increased a participant’s benefit by $300 per month (as computed under § 4022.24). The contributing sponsor of the plan filed a bankruptcy petition in March 2009 and the plan has a termination date in April 2010. PBGC’s guarantee of the participant’s benefit increase is limited to $120 ($300 × 40%), because the increase was made more than 2 years but less than 3 years before the bankruptcy filing date.

§ 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.

(a) Scope. This section shall apply to the guarantee of all benefits described in subpart A (subject to the limitations in § 4022.21) with respect to participants who are substantial owners at the termination date or who were substantial owners at any time within the 5-year period preceding that date.

(b) Phase-in formula when there have been no benefit increases. Benefits provided by a plan under which there has been no benefit increase, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula: The monthly amount computed under § 4022.22 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) Phase-in formula when there have been benefit increases. If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

§ 4022.27 Phase-in of guarantee of unpredictable contingent event benefits.

(a) Scope. This section applies to a benefit increase, as defined in §4022.2, that is an unpredictable contingent event benefit (UCEB) and that is payable with respect to an unpredictable contingent event (UCE) that occurs after July 26, 2005.

(1) Examples of benefit increases within the scope of this section include unreduced early retirement benefits or other early retirement subsidies, or other benefits to the extent that such benefits would not be payable but for the occurrence of one or more UCEs.

(2) Examples of UCEs within the scope of this section include full and partial closings of plants or other facilities, and permanent workforce reductions, such as permanent layoffs. Permanent layoffs include layoffs during which an idled employee continues to earn credited service (creep-type layoff) for a period of time at the end of which the layoff is deemed to be permanent. Permanent layoffs also include layoffs that become permanent upon the occurrence of an additional event such as a declaration by the employer that the participant’s return to work is unlikely or a failure by the employer to offer the employee suitable work in a specified area.

(3) The examples in this section are not an exclusive list of UCEs or UCEBs and are not intended to narrow the statutory definitions, as further delineated in Treasury Regulations.
(b) Facts and circumstances. If PBGC determines that a benefit is a shutdown benefit or other type of UCEB, the benefit will be treated as a UCEB for purposes of this subpart. PBGC will make such determinations based on the facts and circumstances, consistent with these regulations; how a benefit is characterized by the employer or other parties may be relevant but is not determinative.

c) Date phase-in begins. (1) The date the phase-in of PBGC’s guarantee of a UCEB begins is determined in accordance with subpart B of this part. For purposes of this subpart, a UCEB is deemed to be in effect as of the latest of—

(i) The adoption date of the plan provision that provides for the UCEB,

(ii) The effective date of the UCEB, or

(iii) The date the UCE occurs.

(2) The date the phase-in of PBGC’s guarantee of a UCEB begins is not affected by any delay that may occur in placing participants in pay status due to removal of a restriction under section 436(b) of the Code. See the example to removal of a restriction under section 436(b) of the Code. See the example in paragraph (e)(8) of this section.

d) Date UCE occurs. For purposes of this section, PBGC will determine the date the UCE occurs based on plan provisions and other facts and circumstances, including the nature and level of activity at a facility that is closing and the permanence of the event. PBGC will also consider, to the extent relevant, statements or determinations by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court, but will not treat such statements or determinations as controlling.

(1) The date a UCE occurs is determined on a participant-by-participant basis, or on a different basis, such as a facility-wide or company-wide basis, depending upon plan provisions and the facts and circumstances. For example, a benefit triggered by a permanent layoff of a participant would be determined with respect to each participant, and thus layoffs that occur on different dates would generally be distinct UCEs. In contrast, a benefit payable only upon a complete plant shutdown would apply facility-wide, and generally the shutdown date would be the date of the UCE for all participants who work at that plant. Similarly, a benefit payable only upon the complete shutdown of the employer’s entire operations would apply plan-wide, and thus the shutdown date of company operations generally would be the date of the UCE for all participants.

(2) For purposes of paragraph (c)(1)(iii) of this section, if a benefit is contingent upon more than one UCE, PBGC will apply the rule under Treas. Reg. §1.436–1(b)(3)(ii) (26 CFR 1.436–1(b)(3)(ii)) (i.e., the date the UCE occurs is the date of the latest UCE).

e) Examples. The following examples illustrate the operation of the rules in this section. Except as provided in Example 8, no benefit limitation under Code section 436 applies in any of these examples. Unless otherwise stated, the termination is not a PPA 2006 bankruptcy termination.

Example 1. Date of UCE. (i) Facts: On January 1, 2006, a Company adopts a plan that provides an unreduced early retirement benefit for participants with specified age and service whose continuous service is broken by a permanent plant closing or permanent layoff that occurs on or after January 1, 2007. On January 1, 2013, the Company informally and without announcement decides to close Facility A within a two-year period. On January 1, 2014, the Company’s Board of Directors passes a resolution directing the Company’s officers to close Facility A on or before September 1, 2014. On June 1, 2014, the Company issues a notice pursuant to the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. 2101, et seq., that Facility A will close, and all employees will be permanently laid off, on or about August 1, 2014. The Company and the Union representing the employees enter into collective bargaining concerning the closing of Facility A and on July 1, 2014, they jointly agree and announce that Facility A will close and employees who work there will be permanently laid off as of November 1, 2014. However, due to unanticipated business conditions, Facility A continues to operate until December 31, 2014, when operations cease and all employees are permanently laid off. The plan terminates as of December 1, 2015.

(ii) Conclusion: PBGC would determine that the UCE is the facility closing and permanent layoff that occurred on December 31, 2014. Because the date that the UCE occurred (December 31, 2014) is later than both the date the plan provision that established the UCEB was adopted (January 1, 2006) and the date the UCEB became effective (January 1, 2006), a UCEB terminates as of December 31, 2014, when operations cease and all employees are permanently laid off.
Example 2. Sequential layoffs. (i) Facts: The same facts as Example 1, with these exceptions: The first two groups of employees were permanently laid off before the plant closed, October 31, 2014, and November 30, 2014, are the dates that the phase-in period under ERISA section 4022 begins for those groups. Because the third group was permanently laid off on December 31, 2014, the same date the plant closed, the phase-in period would begin on that date for that group. Based on the plan termination date of December 1, 2015, participants laid off on October 31, 2014, and November 30, 2014, would have 20 percent of the UCEBs (or $20 per month, if greater) guaranteed under the phase-in rule. The guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

(ii) Conclusion: Because the plan provides that a UCEB is payable in the event of either a permanent layoff or a plant shutdown, PBGC would determine that phase-in begins on the date on which the UCE applies to each of the three groups of employees. Because the first two groups of employees were permanently laid off before the plant closed, October 31, 2014, and November 30, 2014, are the dates that the phase-in period under ERISA section 4022 begins for those groups. Because the third group was permanently laid off on December 31, 2014, the same date the plant closed, the phase-in period would begin on that date for that group. Based on the plan termination date of December 1, 2015, participants laid off on October 31, 2014, and November 30, 2014, would have 20 percent of the UCEBs (or $20 per month, if greater) guaranteed under the phase-in rule. The guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

Example 3. Skeleton shutdown crews. (i) Facts: The same facts as Example 1, with these exceptions: The plan provides for an unreduced early retirement benefit for age/service-qualified participants only in the event of a break in continuous service due to a permanent and complete plant closing. A minimal skeleton crew remains to perform primarily security and basic maintenance functions until March 31, 2015, when skeleton crew members are permanently laid off and the plant is sold to an unrelated investment group that does not assume the plan or resume business operations at the facility. The plan has no specific provision or past practice governing benefits of skeleton shutdown crews. The plan terminates as of January 1, 2015.

(ii) Conclusion: Because the continued employment of the skeleton crew does not effectively continue operations of the facility, PBGC would determine that there is a permanent and complete plant closing (for purposes of the plan’s plant closing provision) as of December 31, 2014, which is the date the phase-in period under ERISA section 4022 begins with respect to employees who incurred a break in continuous service at that time.
least 20 years of continuous service are entitled to an unreduced early retirement benefit if their continuous service is broken by a permanent layoff. The plan further provides that a participant’s continuous service is broken by a permanent layoff if the participant is laid off and the employer declares that the participant’s return to work is unlikely. Participants may earn up to 2 years of credited service while on layoff. The plan was adopted and effective in 1990. On March 1, 2014, Participant B, who is age 60 and has 20 years of service, is laid off. On June 15, 2014, the employer declares that Participant B’s return to work is unlikely. Participant B retires and goes into pay status as of July 1, 2014. The employer files for bankruptcy on September 1, 2016, and the plan terminates during the bankruptcy.

(ii) Conclusion: PBGC would determine that the phase-in period of the guarantee of the UCEB would begin on June 15, 2014—the later of the two UCEs necessary to make the benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the employer’s declaration that it is unlikely that Participant B will return to work). The phase-in period would end on September 1, 2016, the date of the bankruptcy filing. Thus 40 percent of Participant B’s UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

Example 6. Shutdown benefit with special post-employment eligibility provision. (i) Facts: A plan provides that, in the event of a permanent shutdown of a plant, a participant age 60 or older who terminates employment due to the shutdown and who has at least 20 years of service is entitled to an unreduced early retirement benefit. The plan also provides that a participant with at least 20 years of service who terminates employment due to a plant shutdown at a time when the participant is under age 60 also will be entitled to an unreduced early retirement benefit, provided the participant’s commencement of benefits is on or after attainment of age 60 and the time required to attain age 60 does not exceed the participant’s years of service with the plan sponsor. The plan imposes no other conditions on receipt of the benefit. Plan provisions were adopted and effective in 1990. On January 1, 2014, Participant C’s plant is permanently shut down. At the time of the shutdown, Participant C had 20 years of service and was age 58. On June 1, 2015, Participant C reaches age 60 and retires. The plan terminates as of September 1, 2015.

(ii) Conclusion: PBGC would determine that the guarantee of the shutdown benefit is phased in from January 1, 2014, which is the date of the only UCE (the permanent shutdown of the plant) necessary to make the benefit payable. Thus 20 percent of Participant C’s UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 7. Phase-in of retroactive UCEB. (i) Facts: As the result of a settlement in a class-action lawsuit, a plan provision is adopted on September 1, 2014, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring on or after January 1, 2014. Benefits under the plan provision (September 1, 2014) and the date on which the new benefit was payable), and it is later than the adoption date of the plan provision (September 1, 2014) and the date of the UCE (January 1, 2014). Thus 20 percent of Participant A’s UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.

Example 8. Removal of IRC section 436 restriction. (i)(A) Facts: A plan provision was adopted on September 1, 1989, to provide that age/service-qualified participants are entitled to an unreduced early retirement benefit if permanently laid off due to a plant shutdown occurring after January 1, 1990. Participant A, who was age/service-qualified, was permanently laid off due to a plant shutdown occurring on April 15, 2014. The plan is a calendar year plan.

(B) Under the rules of Code section 436 (ERISA section 206(g)) and Treasury regulations thereunder, a plan cannot provide a UCEB payable with respect to an unpredictable contingent event, if the event occurs during a plan year in which the plan’s adjusted funding target attainment percentage is less than 60%. On March 17, 2014, the plan’s enrolled actuary issued a certification stating that the plan’s adjusted funding target attainment percentage for 2014 is 58%. Therefore, the plan restricts payment of the unreduced early retirement benefit payable with respect to the shutdown on April 15, 2014.

(ii) Conclusion: PBGC would determine that the guarantee of the shutdown benefit is phased in from January 1, 2014, which is the date of the only UCE (the permanent shutdown of the plant) necessary to make the benefit payable. Thus 20 percent of Participant A’s UCEB (or $20 per month, if greater) would be guaranteed under the phase-in rule.
section 436 and Treasury regulations thereunder, is in addition paid retroactively the unreduced benefit for the period May 1, 2014 (the date the unreduced early retirements would have become payable) through September 1, 2014. The plan terminates as of September 1, 2016.

(ii) Conclusion: PBGC would determine that the guarantee of the UCEB is phased in beginning on April 15, 2014, the date the UCE occurred. Because April 15, 2014, is later than both the date the UCEB was adopted (September 1, 1989) and the date the UCEB became effective (January 1, 1990), it would be the date the phase-in period under ERISA section 4022 begins. Commencement of the phase-in period is not affected by the delay in providing the unreduced early retirement benefit to Participant A due to the operation of the rules of Code section 436 and the Treasury regulations thereunder. Thus 40 percent of Participant A’s UCEB (or $40 per month, if greater) would be guaranteed under the phase-in rule.

(79 FR 25672, May 6, 2014)

§ 4022.28 Effect of tax disqualification.

(a) General rule. Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) Exceptions. The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

Subpart C—Section 4022(c) Benefits

§ 4022.51 Determination of section 4022(c) benefits in a PPA 2006 bankruptcy termination.

(a) Amount of unfunded nonguaranteed benefits. For purposes of this section, and subject to paragraph (b) of this section, a plan’s amount of unfunded nonguaranteed benefits means the plan’s outstanding amount of benefit liabilities, as defined in section 4001(a)(19) of ERISA, determined as of the plan’s termination date. A plan’s amount of unfunded nonguaranteed benefits is multiplied by the applicable recovery ratio to determine the aggregate amount to be allocated with respect to participants of the plan under section 4022(c)(1) of ERISA.

(b) Benefits included in unfunded nonguaranteed benefits. For purposes of computing benefits under section 4022(c) of ERISA in a PPA 2006 bankruptcy termination, unfunded nonguaranteed benefits are benefits under a plan as of the plan’s termination date that are neither guaranteed by PBGC (taking into account section 4022(g) of ERISA) nor funded by the plan’s assets (taking into account section 4044(e) of ERISA).

(c) Determination of recovery ratio. In a PPA 2006 bankruptcy termination, the recovery ratio under section 4022(c)(3) of ERISA is determined as follows. The numerator is based on PBGC’s recoveries under section 4062, 4063, or 4064, valued as of the plan’s (or plans’) termination date (or dates). The denominator of the recovery ratio is based on the amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA, as of the plan’s (or plans’) termination date (or dates).

(76 FR 34603, June 14, 2011)