2004 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of their Responses

March 2004

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on January 23 and February 25, 2004

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on January 23 and February 25, 2004, with representatives of the Enrolled Actuaries Program Committee. Included also are summaries of the responses to those questions. The summary responses to the questions are intended to reflect as accurately as possible the statements made by the government representatives. However, those responses are merely the current views of the individuals and do not represent the positions of the Pension Benefit Guaranty Corporation or of any other governmental agency, and cannot be relied upon by any person for any purpose. Moreover, the PBGC has not in any way approved this booklet or reviewed it to determine whether the statements herein are accurate or complete.

The following representatives of the Enrolled Actuaries Program Committee took part in the discussions:

Bruce A. Cadenhead, Mercer Human Resource Consulting
Curtis M. Cartolano, Hewitt Associates LLC
Marjorie R. Martin, Aon Consulting
Jay P. Rosenberg, Mellon Human Resources & Investor Solutions
Donald J. Segal, The Segal Company
Kenneth A. Steiner, Watson Wyatt Worldwide
James A. Stinchcomb, Towers Perrin

The following representatives of the Pension Benefit Guaranty Corporation took part in the discussions:

Stuart A. Sirkin, Director, Corporate Policy and Research Department
C. David Gustafson, Chief Policy Actuary
Jane D. Pacelli, Chief Research Actuary
Karen Krist Justesen, Chief Negotiating Actuary
Gail Sevin, Manager, Policy Division, Corporate Policy and Research Department
Peggy Thibault, Actuary
Deborah Forbes, Analyst
Rhonda Migdail, Analyst
James Bloch, Analyst
Michael Jones, Analyst
Harold J. Ashner, Assistant General Counsel for Legislation and Regulations
James L. Beller, Staff Attorney

The Program Committee would like to thank the practitioners who submitted questions for this booklet.

INDEX

QUESTION 1

Premiums - Irrevocable Commitments

When a plan spins off a portion of the plan and terminates that portion (a spinoff/termination), it is required to purchase irrevocable commitments for accrued benefits remaining in the ongoing plan. How should the ongoing plan treat the irrevocable commitments for premium purposes?

RESPONSE:

Assuming all benefit liabilities in the ongoing plan at the date of the spinoff/termination are provided for through irrevocable commitments, the future flat-rate and variable-rate premiums are determined as follows.

(a) A flat-rate premium is not payable with respect to any individual if all benefit liabilities for the individual have been provided through an irrevocable commitment. However, if the individual has benefit liabilities as of any future premium snapshot date (*e.g.*, by earning sufficient additional credited service), the individual will then be counted for the flat-rate premium.

(b) IRS staff has advised the PBGC that the funding calculations (including current liability) may be determined by either including both or excluding both the assets and liabilities related to the irrevocable commitment. Thus, whether the variable-rate premium is determined by using the General Rule or the Alternative Calculation Method, the plan would either include both or exclude both the assets and liabilities related to the irrevocable commitment, in accordance with the way they are treated for the funding calculations.

QUESTION 2

Premiums - Unlocatable Participants

Question 9 of the PBGC's 2002 Blue Book addressed the situation where a plan administrator knows that a terminated vested participant is deceased, but does not know with certainty whether the participant has a surviving beneficiary. The response made clear that, in such circumstances, the plan administrator may drop the participant from the participant count for purposes of the PBGC's flat-rate premium and disregard the benefit attributable to the participant (including any survivor benefit) for purposes of the PBGC's variable-rate premium, if the plan administrator reasonably believes that the deceased participant has no living beneficiary who may be entitled to benefits from the plan. (The response went on to identify some of the factors to be considered in determining when this point may be reached.)

(a) Where the plan administrator cannot locate the terminated vested participant, but does not know with certainty whether the terminated vested participant is deceased, under what circumstances may the plan administrator:

(1) Drop a participant from the participant count for purposes of the flat-rate premium; or

(2) Disregard the benefit attributable to the participant (including any survivor benefit) for purposes of the variable-rate premium?

(b) Does it make any difference if the plan provides for the forfeiture of benefits in accordance with IRS regulation 1.411(a)-4(b)(6)? (This regulation provides that a benefit that is payable is not treated as forfeitable merely because the benefit is forfeitable on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made for the forfeited benefit.)

RESPONSE:

The following response is limited to the premium area. The circumstances in which a participant or benefit could be disregarded in other contexts, such as plan termination, may be different.

(a)(1) Flat-rate premium. The mere fact that the plan administrator cannot locate the participant — even if coupled with an inability to locate any potential living beneficiary — is not an adequate basis for dropping the participant from the participant count for purposes of the flat-rate premium. However, the plan administrator may drop the participant from the participant count for purposes of the flat-rate premium if the plan administrator reasonably believes that the participant is deceased and has no living beneficiary who may be entitled to benefits from the plan. There is no hard-and-fast rule about when this point may be reached. Factors to be considered include the length of time since the participant terminated employment, what measures the plan has taken to locate the participant and determine

whether the participant is deceased, how old the participant would be if still alive, whether the participant was known to be married, how old the spouse (or other beneficiary) would be if still alive, when a benefit would (or would have) become payable to the participant or to any possible beneficiary, and what measures the plan has taken to locate any possible beneficiary and determine whether the beneficiary is deceased.

(a)(2) Variable-rate premium. The point at which a plan administrator may disregard the benefit attributable to an unlocatable terminated vested participant (including any survivor benefit) for purposes of the variable-rate premium depends on when that benefit may be disregarded for purposes of determining current liability (because unfunded vested benefits is derived from unfunded current liability). IRS staff has advised the PBGC that current liability must be determined using reasonable actuarial assumptions and that the PBGC's test for dropping a participant from the participant count for purposes of the flat-rate premium (as stated in the previous paragraph) when used for determining current liability is consistent with the application of reasonable actuarial assumptions. Therefore, the test for dropping a participant from the flat-rate premium (as stated in the previous paragraph) may also be used as the test for disregarding the benefit attributable to the participant (including any survivor benefit) for purposes of the variable-rate premium. (IRS staff has also advised the PBGC that the PBGC's test, as stated in the response to Question 9 of the PBGC's 2002 Blue Book, for disregarding a potential beneficiary's benefit for purposes of the variable-rate premium is also consistent with the application of reasonable actuarial assumptions when used as the test for disregarding that potential beneficiary's benefit for purposes of determining the plan's current liability.)

(b) Effect of forfeiture provision. A forfeiture provision as described in the question has no bearing on whether an individual may be dropped from the participant count for purposes of the flat-rate premium, given that the unlocatable individual does not lose the right to claim benefits. However, where there is a forfeiture of benefits in accordance with IRS regulation 1.411(a)-4(b)(6), IRS staff has advised the PBGC that the benefit attributable to the participant (including any survivor benefit) is disregarded for purposes of determining the plan's current liability. In such circumstances, because unfunded vested benefits is derived from unfunded current liability, that benefit would also be disregarded for purposes of the PBGC's variable-rate premium. Thus, where there has been a forfeiture of benefits in accordance with IRS regulation 1.411(a)-4(b)(6), the participant's benefit may be disregarded for the variable-rate premium even though the participant is included for purposes of the flat-rate premium.

QUESTION 3

Premiums - Full Funding Limit Exemption for De Minimis Mergers

Question 8 of the PBGC 2002 Blue Book addresses the full funding limitation exemption from payment of PBGC variable-rate premiums in the case of plan mergers. Is this applicable to de minimis mergers (as defined under the IRS regulations section 414(l)-1(h))? Are there any special exemptions applicable to de minimis mergers, *e.g.*, the smaller plan may be ignored for purposes of satisfying the full funding limitation exemption?

RESPONSE:

The same principles that are provided in Question 8 of the 2002 Blue Book would apply to a de minimis merger. There are currently no special exemptions with respect to the full funding limitation in connection with de minimis mergers.

QUESTION 4

Premiums - Interpretation of Significant Event 7

Certain plans are required to take into account the occurrence of "significant events" in calculating unfunded vested benefits for purposes of the variable-rate premium. Significant event 7 (described in § 4006.4(d)(2)(vii)) is "[a]ny other event or trend that results in a material increase in the value of unfunded vested benefits." If there is such an "other event or trend" that results in a material *decrease* in unfunded vested benefits, may the plan reflect the decrease under Significant Event 7?

RESPONSE:

No. Under the plain language of the PBGC's regulation describing Significant Event 7, the plan is not permitted to reflect a decrease in unfunded vested benefits. If the inability to reflect such a decrease makes use of the Alternative Calculation Method undesirable, the General Rule is always available.

QUESTION 5

Standard Terminations - Time for Determining Majority Owner Status

A plan is terminating in a standard termination. The plan administrator issues the notice of intent to terminate on April 15, 2004. The proposed termination date is July 1, 2004. On August 1, 2004, the majority owner sells his interest in the plan's contributing sponsor and is no longer a majority owner. May the former majority owner elect an alternative treatment of his benefit in accordance with 29 CFR § 4041.21(b)(2) on August 15, 2004?

RESPONSE:

No. The PBGC noted in the preamble to the final rule providing for an alternative treatment by a majority owner that it would not "permit participants other than majority owners . . .to elect such an alternative treatment of their benefit . . . out of concern that they might be coerced into so electing." 57 Fed. Reg. 59200, 59212 (December 14, 1992). The PBGC interprets its regulations as limiting the ability to elect such an alternative treatment to those participants who are majority owners *at the time of the election* because such an interpretation should serve to effectively eliminate the risk of coercion.

QUESTION 6

Standard Terminations - Application of Constructive Ownership Rules in Determining Majority Owner Status

A plan is terminating in a standard termination.

(a) A husband and wife are both participants in the plan and each owns 40 percent of the contributing sponsor. Is each a majority owner and thus able to elect alternative treatment of his or her benefit in accordance with 29 CFR § 4041.21(b)(2)?

(b) Three persons are each participants in the plan and each owns one third of the stock of the contributing sponsor and each has an unrestricted option to buy out the other owners (subject to an ordering rule). Is each of these persons a majority owner and therefore able to elect an alternative treatment of his or her benefit in accordance with 29 CFR § 4041.21(b)(2)?

RESPONSE:

(a) Yes. Under the constructive ownership rules of Code sections 414(b), each spouse would be a majority owner and thus able to elect an alternative treatment of his or her benefit in accordance with 29 CFR § 4041.21(b)(2). See Code section 1563(e)(5) and Treas. Reg. § 1-414(b)-1.

(b) Yes. If three persons (whether or not related) each owned one-third of the contributing sponsor, with each owner having an unrestricted option to buy out the other owners (subject to an ordering rule), each would be a majority owner under the constructive ownership rules of Code section 414(b) and thus able to elect an alternative treatment of his or her benefit in accordance with 29 CFR § 4041.21(b)(2). See Code section 1563(e)(1) and Treas. Reg. § 1.414(b)-1.

QUESTION 7

Standard Terminations - Refusal by Participant to Return Election Form

A plan is terminating in a standard termination. With the exception of one participant, all participants have elected lump sums. However, one participant, who is entitled to a non-de minimis benefit, refuses to return the election form. What are the plan's options for completing the standard termination?

RESPONSE:

The plan must purchase an annuity contract for the participant in order to complete the termination. Under 29 CFR § 4041.28(c), the plan administrator must, in accordance with all applicable requirements under the Code and ERISA, distribute plan assets in satisfaction of all plan benefits by purchase of an irrevocable commitment from an insurer or in another permitted form. If a participant refuses to elect another permitted form, the plan administrator has no choice but to purchase an irrevocable commitment for the participant in order to complete the termination. The annuity contract must preserve all of the participant's benefit options. This would include not only the qualified joint-and-survivor annuity, but also any other optional forms, such as a "certain-and-continuous" benefit.

QUESTION 8

Guaranteed Benefits - Post-65 Maximum Guaranteed Benefit

The PBGC maximum guaranteed benefit is reduced where a participant is younger than age 65 at the later of the termination date or the time the participant begins to receive the benefit. Is the maximum guaranteed benefit increased where the participant is older than age 65?

RESPONSE:

Where the benefit application was received, or the formal benefit determination was issued, on or after March 6, 2000, the PBGC maximum guaranteed benefit is increased where the participant is older than age 65 at the later of the termination date or the time the participant begins to receive the benefit. The table below shows a sample of the late retirement factors the PBGC uses to increase the maximum guaranteed benefit.

PBGC Late Retirement Factors

Age	Factor
65	1.0000
66	1.1000
67	1.2100
68	1.3400
69	1.4900
70	1.6600
71	1.9360
72	2.2120
73	2.4880
74	2.7640
75	3.0400
76	3.7160
77	4.3920
78	5.0680
79	5.7440
80	6.4200
81	8.4480
82	10.4750
83	12.5040
84	14.5320
85	16.5630

QUESTION 9

Guaranteed Benefits - Phase-in of Scheduled Benefit Increases

Pursuant to a collective bargaining agreement, Plan X was amended to provide scheduled benefit increases for the three years covered under the collective bargaining agreement. The amendment was adopted on December 31, 1999. The first scheduled increase was effective on January 1, 2000; the second scheduled increase was effective on January 1, 2001; and the third scheduled increase was effective on January 1, 2002. Plan X terminates on June 30, 2004. How should this amendment be treated for phase-in purposes?

RESPONSE:

For phase-in purposes, a benefit increase is effective on the later of the date it is adopted or effective. In this case, the three scheduled increases became effective on January 1 of 2000, 2001, and 2002, respectively. Therefore, the first scheduled increase was in effect for four full years as of the termination date and is phased in at the rate of 80% (or, if greater, $80 per month). The second scheduled increase was in effect for three full years and is phased in at the rate of 60% (or, if greater, $60 per month). The third scheduled increase was in effect for two full years and is phased in at the rate of 40% (or, if greater, $40 per month).

QUESTION 10

Participant Notice - Persons Entitled to Receive Notice; Time of Notice

The PBGC's regulation on Participant Notices (29 CFR Part 4011) contains certain constraints on changing, "from one plan year to the next," the date for determining who is a person that must receive the Participant Notice and on changing, "from one plan year to the next," the issuance date of the Participant Notice.

(a) For the first plan year for which a Participant Notice is required to be issued, are there any constraints on selecting the date for determining who is a person that must receive the Participant Notice or the issuance date of the Participant Notice, provided that in each case the date is within the permitted time period?

(b) How do the rules on permitted changes to the date for determining who is a person that must receive the Participant Notice or the issuance date of the Participant Notice apply where a Participant Notice is not required to be issued for a particular plan year, *e.g.*, where a Participant Notice was required for the 2002 plan year, was not required to be issued for the 2003 plan year, and is required to be issued for the 2004 plan year?

RESPONSE:

The PBGC's Participant Notice regulation provides that, in determining who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries (29 CFR § 4011.7). The regulation also provides that a plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline (including extensions) for filing the annual report for the previous plan year and may change the date of issuance of a Participant Notice from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver or a missed contribution (29 CFR § 4011.8).

(a) For the first plan year for which a Participant Notice is issued, there are no constraints on selecting the date for determining who is a person that must receive the Participant Notice or the issuance date of the Participant Notice, provided that in each case the date is within the permitted time period.

(b) Where the plan administrator is not required to issue a Participant Notice for the immediately preceding plan year, there are no constraints on selecting the date for determining who is a person that must receive the Participant Notice for the current plan year or the issuance date of that Participant Notice, provided that in each case the date is within the permitted time period.

QUESTION 11

Reportable Events - Asset Sale

Company X, which maintains a defined benefit pension plan, is planning to sell all of its assets to Company Y. Company Y is not assuming the pension plan. What are some key PBGC issues for the plan sponsor and plan administrator to consider?

RESPONSE:

(a) Reporting. Although the sale of assets is not itself an event that must be reported to the PBGC pursuant to ERISA section 4043 and Part 4043 of the PBGC's regulations, it is often the case that such a sale will be accompanied by or give rise to an event that is reportable (unless a waiver applies). For instance, when all the assets of a company are sold, the plan will often have a significant reduction in active participants. (See 29 CFR § 4043.23.) In addition, the transfer of the proceeds from the sale to another member of the controlled group may be an extraordinary dividend. (See 29 CFR § 4043.31 and .64.) And in some cases, the plan's sponsor, or a member of the sponsor's controlled group, may be involved in a liquidation, bankruptcy filing, or loan default at or about the time of the asset sale. (See 29 CFR §§ 4043.30, .34, .35, .63, .67, and .68.) The asset sale may also constitute a substantial cessation of operation that must be reported to the PBGC pursuant to ERISA § 4062(e).

(b) PBGC monitoring. In some cases, the PBGC will contact the plan sponsor or plan administrator for information about the asset sale or any related transactions, even if reporting is not otherwise required. For instance, the PBGC may contact a company pursuant to the PBGC's Early Warning Program. See Technical Update 00-3: PBGC's Early Warning Program (July 24, 2000). This Technical Update can be found on the PBGC Web site at www.pbgc.gov/laws/techupdates/tech00-3.htm.

(c) Plan termination and employer liability. Even if a company is going out of business in connection with an asset sale (or otherwise), the plan administrator (who is often the plan sponsor) is responsible for continuing the operation of the plan until it is terminated and the termination process is complete (including any required distribution of assets). Company X will have to decide what it intends to do with the pension plan. Other members of Company X's controlled group could continue to maintain the plan. Company X could seek to terminate the plan voluntarily, either in a distress or standard termination depending upon the circumstances. Or the PBGC may determine that it should seek to have the plan terminated under ERISA section 4042. The PBGC routinely seeks to recover the full amount of unfunded benefit liabilities under section 4062 from the sponsor and any members of its controlled group. In addition, if the facts suggest that a principal purpose of any person entering into a transaction is to evade or avoid pension liability, the PBGC may also seek to recover under section 4069.

QUESTION 12

Reportable Events - Transfer of Benefit Liabilities

Section 4043.32 of the PBGC's Reportable Events regulation contains a number of waivers for the reportable event notice required within 30 days of a transfer of benefit liabilities to a plan of another controlled group. Typically, plan spinoff calculations are done some time after the actual "as of" or effective transfer date. Until the calculations are done, the contributing sponsor and plan administrator may not know whether one of the waivers applies, such as the waiver for calculations made using PBGC safe harbor assumptions.

(a) How is the 30-day deadline determined in these situations: from the date as of which the spinoff occurs, or from the date the final determination is made and it is known whether the safe harbor rates will, or will not, be used?

(b) If the former, is it likely that the full late filing penalty would be assessed in these situations where the notice is delayed until calculations are completed?

RESPONSE:

(a) Deadline and extension requests. The 30-day deadline is measured from the date the plan administrator or contributing sponsor knows or has reason to know that the reportable event has occurred, regardless of the potential availability of any waiver from reporting. Note that the information that PBGC Form 10 ("Post-Event Notice of Reportable Events") calls for in connection with a transfer of benefit liabilities would ordinarily be available before final spinoff (or other transfer) calculations have been done. That information consists of identifying information, a brief description of "the pertinent facts relating to the event," the "[n]ame, contributing sponsor and EIN/PN of transferee plan(s); [an] [e]xplanation of the actuarial assumptions used in determining the value of benefit liabilities (and, if appropriate, plan assets) transferred; [and an] *[e]stimate* of the assets, liabilities, and number of participants whose benefits are transferred" (emphasis added). Nevertheless, if there is a problem in filing a complete report by the deadline, the plan administrator or contributing sponsor should contact the PBGC, preferably *well before* the deadline has passed, to request a case-specific waiver or extension. The PBGC has authority to grant case-specific waivers and extensions when it finds convincing evidence that a waiver or extension is appropriate. (See 29 CFR § 4043.4.)

(b) Penalties. Any late filing penalty would be based on a review of the facts and circumstances. In deciding the amount, if any, of the penalty, the PBGC would take into account whether and when the plan administrator or contributing sponsor contacted the PBGC to request a waiver or extension and the basis for the request. (Of course, if the PBGC granted a complete reporting waiver, or granted a reporting extension and a complete report was filed by the extended deadline, there would be no penalty.)

QUESTION 13

Reportable Events - "Retroactively Missed" Contributions

In the following situations, will the PBGC assess a penalty for failure to file a reportable events notice or Form 10, or perfect or enforce any lien that may have arisen under IRC section 412(n)?

(a) "Recharacterized" contributions. Assume that:

(1) Contributions are made to a calendar year plan on April 15, 2004, and July 15, 2004, in amounts that would be sufficient to satisfy the first two quarterly contribution requirements for the 2004 plan year if those amounts were designated as being "for" the 2004 plan year.

(2) Those amounts are later designated as being "for" the 2003 plan year in the plan's 2003 Form 5500, Schedule B.

(3) No portion of the recharacterized contributions is needed to avoid a funding deficiency in the plan's funding standard account for the 2003 plan year (after taking into account the "catch-up" contribution made to the plan on September 15, 2004).

(4) No reportable events notice is filed within 30 days after April 15, 2004, or within 30 days after July 15, 2004.

(5) No Form 200 is filed within 10 days after either of those dates.

(b) "Missed" quarterlies due to "corridor" interest rate choice. Assume that:

(1) Contributions are made to a calendar year plan on April 15, 2003, July 15, 2003, October 15, 2003, January 15, 2004, April 15, 2004, and July 15, 2004, in amounts that would be sufficient to satisfy each of the four quarterly contribution requirements for the 2003 plan year and each of the first two quarterly contribution requirements for the 2004 plan year if the plan used a current liability interest rate for the 2003 plan year that is at the top of the "corridor" for the 2003 plan year.

(2) The plan instead uses a current liability interest rate for the 2003 plan year that is not at the top of the corridor for the 2003 plan year.

(3) As a result, the amounts paid on each of these six dates is less than the amount required.

(4) There is no accumulated funding deficiency in the plan's funding standard account for the 2003 plan year (after taking into account the "catch-up" contribution made to the plan on September 15, 2004).

(5) No reportable events notice is filed within 30 days after April 15, 2003, July 15, 2003, October 15, 2003, January 15, 2004, April 15, 2004, or July 15, 2004.

(6) No Form 200 is filed within 10 days after any of those dates.

RESPONSE:

In each of the situations described in the question, both the determination of if and when there was a missed contribution resulting from the "recharacterized" contributions (as described in paragraph (a)) or from the choice of a "corridor" interest rate (as described in paragraph (b)) and the determination of if and when a lien arose as a result of any such missed contribution are made under the Internal Revenue Code and are within the jurisdiction of the Internal Revenue Service. However, in each of these situations, assuming that there was such a missed contribution or that such a lien arose, as a matter of enforcement discretion the PBGC would neither assess a penalty based on failure to file a timely reportable events notice or Form 200 nor perfect or enforce that lien, provided that a reportable events notice or Form 200 (as applicable) is filed with the PBGC within 30 days (in the case of a reportable events notice) or within 10 days (in the case of a Form 200) after the 2003 Schedule B is filed. Note that, in situation (b), it makes no difference whether the current liability interest rate that the plan used for any pre-2003 plan year was at the top, middle, or bottom of the corridor for that plan year.

QUESTION 14

Employer Reporting - Short Information Year

Assume that a controlled group's fiscal year (for all controlled group members) is changed from one beginning July 1 to one beginning October 1 and, as a result, there is a short information year (July 1 to September 30) for purposes of employer financial and actuarial reporting under ERISA section 4010 and 29 CFR Part 4010. Assume further that, during this short information year, a particular plan (*e.g.*, a calendar year plan) has no plan year ending date. In such circumstances, how does the PBGC interpret the provisions of its Part 4010 regulations that refer to the plan year that ends in the information year?

RESPONSE:

Under 29 CFR § 4010.4(b), unfunded vested benefits ("UVBs") for purposes of the $50 million UVB threshold test in § 4010.4(a)(1) are determined "at the end of the plan year ending within the . . . information year." Similarly, § 4010.8(a) requires the reporting of the fair market value of the plan's assets and the value of the plan's benefit liabilities "at the end of the plan year ending within the filer's information year," along with a copy of the actuarial valuation report for that plan year.

The plan is not disregarded for the purposes described in the question merely because there is no plan year ending date within the short information year. In such a case, the $50 million UVB threshold test would be determined as of the end of the last plan year that ended *before* the information year; the fair market value of the plan's assets and the value of the plan's benefit liabilities would also be determined as of the end of that plan year; and the copy of the actuarial report that must be submitted would be the one for that plan year. If the filer was required to file for the previous information year, the actuarial information required to be reported would ordinarily have been included in the previous year's report; if so, the filer may refer to the actuarial information in the previous submission instead of resubmitting that information.

QUESTION 15

Employer Reporting - Foreign Plan of U.S. Controlled Group

Assume that a U.S. controlled group has two plans: a U.S. plan that is covered by Title IV of ERISA and a foreign plan that is exempt from Title IV coverage under ERISA section 4021(b)(7). Under ERISA section 4010 and 29 CFR Part 4010 ("Annual Financial and Actuarial Information Reporting"):

(a) Are the unfunded vested benefits of the foreign plan taken into account for purposes of the $50 million UVB threshold test in § 4010.4(a)(1)?

(b) If the controlled group is required to file a report, is plan actuarial information under 29 CFR § 4010.8 required with respect to the foreign plan?

RESPONSE:

(a) $50M UVB threshold test. No. Under 29 CFR § 4010.4(a)(1), the UVBs of all "plans" are taken into account for purposes of the $50 million UVB threshold test. However, 29 CFR § 4001.2 defines "plan" for various purposes (including for purposes of 29 CFR Part 4010) as "a defined benefit plan within the meaning of ERISA section 3(35) *that is covered by Title IV of ERISA*" (emphasis added). Thus, any UVBs of a plan that is not covered by Title IV of ERISA, such as the foreign plan referenced in the question, are disregarded for purposes of the $50 million threshold test in § 4010.4(a)(1).

(b) Required plan actuarial information. No. Under 29 CFR § 4010.4(a)(1), the actuarial information must be filed for each "plan" (except for those small plans that are exempted from this requirement under 29 CFR § 4010.8(c)). As discussed in paragraph (a) of this response, a "plan" is defined to exclude any plan that is not covered by Title IV of ERISA, such as the foreign plan referenced in the question. Therefore, actuarial information under 29 CFR § 4010.8 is not required with respect to the foreign plan.

QUESTION 16

Employer Reporting - Leap Year

In general, employer reporting under ERISA section 4010 (and 29 CFR Part 4010) is due 105 days after the end of the "Information Year." For a calendar year filer, this is usually April 15. However, because calendar year 2004 is a leap year, the filing deadline for the Information Year that ends on December 31, 2003, would be April 14, 2004. In 2000, the PBGC granted a one day extension of this deadline to offset the effect of the leap year. Is the PBGC doing so for 2004?

RESPONSE:

Yes. The PBGC, in Technical Update 04-1, granted an automatic one-day extension for reporting by controlled groups whose 105-day reporting period includes February 29, 2004. For example, for a calendar year filer, the filing deadline is extended to April 15, 2004. (Note that, as always, existing rules extend a filing date that falls on a weekend or Federal holiday to the next regular business day.) See the Technical Update for details at http://www.pbgc.gov/laws/techupdates/tech04-1a.htm.

QUESTION 17

Employer Reporting - Unreduced Retirement Age

Assume that a plan provides that normal retirement age is the later of age 65 or the 5th anniversary of the date of plan participation. As of December 31, 2003, the participant is age 65 and began plan participation on December 31, 2000. For purposes of determining employer liability under ERISA Section 4010, what is that participant's unreduced retirement age (URA)? Assume the 4010 calculation is done as of December 31, 2003.

RESPONSE:

The participant's URA is age 67, *i.e.*, the 5th anniversary of the date of plan participation. The response to question 17 of the 2001 Blue Book said "[e]ligibility service should be frozen at the valuation date." In this case, however, the participant reaches his URA at age 67 even if he has no further eligibility service.

QUESTION 18

Employer Reporting - Expected Retirement Age

Assume that a plan provides a social security bridge benefit – *i.e.*, a temporary benefit payable only until the participant reaches social security eligibility age. For purposes of valuing benefit liabilities using PBGC termination assumptions for a filing under ERISA section 4010, how is the participant's benefit calculated when determining whether the participant is in the low, medium, or high category for expected retirement age (XRA) purposes?

RESPONSE:

As discussed in the response to question 25 of the 2000 Blue Book, for filings under ERISA section 4010, XRA should be determined using the full accrued benefit (rather than, *e.g.*, the vested or guaranteed benefit) payable at normal retirement age to determine whether the participant is in the high, medium, or low retirement rate category. Because the social security bridge benefit is not part of the full accrued benefit payable at normal retirement age, it is not included for this purpose.