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 benefit increase was in effect and during which 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 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, 2007), no benefit limitation applies. If the UCE occurred on or before December 31, 2014, the UCEB would be subject to the benefit limitation under section 436.
0 percent phased in.

Example 2. Sequential layoffs. (i) Facts: The same facts as Example 1, with these exceptions: the plan further provides in light of past practice, PBGC would determine that the date that the UCE occurred was after the plan termination date. Thus the UCE would not be a nonforfeitable benefit as of the plan termination date and therefore would not be guaranteeable.)

Example 4. Creep-type layoff benefit/bankruptcy of contributing sponsor. (i) Facts: A plan provides that participants who are at least age 60 and whose age plus years of continuous service equal at least 80 are entitled to an unreduced early retirement benefit if their continuous service is broken due to a permanent layoff. The plan further provides that a participant’s continuous service is broken due to a permanent layoff when the participant is terminated due to the permanent shutdown of a facility, or the participant has been on layoff status for two years. These provisions were adopted and effective in 1990. Participant A is 56 years old and has 25 years of continuous service when he is laid off in a reduction-in-force on May 15, 2014. He goes into pay status on June 1, 2016, with an unreduced early retirement benefit. The contributing sponsor of Participant A’s plan files a bankruptcy petition under Chapter 11 of the U.S. Bankruptcy Code on September 1, 2017, and the plan terminates during the bankruptcy proceedings with a termination date of October 1, 2018. Under section 4022(g) of ERISA, because the plan terminated while the contributing sponsor was in bankruptcy, the five-year phase-in period ended on the bankruptcy filing date.

(ii) Conclusion: PBGC would determine that the UCE of those participants would be a nonforfeitable benefit as of the plan termination date, but PBGC’s guarantee of the UCE would be 0 percent phased in. The UCE of those participants would be a nonforfeitable benefit as of the plan termination date.

Example 5. Creep-type layoff benefit with provision for declaration that return to work unlikely. (i) Facts: A plan provides that participants who are at least age 60 and have at
least 20 years of continuous service are enti-
tled to an unreduced early retirement ben-
efit if their continuous service is broken by
a permanent layoff. The plan further pro-
vides that a participant’s continuous service
is broken by a permanent layoff if the partic-
ipant is laid off and the employer declares
that the participant’s return to work is un-
likely. 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 ben-
efit payable (i.e., the first UCE is the initial
layoff and the second UCE is the employer’s
declaration that it is unlikely that Partici-
pant B will return to work). The phase-in pe-
riod 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 per-
manent 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 pro-
vides 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 enti-
tled to an unreduced early retirement ben-
efit, provided the participant’s commence-
ment 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 im-
poses no other conditions on receipt of the
benefit. Plan provisions were adopted and ef-
fective in 1990. On January 1, 2014, Partici-
pant 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 re-
tires. 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 shut-
down of the plant) necessary to make the
benefit payable. Thus 20 percent of Partici-
pant 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 enti-
tled to an unreduced early retirement ben-
efit if permanently laid off due to a plant
shutdown occurring on or after January 1,
2014. Benefits under the provision will be
delivered prospectively only, beginning March 1,
2015. Participant A, who was age/service-
qualified, was permanently laid off due to a
plant shutdown occurring on January 1, 2014,
and therefore he is scheduled to be placed in
pay status as of March 1, 2015. The unreduced
early retirement benefit is paid to Partici-
pant A beginning on March 1, 2015. The plan
terminates as of February 1, 2017.

(ii) Conclusion: PBGC would determine that
the guarantee of the UCEB is phased in be-
ginning on March 1, 2015. This is the date the
benefit was effective (since it was the first
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 restric-
tion. (i)(A) Facts: A plan provision was adopt-
ed on September 1, 1989, to provide that age/
service-qualified participants are entitled to
an unreduced early retirement benefit if per-
manently laid off due to a plant shutdown
occurring after January 1, 1990. Participant
A, who was age/service-qualified, was perma-
nently laid off due to a plant shutdown oc-
curring on April 15, 2014. The plan is a cal-
endar year plan.

(B) Under the rules of Code section 436
(ERISA section 206(g)) and Treasury regula-
tions thereunder, a plan cannot provide a
UCEB payable with respect to an unpredict-
able contingent event, if the event occurs
during a plan year in which the plan’s ad-
justed funding target attainment percentage
is less than 60%. On March 17, 2014, the plan’s
enrolled actuary issued a certification stat-
ing that the plan’s adjusted funding target
attainment percentage for 2014 is 58%. There-
fore, the plan restricts payment of the unre-
duced early retirement benefit payable with
respect to the shutdown on April 15, 2014.

(C) On August 15, 2014, the plan sponsor
makes an additional contribution to the plan
that is designated as a contribution under
Code section 436(b)(2) to eliminate the re-
striction on payment of the shutdown bene-
fits. On September 15, 2014, the plan’s en-
rolled actuary issues a certification stating
that, due to the additional section 436(b)(2)
contribution, the plan’s adjusted funding
target attainment percentage for 2014 is 60%.
On October 1, 2014, Participant A is placed
in pay status for the unreduced early retire-
ment benefit and, as required under Code
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.

§ 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)(1) of the Code or 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.

§ 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).