29 C.F.R. § 4262.16

Conditions for special financial assistance.

(a) *In general.* A plan that receives special financial assistance must be administered in accordance with the conditions in this section.

(b) *Benefit increases.* This paragraph (b) applies to benefits and benefit increases described in section 4022A(b)(1) of ERISA without regard to the time the benefit or benefit increase has been in effect. This paragraph (b) does not apply to the reinstatement of benefits that were suspended under section 305(e)(9) or 4245(a) of ERISA (as provided under § 4262.15) or a restoration of benefits under 26 CFR 1.432(e)(9)-1(e)(3).

(1) *Retrospective.* A benefit or benefit increase must not be adopted during the SFA coverage period if it is in whole or in part attributable to service accrued or other events occurring before the adoption date of the amendment.

(2) *Prospective.* A benefit or benefit increase must not be adopted during the SFA coverage period unless—

(i) The plan actuary certifies that employer contribution increases projected to be sufficient to pay for the benefit increase have been adopted or agreed to; and

(ii) Those increased contributions were not included in the determination of the special financial assistance.

(3) *Request for exception.* No earlier than 10 years after the end of the plan year in which the plan receives payment of special financial assistance under § 4262.12, the plan sponsor may request approval from PBGC for an exception from the conditions under paragraphs (b)(1) and (2) of this section by demonstrating to the satisfaction of PBGC that, taking into account the value of the proposed benefit or benefit increase, the plan will avoid insolvency. A request for PBGC approval of a proposed benefit or benefit increase must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following identifying, actuarial, and financial information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) A certification by the enrolled actuary that the plan or any of its component parts received special financial assistance and the most recent value of special financial assistance assets.

(iv) The EIN assigned to the plan sponsor by the IRS and the PN assigned to the plan by the plan sponsor of the plan that applied for special financial assistance, if not the same as the EIN and PN in paragraph (b)(3)(ii) of this section.

(v) A copy of the proposed benefit or benefit increase amendment.

(vi) Most recent plan document or restatement of the plan document and all subsequent amendments adopted (if any).

(vii) A copy of the most recent actuarial valuation performed for the plan before the date of the plan's submission of a request for approval under this paragraph (b)(3), and the actuarial valuation performed for each of the 2 plan years immediately preceding the most recent actuarial valuation.

(viii) A copy of the plan actuary's most recent certification under section 305(b)(3) of ERISA, including a detailed description of the assumptions used in the certification, and the basis under which they were determined. The description must include information about the assumptions used for the projection of future contributions, withdrawal liability payments, and investment returns, and any other assumption that may have a material effect on projections.

(ix) A statement certified by an enrolled actuary of the effect of the proposed benefit or benefit increase on the plan's existing benefit formula and benefit amount, and a demonstration that the expected contributions equal or exceed the estimated amount necessary, taking into account the proposed benefit or benefit increase, to satisfy the minimum funding requirement of section 431 of the Code.

(x) A detailed statement certified by an enrolled actuary that the plan is projected to avoid insolvency, taking into account the value of the proposed benefit or benefit increase. The statement must include the basis for the conclusion, supporting data, calculations, assumptions, a description of the methodology, the basis for assumptions used, and the present value of the proposed benefit or benefit increase. The statement must also specify the amount of the change in the minimum required contribution under section 431 of the Code attributable to the proposed benefit or benefit increase for the first full plan year in which it is in effect, including the change in normal cost, the change in actuarial accrued liability and the annual amortization amount associated with the change in actuarial accrued liability.

(xi) The statement in paragraph (b)(3)(x) of this section must include an exhibit showing the annual cash flow projection for the plan for 30 years beginning on or after the proposed adoption date of the amendment. The cash flow projection should use an open group valuation. Annual cash flow projections must reflect the following information:

(A) Fair market value of assets as of the beginning of the year, splitting the assets by special financial assistance and non-special financial assistance amounts.

(B) Contributions and withdrawal liability payments made and expected to be made to the plan taking into account a reasonable allowance for amounts considered uncollectible.

(C) Plan level benefit payments organized by participant type (*e.g.,* active, retiree, terminated vested) for the projection period.

(D) Administrative expenses for the projection period.

(E) Assumed investment return separately for special financial assistance and non-special financial assistance amounts.

(F) Fair market value of assets as of the end of the year.

(xii) The present value of accrued benefits.

(xiii) Any additional information PBGC determines it needs to review a request for approval of a proposed amendment, including any adjustments to assumptions required by PBGC in its review of whether the plan is projected to avoid insolvency.

(c) *Allocation of plan assets.* During the SFA coverage period, plan assets, including special financial assistance, must be invested in investment grade fixed income as described in § 4262.14(d) 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).

(d) *Contribution decreases.* (1) During the SFA coverage period, the contributions to a plan that receives special financial assistance required for each contribution base unit must not be 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, unless the plan sponsor determines 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, PBGC also determines that the change lessens the risk of loss to plan participants and beneficiaries.

(2) A request for PBGC approval of a proposed contribution change that affects over $10 million of annual contributions and over 10 percent of all employer contributions must be submitted by the plan sponsor or its duly authorized representative and must contain all of the following information:

(i) Name, address, email, and telephone number of the plan sponsor and the plan sponsor's authorized representatives, if any.

(ii) The nine-digit employer identification number (EIN) assigned to the plan sponsor by the IRS and the three-digit plan identification number (PN) assigned to the plan by the plan sponsor, and, if different, the EIN and PN last filed with PBGC. If an EIN or PN has not been assigned, that should be indicated.

(iii) Name, address, email, and telephone number of the contributing employer for which the proposed contribution change is being submitted, and the employer's authorized representatives, if any.

(iv) Names and addresses of each controlled group member of the contributing employer identified in paragraph (d)(2)(ii) of this section, along with a chart depicting the structure of the controlled group by entity and its ownership with ownership percentage.

(v) Audited financial statements (income statement, balance sheet, cashflow statement, and notes) for the contributing employer and the controlled group including the contributing employer, if available, for the most recent 4 years, or, if audited financial statements were not prepared, unaudited financial statements, a statement explaining why audited statements are not available, and tax returns with all schedules for the most recent 4 years available. The financial statement submissions must:

(A) Identify the cash contributions to the multiemployer plan for which the contributing employer is seeking contribution relief;

(B) Identify all outstanding indebtedness, including the name of the lender, the amount of the outstanding loan, scheduled repayments interest rate, collateral, significant covenants, and whether the loan is in default;

(C) Identify and explain any material changes in financial position since the date of the last financial statement;

(D) To the extent that the contributing employer has undergone or is in the process of undergoing a partial liquidation, estimate the sales, gross profit, and operating profit that would have been reported for each of the 3 years covered by the financial statement for only that portion of the business that is currently expected to continue; and

(E) State the estimated liquidation values for any assets related to discontinued operations or operations that are not expected to continue, along with the sources for the estimates.

(vi) Projected financial statements (income statement, balance sheet, cash flow statement) for the current year and the following 4 years as well as the key assumptions underlying those projections and a justification for the reasonableness for each of those key assumptions. The projections must include:

(A) All business or operating plans prepared by or for management, including all explanatory text and schedules;