treasury issuing a final authorization to suspend under section 305(e)(9)(H)(vi) of ERISA and any other terms and conditions set forth in the conditional approval. The conditional approval will include a written statement of preliminary findings, conclusions, and conditions. The conditional approval is not a final agency action. The proposed partition will only become effective upon satisfaction of the required conditions, and the issuance of an order of partition under section 4233(c) of ERISA.

(d) *Final agency action.* Except as provided in paragraph (c) of this section, PBGC's decision on an application for partition under this section is a final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).

§ 4233.13 Coordinated application process for partition and benefit suspension.

(a) *Interagency coordination.* For a plan sponsor that has requested a conditional approval of a partition pursuant to § 4233.12(c), PBGC may render either a conditional approval or a final denial of the application on an expedited basis, provided that the plan sponsor has submitted a completed application to PBGC as prescribed by § 4233.10. PBGC will consult with Treasury and the Department of Labor in the course of reviewing an application for partition.

(1) If PBGC denies the application for partition, it will notify the plan sponsor in writing of PBGC's decision in accordance with § 4233.12(b), and will notify Treasury to allow it to take appropriate action on the benefit suspension application.

(2) If PBGC grants a conditional approval of partition, it will notify the plan sponsor in writing of PBGC's decision in accordance with § 4233.12(c), and will provide Treasury with a copy of PBGC's decision along with PBGC's record of the decision.

(3) If Treasury does not issue the final authorization to suspend, PBGC's preliminary and conditional approval under § 4233.12(c) will be null and void.

(4) If Treasury issues a final authorization to suspend, PBGC will issue a final partition order under § 4233.14 and section 4233(c) of ERISA.

(b) *Combined notice.* A plan sponsor submitting an application for benefit suspensions under section 305(e)(9) of ERISA with Treasury, and a partition under section 4233 of ERISA with PBGC, may combine the PBGC model notice for coordinated applications provided at

Appendix A with the Treasury model notice in Appendix A of Rev. Proc. 2015-34 in satisfaction of the notice requirement of this part.

§ 4233.14 Partition order.

(a) *General Provisions.* The partition order will describe the liabilities to be transferred to the successor plan under section 4233(c) of ERISA, and the manner in which financial assistance will be provided by PBGC under section 4261 of ERISA. The partition order will also set forth PBGC's findings and conclusions on an application for partition, the effective date of partition, the obligations and responsibilities of the plan sponsor to the original plan and successor plan, and such other information as PBGC may deem appropriate.

(b) *Terms and conditions.* The partition order will set forth the terms and conditions of the partition and will incorporate by reference the applicable requirements under sections 4233(d) and 4233(e) of ERISA.

(1) The plan sponsors of the original plan and the successor plan must amend the original plan and successor plan, respectively, to reflect the benefits payable to participants and beneficiaries as a result of the partition order.

(2) The plan sponsors of the original plan and successor plan must maintain a written record of the respective plans' compliance with the terms of the partition order, section 4233 of

(b) *Treatment of plan.* The successor plan will be treated as a terminated multiemployer plan to which section 4041A(d) of ERISA applies because there are no contributing employers with an obligation to contribute within the meaning of section 4212 of ERISA as of the effective date of the partition. The treatment of the successor plan as a terminated plan under this paragraph will not be taken into account for purposes of determining the withdrawal liability of contributing employers to the original plan under sections 4201 and 4233(d)(3) of ERISA.

(c) *Administration of plan.* The plan sponsor of the original plan and the administrator of such plan will be the plan sponsor and the administrator, respectively, of the successor plan. PBGC will retain the right to remove and replace the plan sponsor of the successor plan pursuant to section 4042(b)(2) of ERISA.

§ 4233.16 Coordination of benefits under original plan and successor plan.

(a) *Successor plan benefits.* Subject to the limitations contained in section 4022A of ERISA, the only benefit amounts payable under a successor plan are successor plan benefits as defined in § 4233.2.

(b) *Guarantee of successor plan benefit.* When a participant's or beneficiary's benefit is partially or wholly transferred to a successor plan, the PBGC guarantee applicable to such benefit becomes payable under the successor plan. The benefit remaining in the original plan as of the effective date of the partition, if any, is not subject to a new guarantee, and any increase in the PBGC guarantee amount payable under the original plan will arise solely, if at all, due to an increase in the accrued benefit under a plan amendment following the effective date of the partition, or an additional accrual attributable to service after the effective date of the partition.

(c) *PBGC financial assistance.* Subject to the conditions contained in section 4261 of ERISA, PBGC will provide financial assistance to the successor plan in an amount sufficient to

enable the successor plan to pay only the PBGC-guaranteed amount transferred to the successor plan pursuant to the partition order, and reasonable and necessary administrative expenses if approved by PBGC. The receipt of benefits payable under a successor plan receiving financial assistance from PBGC will be treated as the receipt of guaranteed benefits under section 4022A.

(d) *Payment of monthly benefits.* The plan sponsors of an original plan and a successor plan may, but are not required to, pay monthly benefits payable under the original plan and successor plan, respectively, in a single monthly payment pursuant to a written cost-sharing or expense allocation agreement between the plans.

§ 4233.17 Continuing jurisdiction.

(a) PBGC will continue to have jurisdiction over the original plan and the successor plan to carry out the purposes, terms, and conditions of the partition order, section 4233 of ERISA,

Appendix A to Part 4233—Model Notices

**NOTICE OF APPLICATION FOR PARTITION FOR
[INSERT PLAN NAME]**

[For plans filing an application for partition only]

[Insert Date]

This notice is to inform you that, on *[insert Date]*, *[kpuqtv"Rncp"Urqpugtøu"Pcog]* (“Board of Trustees”) filed a complete application with the Pension Benefit Guaranty Corporation

3.

How will I know when PBGC has made a decision on the application for partition?

If PBGC approves the Board of Trustees' application for partition, PBGC will issue a notice to affected participants and beneficiaries whose benefits will be transferred to the successor plan no later than 14 days after it issues the order of partition. You may also visit www.pbgc.gov/MPRA for a list of applications for partition received by PBGC and the status of those applications.

How do I obtain information on the application for approval to reduce benefits?

The application for approval of the proposed reduction of benefits will be publicly available within 30 days after the Treasury Department receives the application. See www.treasury.gov for a copy of the application, instructions on how to send comments on the application, and how to contact the Treasury Department for further information and assistance.

Your Rights to Receive Information about Your Plan and its Benefits

Your Plan's Summary Plan Description ("SPD") will include information on the procedures for claiming benefits, which will apply to both the original and successor plans until the Plan provides you a new SPD. You also have the legal right to request documents from the original plan to help you understand the partition and your rights such as:

- The plan document, trust agreement, and other documents governing the Plan (*e.g.*, collective bargaining agreements);
- The latest SPD and summaries of material modification;
- The Plan's Form 5500 annual reports, including audited financial statements, filed with the U.S. Department of Labor during the last six years;
- The Plan's annual funding notices for the last six years;
- Actuarial reports (including reports submitted in support of the application for partition) furnished to the Plan within the last six years;
- The Plan's current rehabilitation plan, including contribution schedules; and
- Any quarterly, semi-annual or annual financial reports prepared for the Plan by an investment manager, fiduciary or other advisor and furnished to the Plan within the last six years.

If your benefits are transferred to the successor plan, you will be furnished a successor plan SPD within 120 days of the partition; and the plan document, trust agreement, and other documents governing the successor plan will be available for review following the partition.

The plan administrator must respond to your request for these documents within 30 days, and may charge you the cost per page for the least expensive means of reproducing documents, but cannot charge more than 25 cents per page. The Plan's Form 5500 annual reports are also available free of charge at <http://www.dol.gov/ebsa/5500main.html>. Some of the documents also may be available for examination, without charge, at the plan administrator's office, your worksite, or union hall.

Plan Contact Information

For more information about this Notice, you may contact:

[Insert Name of Plan Administrator, address, email address, and phone number]

PBGC Contact Information

Multiemployer Program Division, PBGC, 1200 K Street, NW, Washington, DC 20005-4026

Email: Multiemployerprogram@pbgc.gov

Phone: (202) 326-4000 x6535

PBGC Participant and Plan Sponsor Advocate Contact Information

Constance Donovan, PBGC, 1200 K Street, NW, Washington, DC 20005-4026

Email: Advocate@pbgc.gov

Phone: (202) 326-4488

Issued in Washington DC this __10th____ day of June, 2015.
