

## **PART 4233—PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS**

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**Authority:** 29 U.S.C. 1302(b)(3), 1413.

### **§ 4233.1 Purpose and scope.**

The purpose of this part is to prescribe rules governing applications for partition under section 4233 of ERISA, and related notice requirements.

### **§ 4233.2 Definitions.**

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* means the Participant and Plan Sponsor Advocate under section 4004 of ERISA.

*Application for partition* means a plan sponsor's application for partition under section 4233 of ERISA and this part.

*Application for a suspension of benefits* means a plan sponsor's application for a suspension of benefits to the Secretary of the Treasury (Treasury) under section 305(e)(9)(G) of ERISA.

*Completed application* means an application for partition for which PBGC has made a determination under § 4233.10 that the application contains all required information and satisfies the requirements described in §§ 4233.4 through 4233.9.

*Effective date of partition* means the date upon which a partition is effective and which is set forth in a partition order.

*Financial assistance* means financial assistance from PBGC under section 4261 of ERISA.

*Insolvent* has the same meaning as insolvent under section 4245(b) of ERISA.

*Interested 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 section 206(d)(3) of ERISA;
- (4) Each employer that has an obligation to contribute under the plan; and
- (5) Each employee organization that currently has a collective bargaining agreement pursuant to which the plan is maintained.

*Original plan* means an eligible multiemployer plan under 4233(b) of ERISA that is partitioned upon the issuance of a partition order under section 4233(c) of ERISA.

*Partition order* means a formal PBGC order of partition under section 4233 of ERISA and § 4233.14.

*Proposed partition* means a proposed partition as structured and described by the plan sponsor in an application for partition.

*Remain solvent* has the same meaning as “avoid insolvency” in section 305(e)(9)(D)(iv) of ERISA and the regulations thereunder, with respect to the determinations made by PBGC under sections 4233(b)(3) and 4233(c) of ERISA.

*Residual benefit* means, with respect to a participant or beneficiary whose benefit was partially transferred to a successor plan pursuant to a partition order, the portion of the benefit payable under the original plan, the amount of which is equal to the difference between the benefit defined in section 4233(e)(1)(A) of ERISA, and the successor plan benefit. The residual benefit as of the effective date of the partition is not subject to a separate guarantee under section 4022A of ERISA.

*Successor plan* means the plan created by a partition order under section 4233(c) of ERISA.

*Successor plan benefit* means, with respect to a participant or beneficiary whose benefit was wholly or partially transferred from an original plan to a successor plan, the portion of the accrued nonforfeitable monthly benefit which would be guaranteed under section 4022A as of 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.” A stamped signature or faxed signature is not permitted.

(c) *Where to file.* See § 4000.4 of this chapter for information on where to file.

### **§ 4233.4 Information to be filed.**

(a) *General.* An application for partition must include the information specified in § 4233.5 (plan information), § 4233.6 (partition information), § 4233.7 (actuarial and financial information), § 4233.8 (participant census data), and § 4233.9 (financial assistance information). If any of the information is not included, the application will not be considered complete.

(b) *Additional information.* (1) PBGC may require a plan sponsor to submit additional information necessary to make a determination on an application under this part and any 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 duly authorized representative, if any.

(c) The most recent trust agreement, including all amendments adopted since the last restatement.

(d) The most recent plan document, including all amendments adopted since the last restatement.

(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.

**§ 4233.7 Actuarial and financial information.**

(a) *Required information.* An application for partition must include the following plan actuarial and financial information:

(1) A copy of the plan's most recent actuarial report and copies of the actuarial reports for the two preceding plan years.

(2) A copy of the plan actuary's most recent certification of critical and declining status, including a detailed description of the assumptions used in the certification, the basis for the projection of future contributions, withdrawal liability payments, investment return assumptions, and any other assumption that may have a material effect on projections.

(3) A detailed statement of the basis for the conclusion that the plan will not remain solvent without a partition and, if applicable, suspension of benefits, including supporting data, calculations, assumptions, and a description of the methodology. Include as an exhibit annual cash flow projections for the plan without partition (or suspension, if applicable) through the projected date of insolvency. Annual cash flow projections must reflect the following information:

(i) Market value of assets as of the beginning of the year.

(ii) Contributions and withdrawal liability payments.

(iii) Benefit payments.

(iv) Administrative expenses.

(v) Market value of assets at year end.

(4) A long-term projection reflecting reduced benefit disbursements at the PBGC-guarantee level after insolvency, and a statement of the present value of all future financial 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 other reasonable actuarial assumptions, including retirement age, form of benefit payment, and administrative expenses, certified by an enrolled actuary).

(5) A detailed statement of the basis for the conclusion that the original plan will remain solvent if the application for partition, and, if applicable, the application for suspension of benefits, is granted, including supporting data, calculations, assumptions, and a description of the methodology, which must be consistent with section 305(e)(9)(D)(iv) and the regulations thereunder (including any adjustment to the cash flows in the initial year to incorporate recent actual fund activity required to be included under that section). Annual cash flow projections for the original plan with partition (and suspension, if applicable) must be included as an exhibit and must reflect the following information:

(i) Market value of assets as of the beginning of the year.

(ii) Contributions and withdrawal liability payments.

(iii) Benefit payments.

(iv) Administrative expenses.

(v) Market value of assets at year end.

(6) If applicable, a copy of the plan actuary's certification under section 305(e)(9)(C)(i) of ERISA.

(7) The plan's projected insolvency date with benefit suspension alone (if applicable), including supporting data.

(8) A long-term projection reflecting benefit disbursements from the successor plan, and a statement of the present value of all future financial assistance to be paid as a result of 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 other reasonable actuarial assumptions, including retirement age, form of benefit payment, and administrative expenses, certified by an enrolled actuary).

(b) *Additional projections.* PBGC may ask the plan for additional projections based on assumptions that it specifies.

(c) *Actuarial calculations and assumptions.* (1) *General.* All calculations required by this part must be performed by an enrolled actuary.

(2) *Assumptions.* All calculations required by this part must be consistent with calculations used for purposes of an application for suspension of benefits under section 305(e)(9) of ERISA, and based on methods and assumptions each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and which, in combination, offer the actuary's best estimate of anticipated experience under the plan. Any change(s) in assumptions from the most recent actuarial valuation, and critical and declining status certification, must be disclosed and must be accompanied by a statement explaining the reason(s) for any change(s) in assumptions.

(3) *Updates.* PBGC may, in its discretion, require updated calculations and representations based on the actual effective date of a partition, revised actuarial assumptions, or for other good cause.

#### **§ 4233.8 Participant census data.**

An application for partition must include a copy of the census data used for the projections described in § 4233.7(a)(3) and (5), including:

(a) Participant type (retiree, beneficiary, disabled, terminated vested, active, alternate payee).

(b) Date of birth.

(c) Credited service for guarantee calculation (*i.e.*, number of years of participation).

(d) Vested accrued monthly benefit before benefit suspension under section 305(e)(9) of ERISA.

(e) Vested accrued monthly benefit after benefit suspension under section 305(e)(9) of ERISA.

(f) Monthly benefit guaranteed by PBGC (determined under the terms of the original plan without respect to benefit suspensions).

(g) Benefit commencement date (for participants in pay status and others for which the reported benefit is not payable at Normal Retirement Date).

(h) For each participant in pay status—

(1) Form of payment, and

(2) Data relevant to the form of payment, including:

(i) For a joint and survivor benefit, the beneficiary's benefit amount (before and after suspension) and the beneficiary's date of birth;

(ii) For a Social Security level income benefit, the date of any change in the benefit amount, and the benefit amount after such change;

(iii) For a 5-year certain or 10-year certain benefit (or similar benefit), the relevant defined period.

(iv) For a form of payment not otherwise described in this section, the data necessary for the valuation of the form of payment, including the benefit amount before and after suspension.

(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 Financial assistance information.**

(a) *Required information.* An application for partition must include the estimated amount of annual financial assistance requested from PBGC for the first year the plan receives financial assistance if partition is approved.

(b) *Additional information.* PBGC may ask the plan for additional information in accordance with § 4233.4(b)(1).

**§ 4233.10 Initial review.**

(a) *Determination on completed application.* PBGC will make a determination on an application not later than 270 days after the date such application is deemed completed.

(b) *Incomplete application.* If the application is incomplete, PBGC will issue a written notice to the plan sponsor describing the information missing from the application.

(c) *Complete application.* Upon making a determination that an application is complete (*i.e.*, the application includes all the information specified in §§ 4233.5 through 4233.9), PBGC will issue a written notice to the plan sponsor. The date of the written notice will mark the beginning of PBGC's 270-day review period under section 4233(a)(1) of ERISA, and the plan sponsor's 30-day notice period under 4233(a)(2) of ERISA.

(d) *Special rule for coordinated applications for partition and benefit suspension.* For a plan requiring both partition and benefit suspensions to remain solvent, PBGC's initial determination that a partition application is complete will be conditioned on the plan sponsor's filing of an application for benefit suspensions with Treasury within 30 days after receiving

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

(2) *Relevant partition application dates.* A brief statement that the plan sponsor has submitted an application for partition to PBGC, the date of the completed application under § 4233.10(c), and a statement that PBGC must issue its decision not later than 270 days after the date on which PBGC notified the plan sponsor that the application was complete.

(3) *Application for suspension of benefits.* If applicable, a statement of whether the plan sponsor has submitted an application for suspension of benefits under section 305(e)(9)(G) of

ERISA, and, if so, information on how to obtain a copy of the application and notice required by section 305(e)(9)(F) of ERISA.

(4) *Description of statutory partition provisions.* A brief description of the requirements under section 4233 of ERISA, and other related statutory requirements, including:

(i) The interrelationship between the partition rules under section 4233 of ERISA and suspensions of benefits under section 305(e)(9) of ERISA (if applicable).

(ii) The multiemployer guarantee under section 4022A of ERISA.

(iii) The eligibility requirements for a partition under section 4233(b) of ERISA, including the Advocate consultation requirement.

(5) *Impact of partition on interested parties.* A brief description of how the proposed partition may impact affected participants, beneficiaries, and alternate payees including:

(i) A statement describing the benefit payment obligations of the original plan and the successor plan.

(ii) A statement explaining that the Board of Trustees of the original plan will also administer the successor plan, but the successor plan will be funded solely by PBGC financial assistance payments.

(6) *Partition application contents summary.* A brief summary of the content of the plan sponsor's application for partition, including the following information:

(i) The plan's critical and declining status and projected insolvency date.

(ii) A statement that the plan sponsor has taken (or is taking) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9), if applicable.

(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](mailto: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](mailto: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.

(e) *Foreign languages.* The plan sponsor of a plan that covers the numbers or percentages in § 2520.104b-10(e) of this title of participants literate only in the same non-English language must, for any notice to interested parties—

(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 ERISA, and this part.

**§ 4233.15 Nature and operation of successor plan.**

(a) *Nature of plan.* The plan created by the partition order is a successor plan to which section 4022A applies, and an insolvent plan under section 4245 of ERISA.

(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, and this part.

(b) PBGC may, upon providing notice to the plan sponsor, make changes to the partition order in response to changed circumstances consistent with section 4233 of ERISA and this part.

## 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]*, *[insert Plan Sponsor's Name]* (“Board of Trustees”) filed a complete application with the Pension Benefit Guaranty Corporation (“PBGC”) requesting approval for a partition of the *[insert Pension Fund name, Employer Identification Number, and three-digit Plan Number]* (the “Plan”).

#### ***What is partition?***

A multiemployer plan that is in critical and declining status may apply to PBGC for an order that separates (*i.e.*, partitions) and transfers the PBGC-guaranteed portion of certain participants’ and beneficiaries’ benefits to a newly-created successor plan. The total amount transferred from the original plan to the successor plan is the minimum amount needed to keep the original plan solvent. While the Board of Trustees will administer the successor plan, PBGC will provide financial assistance to the successor plan to pay the transferred benefits.

PBGC guarantees benefits up to a legal limit. However, if the PBGC-guaranteed amount payable by the successor plan is less than the benefit payable under the original plan, Federal law requires the original plan to pay the difference. Therefore, partition will not change the total amount payable to any participant or beneficiary.

#### ***What are the rules for partition?***

Federal law permits, but does not require, PBGC to approve an application for partition. PBGC generally will make a decision on the application for partition within 270 days. A plan is eligible for partition if certain requirements are met, including:

1. The pension plan is in critical and declining status. A plan is in critical and declining status if it is in critical status (which generally means the plan’s funded percentage is less than 65%) and is projected to run out of money within 15 years (or 20 years if there are twice as many inactive as active participants, or if the plan’s funded percentage is less than 80%).
2. PBGC determines, after consulting with the PBGC Participant and Plan Sponsor Advocate, that the Board of Trustees has taken (or is taking) all reasonable measures to avoid insolvency. Reasonable measures may include contribution increases or reductions in the rate of benefit accruals.
3. PBGC determines that: (1) providing financial assistance in a partition will be significantly less than providing financial assistance in the event the plan becomes insolvent; and (2) partition is necessary for the plan to remain solvent.

4. PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other multiemployer plans (including plans that are insolvent or projected to become insolvent within 10 years) will not be impaired by the partition.
5. The cost of the partition is paid exclusively from PBGC's multiemployer insurance fund.

***Why is partition needed?***

The Plan is in critical and declining status, is [*insert funded percentage*] funded, and is projected to become insolvent by [*insert expected insolvency date*]. The Board of Trustees asserts that it has taken reasonable measures to avoid insolvency, but has determined that these measures are insufficient and that the proposed partition is necessary for the Plan to avoid insolvency.

[*Insert brief statement of the amount of liabilities the Board of Trustees proposes to partition and indicate whether it is the minimum amount needed for the Plan to remain solvent.*] [*If applicable, insert brief statement summarizing the proposed classes of participants and beneficiaries whose benefits will be partially or wholly transferred if the application is granted, and a summary of the factors considered.*] If instead the Plan is allowed to become insolvent, the benefits of all participants and beneficiaries whose benefits exceed the PBGC-guaranteed amount would be reduced to the PBGC-guaranteed amount.

***What is PBGC's multiemployer plan guarantee?***

Federal law sets the maximum that PBGC may guarantee. For multiemployer plan benefits, PBGC guarantees a monthly benefit payment equal to 100 percent of the first \$11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next \$33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is \$35.75 per month times a participant's years of credited service.

PBGC guarantees vested pension benefits payable at normal retirement age, early retirement benefits, and certain survivor benefits, if the participant met the eligibility requirements for a benefit before plan termination or insolvency. A benefit or benefit increase that has been in effect for less than 60 months is not eligible for PBGC's guarantee. PBGC also does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

***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](http://www.pbgc.gov/MPRA) for a list of applications for partition received by PBGC and the status of those applications.

### ***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](mailto: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](mailto:Advocate@pbgc.gov)

Phone: (202) 326-4488

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

*[For plans filing coordinated applications for partition and suspension of benefits]*

[Insert Date]

This notice is to inform you that, on [insert Date], [insert Plan Sponsor's Name] ("Board of Trustees") filed a complete application with the Pension Benefit Guaranty Corporation ("PBGC") requesting approval for a partition of the [insert Pension Fund name, Employer Identification Number, and three-digit Plan Number] (the "Plan"). [Insert statement that the plan sponsor has submitted an application for suspension of benefits under section 305(e)(9)(G) of ERISA, and identify how to obtain a copy of the application and notice required by section 305(e)(9)(F) of ERISA.]

***What is partition?***

A multiemployer plan that is in critical and declining status may apply to PBGC for an order that separates (*i.e.*, partitions) and transfers the PBGC-guaranteed portion of certain participants' and beneficiaries' benefits to a newly-created successor plan. The total amount transferred from the original plan to the successor plan is the minimum amount needed to keep the original plan solvent. While the Board of Trustees will administer the successor plan, PBGC will provide financial assistance to the successor plan to pay the transferred benefits.

PBGC guarantees benefits up to a legal limit. However, if the PBGC-guaranteed amount payable by the successor plan is less than the benefit payable under the original plan after taking into account benefit reductions or any plan amendments after the effective date of the partition, Federal law requires the original plan to pay the difference. Therefore, partition will not further change the total amount payable to any participant or beneficiary.

***What are the rules for partition?***

Federal law permits, but does not require, PBGC to approve an application for partition. PBGC generally will make a decision on the application for partition within 270 days. A plan is eligible for partition if certain requirements are met, including:

1. The pension plan is in critical and declining status. A plan is in critical and declining status if it is in critical status (which generally means the plan's funded percentage is less than 65%) and is projected to run out of money within 15 years (or 20 years if there are at least twice as many inactive as active participants, or if the plan's funded percentage is less than 80%).
2. PBGC determines, after consulting with the PBGC Participant and Plan Sponsor Advocate, that the Board of Trustees has taken (or is taking) all reasonable measures to avoid insolvency, including reducing benefits to the maximum allowed under the law.



3. PBGC determines that: (1) providing financial assistance in a partition will be significantly less than providing financial assistance in the event the plan becomes insolvent; and (2) partition is necessary for the plan to remain solvent.
4. PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other multiemployer plans (including plans that are insolvent or projected to become insolvent within 10 years) will not be impaired by the partition.
5. The cost of the partition is paid exclusively from PBGC's multiemployer insurance fund.

***Why are partition and benefit reductions needed?***

The Plan is in critical and declining status, is [*insert funded percentage*] funded, and is projected to become insolvent by [*insert expected insolvency date*]. The Board of Trustees has taken reasonable measures to avoid insolvency, but has determined that these measures are insufficient and that the proposed partition and reduction of benefits combined are necessary for the Plan to avoid insolvency.

[*Insert brief statement of the amount of liabilities the Board of Trustees proposes to partition and indicate whether it is the minimum amount needed for the Plan to remain solvent.*] [*If applicable, insert brief statement summarizing the proposed classes of participants and beneficiaries whose benefits will be partially or wholly transferred if the application is granted, and a summary of the factors considered.*] If instead the Plan is allowed to become insolvent, the benefits of all participants and beneficiaries whose benefits exceed the PBGC-guaranteed amount would be reduced to the PBGC-guaranteed amount.

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later than 14 days after it issues the order of partition. You may also visit [www.pbgc.gov/MPRA](http://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](http://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.

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