

under this part with PBGC on or before the 105th day after the close of the filer's information year. The filing deadline is extended to the 106th date after the close of the filer's information year if the 105-day reporting period includes February 29.

(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. See § 4000.4 of this chapter for information on where to file.

(d) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(e) *Computation of time.* PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[61 FR 34022, July 1, 1996, as amended at 68 FR 61353, Oct. 28, 2003; 74 FR 11034, Mar. 16, 2009]

**§ 4010.11 Waivers.**

(a) *Aggregate funding shortfall not in excess of \$15 million waiver.* Unless reporting is required by § 4010.4(a)(2) or (3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year (disregarding plans with no 4010 funding shortfall) does not exceed \$15 million, as determined under paragraphs (a)(1) and (2) of this section.

(1) *4010 funding shortfall; in general.* A plan's 4010 funding shortfall for a plan year equals the funding shortfall for

the plan year as provided under section 303(c)(4) of ERISA and section 430(c)(4) of the Code, with the following exceptions:

(i) The funding target used to calculate the 4010 funding shortfall is determined without regard to the interest rate stabilization provisions of section 303(h)(2)(C)(iv) of ERISA and section 430(h)(2)(C)(iv) of the Code and without regard to the at-risk plan provisions in section 303(i) of ERISA and section 430(i) of the Code.

(ii) The value of plan assets used to calculate the 4010 funding shortfall is determined without regard to the reduction under section 303(f)(4)(B) of ERISA and section 430(f)(4)(B) of the Code (dealing with reduction of assets by the amount of prefunding and funding standard carryover balances).

(2) *Multiple employer plans.* For purposes of § 4010.8(c) and paragraph (a) of this section, the entire 4010 funding shortfall of any multiple employer plan of which the filer or any member of the filer's controlled group is a contributing sponsor is included.

(b) *Smaller plans waiver*—(1) *General.* Unless reporting is required by § 4010.4(a)(2) or (a)(3), reporting is waived for a person (that would be a filer if not for the waiver) for an information year if, for the plan year ending within the information year, the aggregate number of participants in all plans (including any exempt plans) maintained by the person's controlled group on the last day of the information year is fewer than 500. For this purpose, the number of participants in any plan may be determined either as of the end of the plan year ending within the information year or as of the valuation date for that plan year.

(2) *Multiple employer plans.* For purposes of this paragraph (b), the aggregate number of participants in all plans maintained by a person's controlled group includes any participants covered by a multiple employer plan in which the person participates (including participants covered by the multiple employer plan who are not or were not employed by the person).

(c) *Missed contributions resulting in a lien or outstanding minimum funding waivers.* Reporting is waived for a person (that would be a filer if not for the

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waiver) for an information year if, for the plan year ending within the information year, reporting would have been required solely under § 4010.4(a)(2) or (3), provided that the missed contributions or applications for minimum funding waivers (as applicable) were reported to PBGC under part 4043 of this chapter by the due date for the 4010 filing.

(d) *Other waiver authority.* PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10. PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions. A request for a waiver or extension must be filed in writing with PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable due date specified in § 4010.10, and must state the facts and circumstances on which the request is based.

[81 FR 15440, Mar. 23, 2016, as amended at 85 FR 6060, Feb. 4, 2020]

### § 4010.12 Alternative method of compliance for certain sponsors of multiple employer plans.

(a) *In general.* Subject to paragraph (b) of this section, an eligible contributing sponsor (as defined in paragraph (c) of this section) of a multiple employer plan satisfies the requirements of this part for an information year if any contributing sponsor of the multiple employer plan provides a timely filing under this part for an information year that coincides with or overlaps with the eligible contributing sponsor's information year.

(b) *PBGC request for additional information.* PBGC may request some or all of the information that would otherwise be required under this part from an eligible contributing sponsor that uses the alternative method of compliance in this section. PBGC will make such a request no earlier than the date the information would otherwise have been due. The eligible contributing

sponsor must provide the requested information no later than 30 days after PBGC makes the request. The requested information need not be submitted electronically.

(c) *Eligible contributing sponsor.* For purposes of this section, an eligible contributing sponsor of a multiple employer plan is a contributing sponsor that would not be subject to reporting if the plan were disregarded in applying the gateway tests in § 4010.4(a).

[74 FR 11035, Mar. 16, 2009]

### § 4010.13 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and ERISA section 4010(c), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to this part will not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

[61 FR 34022, July 1, 1996. Redesignated and amended at 74 FR 11035, Mar. 16, 2009]

### § 4010.14 Penalties.

If all of the information required under this part is not provided within the specified time limit, PBGC may assess a separate penalty under ERISA section 4071 against the filer and each member of the filer's controlled group (other than an exempt entity). PBGC may also pursue other equitable or legal remedies available to it under the law.

[61 FR 34022, July 1, 1996, as amended at 62 FR 36994, July 10, 1997. Redesignated and amended at 74 FR 11035, Mar. 16, 2009; 81 FR 29766, May 13, 2016]

### § 4010.15 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0049.

[61 FR 34022, July 1, 1996. Redesignated at 74 FR 11035, Mar. 16, 2009]

## SUBCHAPTER D—COVERAGE AND BENEFITS

### PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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#### Subpart C—Section 4022(c) Benefits

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- 4022.61 Limitations on benefit payments by plan administrator.
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- 4022.104 Examples.

APPENDIXES A AND B TO PART 4022 [RESERVED]

APPENDIX C TO PART 4022—LUMP SUM INTEREST RATES FOR PRIVATE-SECTOR PAYMENTS

AUTHORITY: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

SOURCE: 61 FR 34028, July 1, 1996, unless otherwise noted.

#### Subpart A—General Provisions; Guaranteed Benefits

##### § 4022.1 Purpose and scope.

The purpose of this part is to prescribe rules governing the calculation and payment of benefits payable in terminated single-employer plans under section 4022 of ERISA. Subpart A, which applies to each plan providing benefits guaranteed under title IV of ERISA, contains definitions applicable to all subparts, and describes benefits that are guaranteed by the PBGC subject to the limitations set forth in subpart B. Subpart C is reserved for rules relating to the calculation and payment of unfunded nonguaranteed benefits under section 4022(c) of ERISA. Subpart D prescribes procedures that minimize the overpayment of benefits by plan administrators after initiating

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distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusted plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

[61 FR 34028, July 1, 1996, as amended at 62 FR 67728, Dec. 30, 1997]

### § 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, bankruptcy filing date, Code, employer, ERISA, guaranteed benefit, majority owner, mandatory employee contributions, nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

*Accumulated mandatory employee contributions* means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

*Benefit in pay status* means that one or more benefit payments have been made or would have been made except for administrative delay.

*Benefit increase* means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early re-

tirement age under a plan, an unpredictable contingent event benefit, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

*Covered employment* means employment with respect to which benefits accrue under a plan.

*Pension benefit* means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient. An annuity benefit resulting from a rollover amount is a pension benefit.

*Straight life annuity* means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

*Unpredictable contingent event (UCE)* has the same meaning as unpredictable contingent event in section 206(g)(1)(C) of ERISA and Treas. Reg. § 1.436-1(j)(9) (26 CFR 1.436-1(j)(9)). It includes a plant shutdown (full or partial) or a similar event (such as a full or partial closing of another type of facility, or a layoff or other workforce reduction), or any event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

*Unpredictable contingent event benefit (UCEB)* has the same meaning as unpredictable contingent event benefit in section 206(g)(1)(C) of ERISA and Treas. Reg. §1.436-1(j)(9) (26 CFR 1.436-1(j)(9)). Thus, a UCEB is any benefit or benefit increase to the extent that it would not be payable but for the occurrence of a UCE. A benefit or benefit increase that is conditioned upon the occurrence of a UCE does not cease to be a UCEB as a result of the contingent event having occurred or its occurrence having become reasonably predictable.

[61 FR 34028, July 1, 1996, as amended at 74 FR 59096, Nov. 17, 2009; 76 FR 34601, June 14, 2011; 79 FR 25672, May 6, 2014; 79 FR 70094, Nov. 25, 2014; 83 FR 49803, Oct. 3, 2018]

#### § 4022.3 Guaranteed benefits.

(a) *General.* Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(1) The benefit is, on the termination date, a nonforfeitable benefit;

(2) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(3) The participant is entitled to the benefit under § 4022.4.

(b) *PPA 2006 bankruptcy termination—*  
(1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraph (a) of this section.

(2) *Condition for entitlement satisfied between bankruptcy filing date and termination date.* If a participant becomes entitled to a subsidized early retirement or other benefit before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) but on or after the bankruptcy filing date (or after the bankruptcy filing date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die), the subsidy or other benefit is not guaranteed because the participant had not satisfied the conditions for entitlement by the bank-

ruptcy filing date. In such a case, the participant may have been put into pay status with the subsidized early retirement or other benefit by the plan administrator, because the plan was ongoing at the time. Even though the subsidy or other benefit is not guaranteed, the participant may be entitled to another benefit from PBGC (at that time or in the future). If so, PBGC will continue paying the participant a benefit, but in an amount reduced to reflect that the subsidy or other benefit is not guaranteed. PBGC will also allow a similarly situated participant who had not started receiving a subsidized early retirement or other benefit before PBGC became trustee of the plan to begin receiving a benefit (if the participant would have been allowed under the plan to begin receiving benefits and has reached his Earliest PBGC Retirement Date, as defined in § 4022.10), but in an amount that does not include the subsidy or other benefit.

(3) *Examples—*(i) *Vesting.* A plan provides for 5-year “cliff” vesting—i.e., benefits become 100% vested when the participant completes five years of service; before the five-year mark, benefits are 0% vested. The contributing sponsor of the plan files a bankruptcy petition on November 15, 2006. The plan terminates with a termination date of December 4, 2007, and PBGC becomes statutory trustee of the plan. A participant had four years and six months of service at the bankruptcy filing date and became vested in May 2007. None of the participant’s benefit is guaranteed because none of the benefit was nonforfeitable as of the bankruptcy filing date.

(ii) *Subsidized early retirement benefit.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section), but the plan also provides that a participant may retire from active employment at any age with a fully subsidized (i.e., not actuarially reduced) early retirement benefit if he has completed 30 years of service. The plan also provides that a participant who is age 60 and has completed 20 years of service may retire from active employment with an early retirement benefit, reduced by three

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percent for each year by which the participant's age at benefit commencement is less than 65. A participant was age 61 and had 29 years and 6 months of service at the bankruptcy filing date. The participant continued working for another six months, then retired as of June 1, 2007, and immediately began receiving from the plan the fully subsidized "30-and-out" early retirement benefit. PBGC will continue paying the participant a benefit, but PBGC's guarantee does not include the full subsidy for the "30-and-out" benefit, because the participant satisfied the conditions for that benefit after the bankruptcy filing date. The guarantee does include, however, the partial subsidy associated with the "60/20" early retirement benefit, because the participant satisfied the conditions for that benefit before the bankruptcy filing date.

(iii) *Accruals after bankruptcy filing date.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section). A participant has a vested, accrued benefit of \$500 per month as of the bankruptcy filing date. At the plan's termination date, the participant has a vested, accrued benefit of \$512 per month. His guaranteed benefit is limited to \$500 per month—the accrued, nonforfeitable benefit as of the bankruptcy filing date.

[61 FR 34028, July 1, 1996; 61 FR 67943, Dec. 26, 1996; 76 FR 34601, June 14, 2011]

### § 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

(1) The benefit was in pay status on the termination date of the plan.

(2) The benefit is payable in an optional life-annuity form of benefit that the participant or beneficiary elected on or before the termination date of the plan or, if later, the date on which PBGC became statutory trustee of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) the participant had satisfied the conditions of the plan necessary to es-

tablish the right to receive the benefit prior to such date (prior to or on such date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

(c) In a PPA 2006 bankruptcy termination, "bankruptcy filing date" is substituted for "termination date" each place that "termination date" appears in paragraphs (a)(1) and (3) of this section. In making this substitution for purposes of paragraph (a)(3) of this section, the rule in § 4022.3(b)(2) (dealing with the situation where the condition for entitlement was satisfied between the bankruptcy filing date and the termination date) shall apply.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

### § 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will

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cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

### § 4022.6 Annuity payable for total disability.

(a) Except as otherwise provided in this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began on or before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability benefits payable to a participant under such standard shall not be guaranteed unless the participant meets the standards of the Social Security Act and the regulations promulgated thereunder for determining total disability.

(c) For the purpose of this section, a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit.

(d) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” in paragraph (a) of this section.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

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### § 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient. If the plan provides more than one such annuity, the recipient may within 30 days after notification of the proposed termination of the plan elect to receive one of those annuities. If the plan does not provide such an annuity, the PBGC will guarantee an actuarially equivalent life annuity.

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit (or of an estimated benefit) payable by the PBGC is \$5,000 or less and the benefit is not yet in pay status, the benefit (or estimated benefit) may be paid in a lump sum.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraph (b)(1)(i) of this section and the monthly benefit (or the estimated monthly benefit) is equal to or greater than \$25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC will provide the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of annuity payments under a qualified preretirement survivor annuity (or under an estimated qualified preretirement survivor annuity) is \$5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit (or estimated benefit) may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Payments to estates.* The PBGC may pay any annuity payments payable to an estate in a single installment without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The PBGC will discount the annuity payments using

the federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) applicable for the month the participant died based on monthly compounding.

(2) *Return of employee contributions—*

(i) *General.* Notwithstanding any other provision of this part, except as provided in paragraph (b)(2)(iii) of this section, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic-type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions. For purposes of this part, the portion of an individual's basic-type benefit derived from mandatory employee contributions is determined under § 4044.12 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in part 4044, subpart B, of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the termination date exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the termination date.

*Example:* Participant A is receiving a benefit of \$600 per month when the plan terminates, \$200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the termination date, his benefit would have been reduced to \$400 per month. The participant receives two monthly payments after the termination date. The set-off amount is \$400. (The \$600 actual payment minus the \$400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(iii) *Rollover amounts.* The rule in paragraph (b)(2) of this section (dealing with return of employee contributions) does not apply to a participant's accumulated mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter) or the benefit derived from such mandatory employee contributions.

(c) *Death benefits—*(1) *General.* Notwithstanding paragraph (a) of this section, a benefit that would otherwise be guaranteed under the provisions of this subpart, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity that has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Except in the case of accumulated mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter), upon the death of a participant the PBGC may pay in a single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1) of this section—

(1) *Benefits disregarded.* In determining whether the lump-sum value of a benefit is \$5,000 or less, the PBGC may disregard the value of any benefits the plan or the PBGC previously paid in lump-sum form or the plan paid by purchasing an annuity contract, the value of any benefits returned under paragraph (b)(2) of this section, and the value of any benefits the PBGC has not yet determined under section 4022(c) of ERISA.

(2) *Actuarial assumptions.* PBGC will calculate the lump sum value of a benefit by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter.



The actuarial assumptions used will be those described in § 4044.52 of this chapter, except as follows:

(i) *Loading for expenses.* There will be no adjustment to reflect the loading for expenses.

(ii) *Mortality assumption.* The “applicable mortality table” specified in section 205(g)(3)(B)(i) of ERISA and section 417(e)(3)(B) of the Code for the year containing the termination date will apply.

(iii) *Interest rate assumption.* The “applicable interest rate” specified in section 205(g)(3)(B)(ii) of ERISA and section 417(e)(3)(C) of the Code for the month containing the termination date will apply.

(iv) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

(e) *Private-sector lump sum rates.* PBGC provides lump sum interest rates for private-sector payments in appendix C to this part.

[61 FR 34028, July 1, 1996, as amended at 63 FR 38306, July 16, 1998; 65 FR 14752, 14755, Mar. 17, 2000; 67 FR 16954, Apr. 8, 2002; 79 FR 70094, Nov. 25, 2014; 85 FR 55591, Sept. 9, 2020]

#### § 4022.8 Form of payment.

(a) *In general.* This section applies where benefits are not already in pay status. Except as provided in § 4022.7 (relating to the payment of lump sums), the PBGC will pay benefits—

(1) In the automatic PBGC form described in paragraph (b) of this section; or

(2) If an optional PBGC form described in paragraph (c) of this section is elected, in that optional form.

(b) *Automatic PBGC form—(1) Participants—(i) Married participants.* The automatic PBGC form with respect to a participant who is married at the time the benefit enters pay status is the form a married participant would be entitled to receive from the plan in the absence of an election.

(ii) *Unmarried participants.* The automatic PBGC form with respect to a participant who is unmarried at the time the benefit enters pay status is the form an unmarried person would be

entitled to receive from the plan in the absence of an election.

(2) *Beneficiaries—(i) QPSA beneficiaries.* The automatic PBGC form with respect to the spouse of a married participant in a plan with a termination date on or after August 23, 1984, who dies before his or her benefit enters pay status is the qualified pre-retirement survivor annuity such a spouse would be entitled to receive from the plan in the absence of an election. The PBGC will not charge the participant or beneficiary for this survivor benefit coverage for the time period beginning on the plan’s termination date (regardless of whether the plan would have charged).

(ii) *Alternate payees.* The automatic PBGC form with respect to an alternate payee with a separate interest under a qualified domestic relations order is the form an unmarried participant would be entitled to receive from the plan in the absence of an election.

(c) *Optional PBGC forms—(1) Participant and beneficiary elections.* A participant may elect any optional form described in paragraphs (c)(4) or (c)(5) of this section. A beneficiary described in paragraph (b)(2) of this section (a QPSA beneficiary or an alternate payee) may elect any optional form described in paragraphs (c)(4)(i) through (c)(4)(iv) of this section.

(2) *Permitted designees.* A participant or beneficiary, whether married or unmarried, who elects an optional form with a survivor feature (e.g., a 5-year certain-and-continuous annuity or, in the case of a participant, a joint-and-50%-survivor annuity) may designate either a spouse or a non-spouse beneficiary to receive survivor benefits. An optional joint-life form must be payable to a natural person or (with the consent of the PBGC) to a trust for the benefit of one or more natural persons.

(3) *Spousal consent.* In the case of a participant who is married at the time the benefit enters pay status, the election of an optional form or the designation of a non-spouse beneficiary is valid only if the participant’s spouse consents.

(4) *Permitted optional single-life forms.* The PBGC may offer benefits in the following single-life forms:

(i) A straight-life annuity;

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(ii) A 5-year certain-and-continuous annuity;

(iii) A 10-year certain-and-continuous annuity;

(iv) A 15-year certain-and-continuous annuity; and

(v) The form an unmarried person would be entitled to receive from the plan in the absence of an election.

(5) *Permitted optional joint-life forms.* The PBGC may offer benefits in the following joint-life forms:

(i) A joint-and-50%-survivor annuity;

(ii) A joint-and-50%-survivor-“pop-up” annuity (*i.e.*, where the participant’s benefit “pops up” to the unreduced level if the beneficiary dies first);

(iii) A joint-and-75%-survivor annuity; and

(iv) A joint-and-100%-survivor annuity.

(6) *Determination of benefit amount; starting benefit.* To determine the amount of the benefit in an optional PBGC form—

(i) *Single-life forms.* In the case of an optional PBGC form under paragraph (c)(4) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to an unmarried participant in the absence of an election.

(ii) *Joint-life forms.* In the case of an optional PBGC form under paragraph (c)(5) of this section, the PBGC will first determine the amount of the benefit in the form the plan would pay to a married participant in the absence of an election. For this purpose, the PBGC will treat a participant who designates a non-spouse beneficiary as being married to a person who is the same age as that non-spouse beneficiary.

(7) *Determination of benefit amount; conversion factors.* The PBGC will convert the benefit amount determined under paragraph (c)(6) of this section to the optional form elected, using PBGC factors based on—

(i) *Mortality.* Unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95-6, 1995-1 C.B. 80 (Internal Revenue Service Cumulative Bulletins are available

from the Superintendent of Documents, Government Printing Office, Washington, DC 20402); and

(ii) *Interest.* An interest rate of six percent.

(8) *Determination of benefit amount; limitation.* The PBGC will limit the benefit amount determined under paragraph (c)(7) of this section to the amount of the benefit it would pay in the form of a straight life annuity under paragraph (c)(4)(i) of this section.

(9) *Incidental benefits.* The PBGC will not pay an optional PBGC form with a death benefit (e.g., a joint-and-50%-survivor annuity) unless the death benefit would be an “incidental death benefit” under 26 CFR 1.401-1(b)(1)(i). If the death benefit would not be an “incidental death benefit,” the PBGC may instead offer a modified version of the optional form under which the death benefit would be an “incidental death benefit.”

(d) *Change in benefit form.* Once payment of a benefit starts, the benefit form cannot be changed.

(e) *PBGC discretion.* The PBGC may make other optional annuity forms available subject to the rules in paragraph (c) of this section.

(f) *Rollover amounts.* The annuity benefit resulting from rollover amounts (as determined under § 4044.12(c)(4) of this chapter) is combined with any other benefit under the plan and paid in the same form and at the same time as the other benefit.

[67 FR 16954, Apr. 8, 2002, as amended at 79 FR 70095, Nov. 25, 2014]

### § 4022.9 Time of payment; benefit applications.

(a) *Time of payment.* A participant may start receiving an annuity benefit from the PBGC (subject to the PBGC’s rules for starting benefit payments) on his or her Earliest PBGC Retirement Date as determined under § 4022.10 of this subchapter or, if later, the plan’s termination date.

(b) *Elections and consents.* The PBGC may prescribe the time and manner for benefit elections to be made and spousal consents to be provided.

(c) *Benefit applications.* The PBGC is not required to accept any application

for benefits not made in accordance with its forms and instructions.

(d) *Filing with the PBGC*—(1) *Method and date of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part. Benefit applications and related submissions are treated as filed on the date received by the PBGC unless the instructions for the applicable form provide for an earlier date. Subpart C of part 4000 of this chapter provides rules for determining when the PBGC receives a submission.

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

(3) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period for filing under this part.

[67 FR 16955, Apr. 8, 2002, as amended at 68 FR 61353, Oct. 28, 2003]

**§ 4022.10 Earliest PBGC Retirement Date.**

The Earliest PBGC Retirement Date for a participant is the earliest date on which the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA. The Earliest PBGC Retirement Date is determined in accordance with this § 4022.10. For purposes of this § 4022.10, “age” means the participant’s age as of his or her last birthday (unless otherwise required by the context).

(a) *Immediate annuity at or after age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is on or after the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the earliest date on which the participant could separate from service with the right to receive an immediate annuity.

(b) *Immediate annuity before age 55.* If the earliest date on which a participant could separate from service with the right to receive an immediate annuity is before the date the participant reaches age 55, the Earliest PBGC Retirement Date for the participant is the date the participant reaches age 55 (except as provided in paragraph (c) of this section).

(c) *Facts and circumstances.* If a participant could separate from service with the right to receive an immediate annuity before the date the participant reaches age 55, the PBGC will make a determination, under the facts and circumstances, as to whether the participant could retire under plan provisions for purposes of section 4044(a)(3)(B) of ERISA on an earlier date. If the PBGC determines, under the facts and circumstances, that the participant could retire under plan provisions for those purposes on an earlier date, that earlier date is the Earliest PBGC Retirement Date for the participant. In making this determination, the PBGC will take into account plan provisions (e.g., the general structure of the provisions, the extent to which the benefit is subsidized, and whether eligibility for the benefit is based on a substantial service or age-and-service requirement), the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant considerations. Neither a plan’s reference to a separation from service at a particular age as a “retirement” nor the ability of a participant to receive an immediate annuity at a particular age necessarily makes the date the participant reaches that age the Earliest PBGC Retirement Date for the participant. The Earliest PBGC Retirement Date determined by the PBGC under this paragraph (c) will never be earlier than the earliest date the participant could separate from service with the right to receive an immediate annuity.

(d) *Examples.* The following examples illustrate the operation of the rules in paragraphs (a) through (c) of this section.

(1) *Normal retirement age.* A plan’s normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon separation before normal retirement age. The Earliest PBGC Retirement Date for a participant who, as of the plan’s termination date, is age 50 is the date the participant reaches age 65.

(2) *Early retirement age.* A plan’s normal retirement age is age 65. The plan specifies an early retirement age of 60 with 10 years of service. The plan does

not offer a consensual lump sum or an immediate annuity upon separation before early retirement age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 55 and has completed 10 years of service is the date the participant reaches age 60.

(3) *Separation at any age.* A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 35 is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could "retire" for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date.

(4) *Age 50 retirement common.* A plan's normal retirement age is age 60. The plan specifies an early retirement age of 50 but offers an immediate annuity upon separation regardless of age. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 35 is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the Earliest PBGC Retirement Date would be that earlier date. For example, if it were common for participants to retire at age 50, the PBGC could determine that the participant's Earliest PBGC Retirement Date would be the date the participant reached age 50.

(5) *"30-and-out" benefit.* A plan's normal retirement age is age 65. The plan offers an immediate annuity upon separation regardless of age and a fully-subsidized annuity upon separation with 30 years of service. The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 48 and has completed 30 years of service is the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section

4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that the participant's Earliest PBGC Retirement Date is the date the participant completed 30 years of service.

(6) *Typical airline pilots' plan.* An airline pilots' plan has a normal retirement age of 60. The plan specifies an early retirement age of 50 (with 5 years of service). The Earliest PBGC Retirement Date for a participant who, as of the plan's termination date, is age 48 and has completed five years of service would be the date the participant reaches age 55, unless the PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's Earliest PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that the participant's Earliest PBGC Retirement Date is the date the participant reaches age 50. If the plan instead had provided for early retirement before age 50, the PBGC would consider all the facts and circumstances (including the plan's normal retirement age and the age at which employees customarily retire in the airline industry) in determining whether to treat the date the participant reaches the plan's early retirement age as the participant's Earliest PBGC Retirement Date.

(e) *Special rule for "window" provisions.* For purposes of paragraphs (a), (b), and (c) of this section, the PBGC will treat a participant as being able, under plan provisions, to separate from service with the right to receive an immediate annuity on a date before the plan's termination date only if—

(1) Eligibility for that immediate annuity continues through the earlier of—

- (i) The plan's termination date; or
- (ii) The date the participant actually separates from service with the right to receive an immediate annuity; and

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(2) The participant satisfies the conditions for eligibility for that immediate annuity on or before the plan's termination date.

[67 FR 16955, Apr. 8, 2002]

### **§ 4022.11 Guarantee of benefits relating to uniformed service.**

This section applies to a benefit of a participant who becomes reemployed after service in the uniformed services that is covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(a) A benefit described in paragraph (b) of this section that would satisfy the requirements of § 4022.3(a) and (c) (together with any benefit earned for the period preceding military service) except for the fact that the participant was not reemployed on or before the termination date will be deemed to satisfy those requirements if PBGC determines, based upon a demonstration by the participant or otherwise, that he or she became reemployed after the termination date and entitled to the benefit under USERRA.

(b) A benefit described in this paragraph (b) is a benefit attributable to a period of service commencing before the termination date and ending on the termination date during which the participant was serving in the uniformed services as defined in 38 U.S.C. 4303(13) (or was in a subsequent reemployment eligibility period) and to which the participant is entitled under USERRA.

(c) Example: A plan's vesting requirement is 5 years of service with the employer. A participant has completed 4 years of service when he leaves employment for uniformed service. The plan terminates while the participant is in military service. As of the termination date, the participant would have had 5 years of service and 5 years of benefit accruals if he had remained continuously employed. Upon reemployment after the termination date but within the time limits set by USERRA, the participant would have had 6 years of service under the plan for vesting and benefit accrual purposes, if the plan had not terminated. PBGC would treat the participant as having a vested, nonforfeitable plan benefit with 5 years of vesting service

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and benefit accruals as of the termination date.

(d) In the case of a PPA 2006 bankruptcy termination, "bankruptcy filing date" is substituted for "termination date" each place that "termination date" appears in this section.

[74 FR 59096, Nov. 17, 2009]

### **Subpart B—Limitations on Guaranteed Benefits**

#### **§ 4022.21 Limitations; in general.**

(a)(1) Subject to paragraphs (b), (c), (d), and (e) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) The limitation of paragraph (a)(1) of this section shall not apply to:

(i) A survivor's benefit payable as an annuity on account of the death of a participant that occurred on or before the plan's termination date and before the participant retired;

(ii) A disability pension described in § 4022.6 of this part; or

(iii) A benefit payable in non-level installments that in combination with Social Security, Railroad Retirement, or workman's compensation benefits yields a substantially level income if the projected income from the plan benefit over the expected life of the recipient does not exceed the value of the straight life annuity described in paragraph (a)(1) of this section.

(b) The PBGC will not guarantee the payment of that part of any benefit that exceeds the limitations in section 4022(b) of ERISA and this subpart B.

(c)(1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a

single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

(d) The PBGC will not guarantee a joint-life annuity benefit payable to other than—

(1) Natural persons; or

(2) A trust or estate for the benefit of one or more natural persons.

(e) *PPA 2006 bankruptcy termination—*

(1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraph (a)(1) of this section.

(2) *Examples—(i) Straight-life annuity.* A plan provides for normal retirement at age 65. If a participant terminates employment at or after age 55 with 25 years of service, the plan will pay an unreduced early retirement benefit, plus a temporary supplement of \$400 per month until the participant reaches age 62. When the plan’s contributing sponsor files a bankruptcy petition in 2008, a participant who is still working has a vested, accrued benefit of \$1,500 per month (as a straight-life annuity) and has satisfied the age and service requirements for the unreduced early retirement benefit. The participant retires eight months later, when his vested, accrued benefit is \$1,530 per month (as a straight-life annuity). He elects to receive his benefit as a straight-life annuity, and begins receiving a total benefit of \$1,930: His \$1,530 accrued benefit plus the \$400 temporary supplement. The plan terminates six months later, during the sponsor’s bankruptcy. No Title IV limitations apply to the participant’s benefit, other than the limitation in paragraph (a)(1) of this section. PBGC will guarantee \$1,500, the amount of the participant’s accrued benefit (as a

straight-life annuity) as of the bankruptcy filing date.

(ii) *Joint-and-survivor annuity.* The facts are the same as Example (i) (paragraph (e)(2)(i) of this section), except that the participant elects to receive his benefit as a 50% joint-and-survivor annuity. Before plan termination, the participant was receiving a total benefit of \$1,777: His \$1,530 accrued benefit, reduced by 10% for the survivor benefit, plus the \$400 temporary supplement. From the termination date until the participant reaches age 62, PBGC will guarantee \$1,500: The \$1,500 accrued benefit (as a straight-life annuity) as of the bankruptcy filing date, reduced to \$1,350 to reflect the 10% reduction for the survivor benefit, plus \$150 of the temporary supplement that, in combination with the \$1,350, does not exceed the \$1,500 accrued-at-normal limit. When the participant reaches age 62, his guaranteed benefit is reduced to \$1,350, because under plan provisions the temporary supplement ceases at that time.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

**§ 4022.22 Maximum guaranteeable benefit.**

(a) *In general.* Subject to section 4022B of ERISA and part 4022B of this chapter, and except as provided in paragraph (b) of this section, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65, equal to the lesser of—

(1) One-twelfth of the participant’s average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan; or

(2) \$750 multiplied by the fraction  $x/13,200$  where “x” is the Social Security

contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

(b) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination—

(1) The five-year period described in paragraph (a)(1) of this section shall not include any calendar years that end after the bankruptcy filing date.

(2) “Bankruptcy filing date” is substituted for “termination date of the plan” in paragraph (a)(2) of this section. Example: A contributing sponsor files a bankruptcy petition in 2007. The sponsor’s plan terminates in a distress termination with a termination date in 2008. PBGC will compute participants’ maximum guaranteeable benefits based on the amount determined under paragraph (a)(2) for 2007 (\$4,125.00 as a straight-life annuity starting at age 65).

(c) *Gross income.* For purposes of paragraph (a)(1) of this section—

(1) Gross income means “earned income” as defined in section 911(d)(2) of the Code, determined without regard to any community property laws.

(2) If the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant’s gross income for the calendar year.

(d) *Rollover amounts.* Any portion of a benefit derived from mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(i) of this chapter) is disregarded in applying the provisions of §§ 4022.22 and 4022.23. However, any portion of a benefit derived from employer contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(ii) of this chapter) is combined with any other benefit under the plan for purposes of determining the maximum guaranteeable benefit under §§ 4022.22 and 4022.23. For example, assume that a participant has an \$80,000 total annual plan benefit at age 65, of which \$15,000 is derived from mandatory employee contributions resulting from rollover amounts and \$5,000 is de-

rived from employer contributions resulting from rollover amounts. The \$15,000 benefit derived from employee contributions resulting from rollover amounts would be excluded in the determination of the participant’s maximum guaranteeable amount. The participant’s remaining \$65,000 benefit (including the \$5,000 benefit derived from employer contributions resulting from rollover amounts) would be subject to the maximum guaranteeable benefit limitation. Assuming the plan terminated in 2014, the participant’s maximum guaranteeable benefit of approximately \$59,000 for a straight life annuity at age 65 would effectively be increased by the \$15,000 benefit derived from employee contributions resulting from rollover amounts, resulting in total guaranteeable benefits of approximately \$74,000. (The maximum guaranteeable benefit limitation would apply to the participant’s benefit derived from employer contributions; as a result, \$6,000 of the participant’s benefit derived from employer contributions would not be guaranteeable by PBGC.)

[76 FR 34602, June 14, 2011, as amended at 79 FR 70095, Nov. 25, 2014]

**§ 4022.23 Computation of maximum guaranteeable benefits.**

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to

paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be  $\frac{7}{12}$  of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be  $\frac{4}{12}$  of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be  $\frac{2}{12}$  of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be  $\frac{1}{2}$  of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date:

For each month up to 60 months deduct  $\frac{1}{24}$  of 1%;

For each month beyond 60 months deduct  $\frac{1}{12}$  of 1%.

(i) A cash refund annuity means an annuity under which if the participant dies prior to the time when he has re-

ceived pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit. A cash refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit. An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (contingent basis) computed under § 4022.22 shall be reduced by an amount equal to 10% plus  $\frac{2}{10}$  of 1% for each percentage point in excess of 50% of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) means an annuity which is payable in periodic installments to a participant and upon his death or the death of his beneficiary is payable to the survivor for the survivor's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (joint basis) computed under § 4022.22 shall be reduced by an



amount equal to  $\frac{1}{10}$  of 1% for each percentage point in excess of 50% of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraph (d)(2) or (3) of this section, and the beneficiary's age is different from the participant's age, by 15 years or less, the monthly amount computed under § 4022.22 shall be adjusted by the following amounts: If the beneficiary is younger than the participant, deduct 1% for each year of the age difference; If the beneficiary is older than the participant, add  $\frac{1}{2}$  of 1% for each year of the age difference. In computing the difference in ages, years over 65 years of age shall not be counted. If the difference in age between the beneficiary and the participant is greater than 15 years, PBGC shall provide the adjustment factors to be used.

(f) *Step-down life annuity.* A step-down life annuity means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

(1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY

Age of participant <sup>1</sup> at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination <sup>2</sup>									
	1	2	3	4	5	6	7	8	9	10
45 .....	0.060	0.117	0.170	0.220	0.268	0.315	0.355	0.395	0.435	0.475
46 .....	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47 .....	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48 .....	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49 .....	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50 .....	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51 .....	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52 .....	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
53 .....	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
54 .....	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55 .....	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56 .....	.072	.141	.206	.268	.328	.387	.439	.491	.543	.....
57 .....	.074	.145	.212	.276	.338	.399	.453	.507	.....	.....
58 .....	.076	.149	.218	.284	.348	.411	.467	.....	.....	.....
59 .....	.078	.153	.224	.292	.358	.423	.....	.....	.....	.....
60 .....	.080	.157	.230	.300	.368	.....	.....	.....	.....	.....
61 .....	.082	.161	.236	.308	.....	.....	.....	.....	.....	.....
62 .....	.084	.165	.242	.....	.....	.....	.....	.....	.....	.....
63 .....	.086	.169	.....	.....	.....	.....	.....	.....	.....	.....
64 .....	.088	.....	.....	.....	.....	.....	.....	.....	.....	.....

<sup>1</sup> At last birthday.

<sup>2</sup> If the benefit is payable for less than 1 yr, the appropriate factor is obtained by multiplying the factor for 1 yr by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under § 4022.22 shall be adjusted by applying the factors set forth in paragraph (c) of

this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f)(1) of this section exceeds the monthly

amount calculated pursuant to paragraph (f)(2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f)(2) of this section bears to the monthly benefit calculated pursuant to paragraph (f)(1) of this section.

(g) *PPA 2006 bankruptcy termination.*

(1) In a PPA 2006 bankruptcy termination, except as provided in the next sentence, “bankruptcy filing date” is substituted for “termination date” and “date of plan termination” each place that “termination date” or “date of plan termination” appears in paragraphs (c), (d), and (f) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will determine the factors in paragraphs (d), (e), and (f) based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date. (The case of Participant C in the example below illustrates this exception.)

(2) *Example.* (i) *Facts.* The contributing sponsor of a plan files a bankruptcy petition in July 2007, and the sponsor’s plan terminates in a PBGC-initiated termination with a termination date in July 2008. At the bankruptcy filing date:

(A) Participant A was age 64 and receiving a benefit from the plan in the form of a 10-year certain-and-continuous annuity, with 4 years remaining in the certain period.

(B) Participant B was age 60 and 6 months and was still working. She began receiving a benefit from the plan in the form of a 50% joint-and-survivor annuity when she turned 61 in January

2008. Her spouse was the same age as she.

(C) Participant C was age 60 and was receiving a \$3,000/month benefit from the plan in the form of a 50% joint-and-survivor annuity, with his spouse, age 58, as his beneficiary. Participant C he died in February 2008 and in March 2008 his spouse began receiving a 50% survivor annuity of \$1,500/month.

(D) Participant D was age 59 and was still working; he began receiving a straight-life annuity from the PBGC in July 2010 when he was 62 years old.

(ii) *Conclusions.* In accordance with § 4022.22(b)(2), PBGC computes the maximum guaranteeable monthly benefit for Participants A, B, and D and for the spouse of Participant C based on the \$4,125.00 amount determined under § 4022.22(a)(2) for 2007. (The gross-income-based limitation in § 4022.22(a)(1) does not apply to any of these participants.)

(A) Participant A’s maximum guaranteeable monthly benefit is \$3,759.53 [ $\$4,125.00 \times .93$  (7% reduction for a benefit starting at age 64)  $\times .98$  (2% reduction for a certain-and-continuous annuity with 4 years remaining in the certain period)].

(B) Participant B’s maximum guaranteeable monthly benefit is \$2,673.00 [ $\$4,125.00 \times .72$  (28% reduction for a benefit starting at age 61)  $\times .90$  (10% reduction due to the 50% joint-and-survivor feature)].

(C) Participant C’s spouse’s maximum guaranteeable monthly benefit is \$2,351.25 [ $\$4,125.00 \times .57$  (43% reduction for a benefit starting at age 58; no reduction for the form of benefit because the spouse’s survivor benefit is a straight-life annuity)]. Because that amount exceeds the spouse’s \$1,500 monthly survivor benefit, the spouse’s benefit is not reduced by the maximum guaranteeable benefit limitation.

(D) Participant D’s maximum guaranteeable monthly benefit is \$3,258.75 [ $\$4,125.00 \times .79$  (21% reduction for a benefit starting at age 62)].

[61 FR 34023, July 1, 1996; 61 FR 36626, July 12, 1996; 76 FR 34603, June 14, 2011]

#### § 4022.24 Benefit increases.

(a) *Scope.* This section applies to all benefit increases, as defined in § 4022.2, that have been in effect for less than

five years preceding the termination date.

(b) *General rule.* Benefit increases described in paragraph (a) of this section are guaranteeable only to the extent provided in § 4022.25.

(c) *Computation of guaranteeable benefit increases.* Except as provided in paragraph (d) of this section pertaining to multiple benefit increases, the amount of a guaranteeable benefit increase shall be the amount, if any, by which the monthly benefit calculated pursuant to paragraph (c)(1) of this section (the monthly benefit provided under the terms of the plan as of the termination date, as limited by § 4022.22) exceeds the monthly benefit calculated pursuant to paragraph (c)(4) of this section (the monthly benefit which would have been payable on the termination date if the benefit provided subsequent to the increase were equivalent, as of the date of the increase, to the benefit provided prior to the increase).

(1) Determine the amount of the monthly benefit payable on the termination date (or, in the case of a deferred benefit, the monthly benefit which will become payable thereafter) under the terms of the plan subsequent to the increase, using service credited to the participant as of the termination date, that is guaranteeable pursuant to § 4022.22;

(2) Determine, as of the date of the benefit increase, in accordance with the provisions of § 4022.23, the factors which would be used to calculate the monthly maximum benefit guaranteeable (i) under the terms of the plan prior to the increase and (ii) under the terms of the plan subsequent to the increase. However, when the benefit referred to in paragraph (c)(2)(ii) of this section is a joint and survivor benefit deferred as of the termination date and there is no beneficiary on that date, the factors computed in paragraph (c)(2)(ii) of this section shall be determined as if the benefit were payable only to the participant. Each set of factors determined under this paragraph shall be stated in the manner set forth in § 4022.23(b)(1);

(3) Multiply the monthly benefit which would have been payable (or, in the case of a deferred benefit, would

have become payable) under the terms of the plan prior to the increase based on service credited to the participant as of the termination date by a fraction, the numerator of which is the product of the factors computed pursuant to paragraph (c)(2)(ii) of this section and the denominator of which is the product of the factors computed pursuant to paragraph (c)(2)(i) of this section.

(4) Calculate the amount of the monthly benefit which would be payable on the termination date if the monthly benefit computed in paragraph (c)(3) of this section had been payable commencing on the date of the benefit increase (or, in the case of a deferred benefit, would have become payable thereafter). In the case of a benefit which does not become payable until subsequent to the termination date, the amount of the monthly benefit determined pursuant to this paragraph is the same as the amount of the monthly benefit calculated pursuant to paragraph (c)(3) of this section.

(d) *Multiple benefit increases.* (1) Where there has been more than one benefit increase described in paragraph (a) of this section, the amounts of guaranteeable benefit increases shall be calculated beginning with the earliest increase, and each such amount (except for the amount resulting from the final benefit increase) shall be multiplied by a fraction, the numerator of which is the product of the factors, stated in the manner set forth in § 4022.23(b)(1), used to calculate the monthly maximum guaranteeable benefit under § 4022.22 and the denominator of which is the product of the factors used in the calculation under paragraph (c)(2)(i) of this section.

(2) Each benefit increase shall be treated separately for the purposes of § 4022.25, except as otherwise provided in paragraph (d) of that section, and for the purposes of § 4022.26, as appropriate.

(e) Except as provided in § 4022.27(c), for the purposes of §§ 4022.22 through 4022.28, a benefit increase is deemed to be in effect commencing on the later of its adoption date or its effective date.

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination,

except as provided in the next sentence, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraphs (a) and (c) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will compute the benefit based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date, consistent with § 4022.23(g).

(g) *Rollover amounts.* Any portion of a benefit derived from mandatory employee contributions resulting from rollover amounts (as determined under § 4044.12 (c)(4)(i) of this chapter) is disregarded in applying the provisions of §§ 4022.24 through 4022.26. However, any portion of a benefit derived from employer contributions resulting from rollover amounts (as determined under § 4044.12(c)(4)(ii) of this chapter) is combined with any other benefit under the plan in applying the provisions of §§ 4022.24 through 4022.26. In such case, the benefit increase is deemed to be in effect on the date the rollover amounts are received by the plan.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 62 FR 67728, Dec. 30, 1997; 76 FR 34603, June 14, 2011; 79 FR 25672, May 6, 2014; 79 FR 70095, Nov. 25, 2014; 83 FR 49803, Oct. 3, 2018]

**§ 4022.25 Five-year phase-in of benefit guarantee.**

(a) *Scope.* This section applies to the guarantee of benefit increases which have been in effect for less than five years.

(b) *Phase-in formula.* The amount of a benefit increase computed pursuant to § 4022.24 shall be guaranteed to the extent provided in the following formula: the number of years the benefit increase has been in effect, not to exceed five, multiplied by the greater of (1) 20 percent of the amount computed pursuant to § 4022.24; or (2) \$20 per month.

(c) *Computation of years.* In computing the number of years a benefit increase has been in effect, each com-

plete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” each place that “termination date” appears in paragraphs (c) and (d) of this section. Example: A plan amendment that was adopted and effective in February 2007 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 ( $\$300 \times 40\%$ ), because the increase was made more than 2 years but less than 3 years before the bankruptcy filing date.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34603, June 14, 2011; 83 FR 49804, Oct. 3, 2018]

**§ 4022.26 Benefit guarantee for participants who are majority owners.**

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

(b) *Formula.* Benefits provided by a plan are guaranteed to the extent provided in the following formula: The amount of the participant’s benefit

that PBGC would otherwise guarantee under section 4022 of ERISA and this part if the participant were not a majority owner, multiplied by a fraction not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10.

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “termination date” in paragraph (b) of this section.

[83 FR 49804, Oct. 3, 2018]

**§ 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 shut-

down 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 UCEB 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), December 31, 2014, would be the date the phase-in period under ERISA section 4022

begins. In light of the plan termination date of December 1, 2015, the guarantee of the UCEBs of participants laid off on December 31, 2014, would be 0 percent phased in.

*Example 2. Sequential layoffs.* (i) *Facts:* The same facts as Example 1, with these exceptions: Not all employees are laid off on December 31, 2014. The Company and Union agree to and subsequently implement a shutdown in which employees are permanently laid off in stages—one third of the employees are laid off on October 31, 2014, another third are laid off on November 30, 2014, and the remaining one-third are laid off on December 31, 2014.

(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 of the UCE applicable 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 facility 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. The UCEB of those participants would be a

nonforfeitable benefit as of the plan termination date, but PBGC's guarantee of the UCEB would be 0 percent phased in. In the case of the skeleton crew members, such participants would not be eligible for the UCEB because they did not incur a break in continuous service until after the plan termination date. (If the plan had a provision that there is no shutdown until all employees, including any skeleton crew are terminated, or if the plan were reasonably interpreted to so provide in light of past practice, PBGC would determine that the date that the UCE occurred was after the plan termination date. Thus the UCEB 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 55 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 is not recalled to employment, and on May 15, 2016, under the terms of the plan, his continuous service is broken due to the layoff. 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 guarantee of the UCEB is phased in beginning on May 15, 2016, the date of the later of the two UCEs necessary to make this benefit payable (i.e., the first UCE is the initial layoff and the second UCE is the expiration of the two-year period without rehire). Since that date is more than one year (but less than two years) before the September 1, 2017, bankruptcy filing date, 20 percent of Participant A's UCEB (or \$20 per month, if greater) would be guaranteed under the phase-in rule.

*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 entitled to an unreduced early retirement ben-

efit 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 provision are payable 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 Participant 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 beginning 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 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.

(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 restriction on payment of the shutdown benefits. On September 15, 2014, the plan's enrolled 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 retirement 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.

[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]

### Subpart D—Benefit Reductions in Terminating Plans

#### § 4022.61 Limitations on benefit payments by plan administrator.

(a) *General.* When § 4041.42 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(a)(2) of this part, adjusted for age and benefit form, for the year of the proposed termination date. In a PPA 2006 bankruptcy termination, the maximum guaranteeable benefit is determined as of the bankruptcy filing date, in accordance with §§ 4022.22(b) and 4022.23(g).

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under § 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples. (For

examples addressing issues specific to a PPA 2006 bankruptcy termination, see §§ 4022.21(e), 4022.22(b), and 4022.23(g).)

*Example 1. Facts.* On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of \$2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (*i.e.*, \$1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

*Benefit reductions.* Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is \$2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00–0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65–56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00–0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is \$1,926.51 ( $\$2,352.27 \times 0.90 \times 0.91$ ) per month. Therefore, the plan administrator must reduce the participant's benefit payment from \$2,500 to \$1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse \$963.26 ( $0.50 \times \$1,926.51$ ) per month.

*Example 2. Facts.* The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of \$400 per month plus a temporary supplement of \$400 per month payable until age 62 (*i.e.*, a step-down

benefit). The participant's accrued benefit under the plan is \$450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 4022.23(c) of this chapter is \$1,693.63 ( $\$2,352.27 \times 0.72$ ) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 4022.23(d) for benefit form.

*Benefit reductions.* The plan benefit of \$800 per month payable until age 62 exceeds the participant's accrued benefit at normal requirement age of \$450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to \$450 per month. Since the levelized benefit of \$404.10 ( $((0.082 \times 50) + \$400)$  per month, determined under § 4022.23(f), is less than the adjusted maximum guaranteeable benefit of \$1,693.63 per month, no further reduction in the \$450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

*Example 3. Facts.* A retired participant is receiving a reduced early retirement benefit of \$1,100 per month plus a temporary supplement of \$700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$1,200 per month. The maximum guaranteeable benefit adjusted for age is \$1,152.61 ( $\$2,352.27 \times 0.49$ ) per month. A form adjustment is not required.

*Benefit reductions.* The plan benefit of \$1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of \$1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to \$100 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of \$1,100 per month and a temporary annuity supplement of \$100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of \$100 per month is converted to a level-life annuity equivalent in accordance with § 4022.23(f) of this chapter. The level-life annuity equivalent is \$38.70 ( $\$100 \times 0.387$ ). This, added to the life annuity of \$1,100 per month, equals \$1,138.70. Since the maximum guaranteeable benefit of \$1,152.61 per month exceeds \$1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit

under paragraph (d). Assume that the estimated benefit under paragraph (d) is \$780 per month until age 62 and \$715 per month thereafter. The plan administrator would pay the participant \$780 per month, reduced to \$715 per month at age 62, subject to the final benefit determination made under title IV.

*Example 4. Facts.* A retired participant is receiving a reduced early retirement benefit of \$2,650 per month plus a temporary supplement of \$800 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is \$1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

*Benefit reductions.* The plan benefit of \$3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is \$3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed \$3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 4022.23(f) adjustment factor, is \$2,785.45  $((\$350 \times 0.387) + \$2,650)$  per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of \$1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 37.24 percent  $(\$1,037.35/\$2,785.45)$ . Thus, the plan administrator must reduce the participant's level-life benefit of \$2,650 per month to \$986.86  $(\$2,650 \times 0.3724)$  and must further reduce the reduced temporary benefit of \$350 per month to \$130.34  $(\$350 \times 0.3724)$ . Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is \$1,117.20  $(\$986.86 + \$130.34)$  per month to age 62 and \$986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is \$1,005.48 per month to age 62 and \$888.17 per month thereafter. The plan administrator would reduce the participant's benefit from \$3,450 per month to \$1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to \$888.17 per month, subject to the final benefit determination made under title IV.

[61 FR 34028, July 1, 1996, as amended at 62 FR 60428, Nov. 7, 1997; 76 FR 34604, June 14, 2011]

**§ 4022.62 Estimated guaranteed benefit.**

(a) *General.* The estimated guaranteed benefit payable with respect to each participant who is not a majority owner is computed under paragraph (c) of this section. The estimated guaranteed benefit payable with respect to each participant who is a majority owner is computed under paragraph (d) of this section.

(b) *Rules for determining benefits.* For the purposes of determining entitlement to a benefit and the amount of the estimated benefit under this section, the following rules apply:

(1) *Non-PPA 2006 bankruptcy termination.* In a non-PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(ii) For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the proposed termination date.

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the bankruptcy filing date, the plan administrator shall use the participant's age and benefit payable under the plan as of the bankruptcy filing date.

(ii) For benefits payable with respect to a participant who enters pay status after the bankruptcy filing date, the

plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the bankruptcy filing date.

(3) *Participants with new benefits or benefit improvements.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) of this section, only new benefits and benefit improvements that affect the benefit of the participant or beneficiary for whom the determination is made are taken into account.

(4) *Limitations on estimated guaranteed benefits.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) or (d) of this section, the benefit determined under paragraph (b)(1) or (b)(2) of this section is subject to the limitations set forth in § 4022.61 (b) and (c).

(5) Nothing in this paragraph (b) overrides the provisions of subparts A and B of part 4022 with respect to the requirements necessary for a benefit to be guaranteed by PBGC.

(c) *Estimated guaranteed benefit payable with respect to a participant who is not a majority owner.* For benefits payable with respect to a participant who is not a majority owner, the estimated guaranteed benefit is determined under paragraph (c)(1) of this section, if no portion of the benefit is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA. In any other case, the estimated guaranteed benefit is determined under paragraph (c)(2). "Benefit subject to phase-in" means a benefit that is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA, determined without regard to section 4022(b)(7) of ERISA.

(1) *Participants with no benefits subject to phase-in.* In the case of a participant or beneficiary with no benefit improvement (as defined in paragraph (c)(2)(ii)) or new benefit (as defined in paragraph (c)(2)(i)) in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section.

(2) *Participants with benefits subject to phase-in.* In the case of a participant or beneficiary with a benefit improve-

ment or new benefit in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section, multiplied by the multiplier determined according to paragraphs (i), (ii), and (iii), but not less than the benefit to which he or she would have been entitled if the benefit improvement or new benefit had not been adopted.

(i) From column (a) of Table I, select the line that applies according to the number of full years before the proposed termination date since the plan was last amended to provide for a new benefit (or the number of full years since the plan was established, if it has never been amended to provide for a new benefit). "New benefit" means a change in the terms of the plan that results in (a) a participant's or a beneficiary's eligibility for a benefit that was not previously available or to which he or she was not entitled (excluding a benefit that is actuarially equivalent to the normal retirement benefit to which the participant was previously entitled) or (b) an increase of more than twenty percent in the benefit to which a participant is entitled upon entering pay status before his or her normal retirement age under the plan. "New benefits" result from liberalized participation or vesting requirements, reductions in the age or service requirements for receiving unreduced benefits, additions of actuarially subsidized benefits, and increases in actuarial subsidies. "New benefits" also result from increases that become payable by reason of the occurrence of an unpredictable contingent event (provided the event occurred after July 26, 2005), to the extent the increase would not be payable but for the occurrence of the event; in the case of such new benefits, the date of the occurrence of the unpredictable contingent event is treated as the amendment date for purposes of Table I. The establishment of a plan creates a new benefit as of the effective date of the plan. A change in the amount of a benefit is not deemed to be a "new benefit" if it

results solely from a benefit improvement. “New benefit” and “benefit improvement” are mutually exclusive terms.

(ii) If there was no benefit improvement under the plan during the one-year period ending on the proposed termination date, use the multiplier set forth in column (b) of Table I on the line selected from column (a). “Benefit improvement” means a change in the terms of the plan that results in (a) an increase in the benefit to which a participant is entitled at his or her normal retirement age under the plan or (b) an increase in the benefit to which a participant or beneficiary in pay status is entitled.

(iii) If there was any benefit improvement during the one-year period ending on the proposed termination date, use the multiplier set forth in column (c) of Table I on the line selected from column (a).

TABLE I—APPLICABLE MULTIPLIER IF—

Full years since last new benefit (a)	No benefit improvement during last year (b)	Benefit improvement during last year (c)
Five or more .....	.90	.80
Four .....	.80	.70
Three .....	.65	.55
Two .....	.50	.45
Fewer than two .....	.35	.30

NOTE: The foregoing method of estimating guaranteed benefits is based upon the PBGC’s experience with a wide range of plans and may not provide accurate estimates in certain circumstances. In accordance with § 4022.61(e), a plan administrator may use a different method of estimation if he or she demonstrates to the PBGC that his proposed method will be more equitable to participants and beneficiaries. The PBGC may require the use of a different method in certain cases.

(d) *Estimated guaranteed benefit payable with respect to a majority owner.* For benefits payable with respect to each participant who is a majority owner, the estimated guaranteed benefit is the benefit to which he or she would be entitled under paragraph (c) of this section but for his or her status as a majority owner, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the proposed termination date and the denominator of which is 10.

(e) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted

for “proposed termination date” each place that “proposed termination date” appears in paragraphs (c) and (d) of this section.

(f) *Examples.* This section is illustrated by the following examples. (For an example addressing issues specific to a PPA 2006 bankruptcy termination, see § 4022.25(f).)

(1) *Example 1—(i) Facts.* A participant who is not a majority owner retired on December 31, 2011, at age 60 and began receiving a benefit of \$600 per month. On January 1, 2009, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of  $\frac{1}{15}$  for each year by which his or her actual retirement age preceded age 65. On January 1, 2012, the plan’s benefit formula was amended to increase benefits for participants who retired before January 1, 2012. As a result, the participant’s benefit was increased to \$750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 2012.

(ii) *Estimated guaranteed benefit.* (A) No reduction is required under § 4022.61(b) or (c) because the participant’s benefit does not exceed either the participant’s accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

(B) The amendment as of January 1, 2009, resulted in a “new benefit” because the reduction in the age at which the participant could receive unreduced benefits increased the participant’s benefit entitlement at actual retirement age by  $\frac{5}{15}$ , which is more than the 20-percent increase threshold under paragraph (c)(2)(i) of this section. The amendment of January 1, 2012, which increased the participant’s benefit to \$750 per month, is a “benefit improvement” because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether an increase in a pay status benefit is a benefit improvement.)

(C) The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of

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Table I of this section (because the last new benefit had been in effect for three full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the one-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is \$412.50 ( $0.55 \times \$750$ ) per month.

(2) *Example 2—(i) Facts.* A participant who is not a majority owner terminated employment on December 31, 2010. On January 1, 2012, she reached age 65 and began receiving a benefit of \$250 per month. She had completed three years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 2008. Under the schedule in effect before the amendment, a participant with five years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 2012.

(ii) *Estimated guaranteed benefit.* No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for four full years before the proposed termination date, the second row of Table I of this section is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is \$200 ( $0.80 \times \$250$ ) per month.

(3) *Example 3—(i) Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for seven full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of \$2,000 per month. No reduc-

tion of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Consequently, the amount of this participant's estimated guaranteed benefit is \$1,400 ( $\$2,000 \times \frac{7}{10}$ ) per month.

(4) *Example 4—(i) Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for 12 full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of \$2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Since the plan was in effect for more than 10 years as of the proposed termination date, the amount of this participant's estimated guaranteed benefit is \$2,000 per month.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996; 76 FR 34604, June 14, 2011; 79 FR 25674, May 6, 2014; 83 FR 49804, Oct. 3, 2018]

### § 4022.63 Estimated asset-funded benefit.

(a) *General.* If the conditions specified in paragraph (b) exist, the plan administrator shall determine each participant's estimated asset-funded benefit. The estimated asset-funded benefit payable with respect to each participant who is not a majority owner is computed under paragraph (c) of this section. The estimated asset-funded benefit payable with respect to each participant who is a majority owner is computed under paragraph (d) of this section.

(b) *Conditions for use of this section.* The conditions set forth in this paragraph must be satisfied in order to make use of the procedures set forth in this section. If the specified conditions exist, estimated asset-funded benefits must be determined in accordance with these procedures (or in accordance with alternative procedures authorized by the PBGC under § 4022.61(f)) for each

participant and beneficiary whose benefit under the plan exceeds the limitations contained in § 4022.61(b) or (c) or who is a majority owner or the beneficiary of a majority owner. If the specified conditions do not exist, title IV benefits may be estimated by the plan administrator in accordance with procedures authorized by the PBGC, but no such estimate is required. The conditions are as follows:

(1) An actuarial valuation of the plan has been performed for a plan year beginning not more than eighteen months before the proposed termination date. If the interest rate used to value plan liabilities in this valuation exceeded the applicable valuation interest rates and factors under appendix B to part 4044 of this chapter in effect on the proposed termination date, the value of benefits in pay status and the value of vested benefits not in pay status on the valuation date must be converted to the PBGC's valuation rates and factors.

(2) The plan has been in effect for at least five full years before the proposed termination date, and the most recent actuarial valuation demonstrates that the value of plan assets, reduced by employee contributions remaining in the plan and interest credited thereon under the terms of the plan, exceeds the present value, adjusted as required under paragraph (b)(1), of all plan benefits in pay status on the valuation date.

(3) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “proposed termination date” in the first sentence of paragraph (b)(2) of this section.

(c) *In general*—(1) *Estimated asset-funded benefit payable with respect to a participant who is not a majority owner.* For benefits payable with respect to a participant who is not a majority owner, the estimated asset-funded benefit is the estimated priority category 3 benefit computed under this paragraph. Priority category 3 benefits are payable with respect to participants who were, or could have been, in pay status three full years prior to the proposed termination date. The estimated priority category 3 benefit is computed by multiplying the benefit payable

with respect to the participant under § 4022.62 (b)(1) and (b)(2) by a fraction, not to exceed one—

(i) The numerator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the date five full years before the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date, and

(ii) The denominator of which is the benefit that would be payable with respect to the participant at normal retirement age under the provisions of the plan in effect on the proposed termination date, based on the participant's age, service, and compensation as of the earlier of the participant's benefit commencement date or the proposed termination date.

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, “bankruptcy filing date” is substituted for “proposed termination date” each place that “proposed termination date” appears in paragraph (c)(1) of this section.

(d) *Estimated asset-funded benefit payable with respect to a majority owner.* For benefits payable with respect to a participant who is a majority owner, the estimated asset-funded benefit is the higher of the benefit computed under paragraph (c) of this section or the benefit computed under this paragraph.

(1) The plan administrator shall first calculate the estimated guaranteed benefit payable with respect to the majority owner as if he or she were not a majority owner, using the method set forth in § 4022.62(c).

(2) The benefit computed under paragraph (d)(1) shall be multiplied by the priority category 4 funding ratio. The category 4 funding ratio is the ratio of x to y, not to exceed one, where—

(i) In a plan with priority category 3 benefits, x equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and the present value of benefits in pay status, and y equals the present value of all vested benefits not

in pay status minus such employee contributions and interest; or

(ii) In a plan with no priority category 3 benefits,  $x$  equals plan assets minus employee contributions remaining in the plan on the valuation date, with interest credited thereon under the terms of the plan, and  $y$  equals the present value of all vested benefits minus such employee contributions and interest.

(e) *Examples.* This section is illustrated by the following examples:

(1) *Example 1—(i) Facts.* (A) A participant who is not a majority owner was eligible to retire 3.5 years before the proposed termination date. The participant retired two years before the proposed termination date with 20 years of service. Her final five years' average salary was \$45,000, and she was entitled to an unreduced early retirement benefit of \$1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61(b) or (c).

(B) On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final five years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1.5 percent. The amendments improving benefits were put into effect 3.5 years before the proposed termination date. There were no other amendments during the five-year period.

(C) The participant's estimated guaranteed benefit computed under § 4022.62(c) is \$1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or \$1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the asset-funded benefit.

(ii) *Estimated asset-funded benefit.* (A) For a participant who is not a majority owner, the amount of the estimated asset-funded benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of the

normal retirement benefit under the provisions of the plan in effect five years before the proposed termination date and the normal retirement benefit under the plan provisions in effect on the proposed termination date.

(B) Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan five years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated asset-funded benefit is \$1,125 ( $0.015/0.020 \times \$1,500$ ) per month. This amount is less than the estimated guaranteed benefit of \$1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is \$1,350 per month.

(iii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, the methodology would be the same, but "bankruptcy filing date" would be substituted for "proposed termination date" each place that "proposed termination date" appears in the example, and the numbers would change accordingly.

(2) *Example 2—(i) Facts.* (A) A participant who is a majority owner retired on the proposed termination date of October 31, 2012. The original plan had been in effect for seven full years as of the proposed termination date. Under the provisions of the plan in effect five years before the proposed termination date, the participant is entitled to a single life annuity of \$500 per month. The plan was amended to increase benefits three full years before the proposed termination date. Under these plan amendments, the participant is entitled to a single life annuity of \$1,000 per month.

(B) The participant's estimated guaranteed benefit computed under



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§ 4022.62(d) is \$455 per month ( $\$1,000 \times 0.65 \times \frac{7}{10}$ ).

(C) It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal \$2 million. The present value of all benefits in pay status is \$1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is \$0.75 million based on applicable PBGC interest rates.

(ii) *Estimated asset-funded benefit.* (A) Paragraph (d) of this section provides that the amount of the estimated asset-funded benefit payable with respect to a participant who is a majority owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

(B) Under paragraph (c) of this section, the participant's estimated priority category 3 benefit is \$500 ( $\$1,000 \times \$500/\$1,000$ ) per month.

(C) Under paragraph (d) of this section, the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (*i.e.*, as if the participant were not a majority owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i) of this section. The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is \$1,000 per month times 0.65 (the factor from column (b) of Table I in § 4022.62(c)(2)), or \$650 per month. Multiplying \$650 by the category 4 funding ratio of  $\frac{2}{3}$  ( $(\$2 \text{ million} - \$1.5 \text{ million})/\$0.75 \text{ million}$ ) produces an estimated category 4 benefit of \$433.33 per month.

(D) Because the estimated category 4 benefit so computed is less than the estimated category 3 benefit so computed, the estimated category 3 benefit is the estimated asset-funded benefit. Because the estimated category 3 benefit so computed is greater than the es-

timated guaranteed benefit of \$455 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated priority category 3 benefit of \$500 per month.

[61 FR 34028, July 1, 1996; 61 FR 36626, July 12, 1996, as amended at 76 FR 34604, June 14, 2011; 83 FR 49805, Oct. 3, 2018]

### Subpart E—PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

#### § 4022.81 General rules.

(a) *Recoupment of benefit overpayments.* If at any time the PBGC determines that net benefits paid with respect to any participant in a PBGC-trusted plan exceed the total amount to which the participant (and any beneficiary) is entitled up to that time under title IV of ERISA, and the participant (or beneficiary) is, as of the termination date, entitled to receive future benefit payments, the PBGC will recoup the net overpayment in accordance with paragraph (c) of this section and § 4022.82. Notwithstanding the previous sentence, the PBGC may, in its discretion, recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally do so unless net benefits paid after the termination date exceed those to which a participant (and any beneficiary) is entitled under the terms of the plan before any reductions under subpart D.

(b) *Reimbursement of benefit underpayments.* If at any time the PBGC determines that net benefits paid with respect to a participant in a PBGC-trusted plan are less than the amount to which the participant (and any beneficiary) is entitled up to that time under title IV of ERISA, the PBGC will reimburse the participant or beneficiary for the net underpayment in accordance with paragraph (c) of this section and § 4022.83.

(c) *Amount to be recouped or reimbursed.* In order to determine the amount to be recouped from, or reimbursed to, a participant (or beneficiary), the PBGC will calculate a monthly account balance for each month ending after the termination

date. The PBGC will start with a balance of zero as of the end of the calendar month ending immediately prior to the termination date and determine the account balance as of the end of each month thereafter as follows:

(1) *Debit for overpayments.* The PBGC will subtract from the account balance the amount of overpayments made in that month. Only overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA will be included.

(2) *Credit for underpayments.* The PBGC will add to the account balance the amount of underpayments made in that month. Only underpayments made on or after the termination date will be included.

(3) *PPA 2006 bankruptcy termination.* The provisions of paragraphs (c)(1) and (2) of this section regarding the overpayments and underpayments that will be included in the account balance apply regardless of whether the termination is a PPA 2006 bankruptcy termination.

(4) *Credit for interest on net underpayments.* If at the end of a month there is a positive account balance (a net underpayment), the PBGC will add to the account balance interest thereon for that month using—

(i) For months after May 1998, the applicable federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month (or, where the rate for a month is not available at the time the PBGC calculates the amount to be recouped or reimbursed, the most recent month for which the rate is available) based on monthly compounding; and

(ii) For May 1998 and earlier months, the immediate annuity rate established for lump sum valuations as set forth in Table II of appendix B of part 4044 of this chapter.

(5) *No interest on net overpayments.* If at the end of a month, there is a negative account balance (a net overpayment), there will be no interest adjustment for that month.

(d) *Death of participant—*(1) *Benefit overpayments.* If the PBGC determines that, at the time of a participant's death, there was a net overpayment to the participant—

(i) *Future annuity payments.* If the participant was entitled to future annuity payments as of the plan's termination date, the PBGC will (except as provided in paragraph (a) of this section) recoup the overpayment from the person (if any) who is receiving survivor benefits under the annuity.

(ii) *No future annuity payments.* If the participant was not entitled to future annuity benefits as of the plan's termination date, the PBGC may seek repayment of the overpayment from the participant's estate.

(2) *Benefit underpayments.* If the PBGC determines that, at the time of a participant's death, there was a net underpayment to the participant—

(i) *Future annuity payments.* If the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, the PBGC will pay the underpayment to the person who is receiving survivor benefits; for this purpose, if the person receiving survivor benefits is an alternate payee under a qualified domestic relations order, the PBGC will treat the benefit as if payments do not continue after the participant's death (see paragraph (d)(2)(ii) of this section).

(ii) *No future annuity payments.* If the benefit is not in the form of a joint-and-survivor or other annuity (e.g., a certain-and-continuous annuity) under which payments may continue after the participant's death or although the benefit is in such a form payments do not continue after the participant's death (i.e., in the case of a joint-and-survivor annuity, the person designated to receive survivor benefits predeceased the participant or, in the case of another annuity under which payments may continue after the participant's death the participant died with no payments owed for future periods), the PBGC will pay the underpayment to the person determined

## § 4022.82

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under the rules in §§ 4022.91 through 4022.95.

[63 FR 29354, May 29, 1998, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34604, June 14, 2011]

### § 4022.82 Method of recoupment.

(a) *Future benefit reduction.* The PBGC will recoup net overpayments of benefits by reducing the amount of each future benefit payment to which the participant or any beneficiary is entitled by the fraction determined under paragraphs (a)(1) and (a)(2) of this section, except that benefit reduction will cease when the amount (without interest) of the net overpayment is recouped. Notwithstanding the preceding sentence, the PBGC may accept repayment ahead of the recoupment schedule.

(1) *Computation.* The PBGC will determine the fractional multiplier by dividing the amount of the net overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA.

(i) *Non-PPA 2006 bankruptcy termination.* In a non-PPA bankruptcy termination, the PBGC will determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date.

(ii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, PBGC will determine the amount of benefit payable with respect to the participant under title IV of ERISA taking into account the limitations in sections 4022(g) and 4044(e) (and corresponding provisions of these regulations), and will determine the present value of that amount as of the termination date, using PBGC interest rates and factors in effect on the termination date.

(iii) *Facts and circumstances.* The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

(2) *Limitation on benefit reduction.* Except as provided in paragraph (a)(1) of this section, the PBGC will reduce benefits with respect to a participant or beneficiary by no more than the greater of—

(i) Ten percent per month; or

(ii) The amount of benefit per month in excess of the maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA, determined without adjustment for age and benefit form.

(3) *PBGC notice to participant or beneficiary.* Before effecting a benefit reduction pursuant to this paragraph, the PBGC will notify the participant or beneficiary in writing of the amount of the net overpayment and of the amount of the reduced benefit computed under this section.

(4) *Waiver of de minimis amounts.* The PBGC may, in its discretion, decide not to recoup net overpayments that it determines to be *de minimis*.

(5) *Final installment.* The PBGC will cease recoupment one month early if the amount remaining to be recouped in the final month is less than the amount of the monthly reduction.

(b) *Full repayment through recoupment.* Recoupment under this section constitutes full repayment of the net overpayment.

[63 FR 29354, May 29, 1998, as amended at 76 FR 34604, June 14, 2011]

### § 4022.83 PBGC reimbursement of benefit underpayments.

When the PBGC determines that there has been a net benefit underpayment made with respect to a participant, it shall pay the participant or beneficiary the amount of the net underpayment, determined in accordance with § 4022.81(c), in a single payment.

[61 FR 34028, July 1, 1996, as amended at 63 FR 29355, May 29, 1998]

## Subpart F—Certain Payments Owed Upon Death

SOURCE: 67 FR 16957, Apr. 8, 2002, unless otherwise noted.

### § 4022.91 When do these rules apply?

(a) *Types of benefits.* Provided the conditions in paragraphs (b) and (c) of this section are satisfied, these rules (§§ 4022.91 through 4022.95) apply to any benefits we may owe you (including benefits we owe you because your plan owed them) at the time of your death,

such as a payment of a lump-sum benefit that we calculated as of your plan's termination date but have not yet paid you or a back payment to reimburse you for monthly underpayments. We may owe you benefits at the time of your death if—

(1) You are a participant in a terminated plan;

(2) You are a beneficiary (including an alternate payee) of a participant; or

(3) You are a designee or other payee (e.g., a participant's next of kin) under these rules, as explained in § 4022.93.

(b) *Payments do not continue after death.* These rules apply only if payments do not continue after your death. (If payments continue after your death, we will make up any underpayment to you at the time of your death under the rule in § 4022.81(d)(2)(i) by paying it to the person who is entitled to receive those continuing payments.) Payments do not continue after your death if—

(1) Your benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after your death (e.g., a certain-and-continuous annuity);

(2) Your benefit is in the form of a joint-and-survivor annuity and the person designated to receive survivor benefits died before you; or

(3) Your benefit is in the form of another type of annuity under which payments may continue after your death (e.g., a certain-and-continuous annuity) but you die with no payments owed for future periods.

(c) *Time of death.* These rules apply only if you die—

(1) On or after the date we take over your plan (as trustee); or

(2) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid all benefits owed to you at the time of your death.

(d) *Effect of plan or will.* These rules apply even if there is a contrary provision in a plan or will.

#### **§ 4022.92 What definitions do I need to know for these rules?**

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

“We” means the PBGC.

“You” means the person to whom we may owe benefits at the time of death.

#### **§ 4022.93 Who will get benefits the PBGC may owe me at the time of my death?**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section (which explain what happens if you die before the date we take over your plan or within 180 days after the date we take over your plan), we will pay any benefits we owe you at the time of your death to the person(s) surviving you in the following order—

(1) *Designee with the PBGC.* The person(s) you designated with us to get any benefits we may owe you at the time of your death. See § 4022.94 for information on designating with us.

(2) *Spouse.* Your spouse. We will consider a person to whom you are married to be your spouse even if you and that person are separated, unless a decree of divorce or annulment has been entered in a court.

(3) *Children.* Your children and descendants of your deceased children.

(i) *Adopted children.* In determining who is a child or descendant, an adopted child is treated the same way as a natural child.

(ii) *Child dies before parent.* If one of your children dies before you, any of your grandchildren through that deceased child will equally divide that deceased child's share; if one of your grandchildren through that deceased child dies before that deceased child, any of your great-grandchildren through that deceased grandchild will equally divide that deceased grandchild's share; and so on.

(4) *Parents.* Your parents. A parent includes an adoptive parent.

(5) *Estate.* Your estate, provided your estate is open.

(6) *Next of kin.* Your next of kin in accordance with applicable state law.

(b) *Pre-trusteeship deaths.* If you die before the date we take over your plan and, by that date, the plan administrator has not paid all benefits owed to you at the time of your death, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get

those benefits (provided the designation clearly applies to those benefits). If there is no such designation, we will pay those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

(c) *Deaths shortly after trusteeship.* If you die within 180 days after the date we take over your plan and you have not designated anyone with the PBGC under paragraph (a)(1) of this section, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits) before paying those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

**§ 4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?**

(a) *When you may designate.* At any time on or after the date we take over your plan, you may designate with us who will get any benefits we owe you at the time of your death.

(b) *Change of designee.* If you want to change the person(s) you designate with us, you must submit another designation to us.

(c) *If your designee dies before you—(1) In general.* If the person(s) you designate with us dies before you or at the same time as you, we will treat you as not having designated anyone with us (unless you named an alternate designee who survives you). Therefore, you should keep your designation with us current.

(2) *Simultaneous deaths.* If you and a person you designated die as a result of the same event, we will treat you and that person as having died at the same time, provided you and that person die within 30 days of each other.

**§ 4022.95 Examples.**

The following examples show how the rules in §§ 4022.91 through 4022.94 apply. For examples on how these rules apply in the case of a certain-and-continuous annuity, see § 4022.104.

At the time of his death, Charlie was receiving payments under a joint-and-survivor annuity. Charlie designated Ellen to receive survivor benefits under his joint-and-survivor annuity. We underpaid Charlie for periods before his death. At the time of his death, we owed Charlie a back payment to reimburse him for those underpayments.

(a) *Example 1: where surviving beneficiary is alive at participant's death.* Ellen survived Charlie. As explained in § 4022.91(b), because Ellen is entitled to survivor benefits under the joint-and-survivor annuity, we would pay Ellen the back payment.

(b) *Example 2: where surviving beneficiary predeceases participant.* Ellen died before Charlie. As explained in §§ 4022.91(b) and 4022.93, because benefits do not continue after Charlie's death under the joint-and-survivor annuity, we would pay the back payment to the person(s) Charlie designated to receive any payments we might owe him at the time of his death. If Charlie did not designate anyone to receive those payments or his designee died before him, we would pay the back payment to the person(s) surviving Charlie in the following order: spouse, children, parents, estate and next of kin.

**Subpart G—Certain-and-Continuous and Similar Annuity Payments Owed for Future Periods After Death**

SOURCE: 67 FR 16958, Apr. 8, 2002, unless otherwise noted.

**§ 4022.101 When do these rules apply?**

(a) *In general.* These rules (§§ 4022.101 through 4022.104) apply only if you die—

(1) *Required payments for future periods.* Without having received all required payments for future periods under a form of annuity promising that, regardless of a participant's death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity);

(2) *No surviving beneficiary.* Without a surviving beneficiary designated to receive the payments described in paragraph (a)(1) of this section; and

(3) *Time of death.* (i) On or after the date we take over your plan (as trustee); or

(ii) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid any required payments for future periods.

(b) *Effect of plan or will.* These rules apply even if there is a contrary provision in a plan or will.

(c) *Payments owed at time of death.* See §§ 4022.91 through 4022.95 for rules that apply to benefits we may owe you at the time of your death, such as a correction for monthly underpayments.

**§ 4022.102 What definitions do I need to know for these rules?**

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

“We” means the PBGC.

“You” means the person who might die—

(1) Without having received all required payments for future periods under a form of annuity promising that, regardless of a participant’s death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity); and

(2) Without a surviving beneficiary designated to receive the payments described in paragraph (1) of this definition.

**§ 4022.103 Who will get benefits if I die when payments for future periods under a certain-and-continuous or similar annuity are owed upon my death?**

If you die at a time when payments are owed for future periods under a form of annuity promising that, regardless of a participant’s death, there will be annuity payments for a certain period of time (e.g., a certain-and-continuous annuity) or until a certain amount is paid (e.g., a cash-refund annuity or installment-refund annuity), and there is no surviving beneficiary

designated to receive such payments, we will pay the remaining payments to the person determined under the rules in § 4022.93.

**§ 4022.104 Examples.**

The following examples show how the rules in §§ 4022.101 through 4022.103 and 4022.91 through 4022.94 apply in the case of a certain-and-continuous annuity.

(a) *C&C annuity with no underpayment.* At the time of his death, Charlie was receiving payments (in the correct amount) under a 5-year certain-and-continuous annuity. Charlie designated Ellen to receive any payments we might owe for periods after his death (but did not designate an alternate beneficiary to receive those payments in case Ellen died before him). Charlie died with three years of payments remaining.

(1) *Example 1: where surviving beneficiary predeceases participant.* Ellen died before Charlie. As explained in §§ 4022.103 and 4022.93, we would pay the remaining three years of payments to the person(s) surviving Charlie in the following order: spouse, children, parents, estate and next of kin.

(2) *Example 2: where surviving beneficiary dies during certain period.* Ellen survived Charlie and lived another year. We pay Ellen one year of payments. As explained in §§ 4022.103 and 4022.93, we would pay the remaining two years of payments to the person Ellen designated to receive any payments we might owe for periods after Ellen’s death. If Ellen did not designate anyone to receive those payments or her designee died before her, we would pay the remaining year of payments to the person(s) surviving Ellen in the following order: spouse, children, parents, estate, next of kin.

(b) *C&C annuity with underpayment.* At the time of his death, Charlie was receiving payments under a 5-year certain-and-continuous annuity. Charlie designated Ellen to receive any payments we might owe for periods after his death. We underpaid Charlie for periods before his death. At the time of his death, we owed Charlie a back payment to reimburse him for those underpayments.

(1) *Example 3: where participant dies during certain period.* Charlie died with three years of payments remaining. Ellen survived Charlie and lived at least another three years. We pay Ellen the remaining three years of payments. As explained in § 4022.91(b), because Ellen is entitled to survivor benefits under the certain-and-continuous annuity, we would pay Ellen the back payment for the underpayments to Charlie (and for any underpayments to Ellen).

(2) *Example 4: where participant and surviving beneficiary die during certain period.*