

after the date you receive notice of the Federal reviewing official's decision, the reconsidered determination you received as a result of § 405.240 of this part, or the initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). \* \* \*

\* \* \* \* \*

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart N—[Amended]

■ 11. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 12. Amend § 416.1406 by adding a fourth sentence to paragraph (b)(4) to read as follows:

#### § 416.1406 Testing modifications to the disability determination procedures.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* If you requested review by a Federal reviewing official under part 405 of this chapter and we considered that request a request for review by an administrative law judge as a result of § 405.240(b) of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter.

■ 13. Amend § 416.1430 by adding paragraph (c) to read as follows:

#### § 416.1430 Availability of a hearing before an administrative law judge.

\* \* \* \* \*

(c) If you received a reconsidered determination instead of a decision by a Federal reviewing official as a result of § 405.240 of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter to your request for a hearing before an administrative law judge.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9376]

RIN 1545–BD54

#### Guidance Under Section 1502; Miscellaneous Operating Rules for Successor Persons; Succession to Items of the Liquidating Corporation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 1502 of the Internal Revenue Code that provide guidance regarding the manner in which the items (including items described in section 381(c) but excluding intercompany items under § 1.1502–13) of a liquidating corporation are succeeded to and taken into account in cases in which multiple members acquire the assets of the liquidating corporation in a complete liquidation to which section 332 applies. These final regulations affect corporations filing consolidated returns.

**DATES:** *Effective Date:* These regulations are effective January 15, 2008.

*Applicability Date:* For the date of applicability, see § 1.1502–80(g)(7).

**FOR FURTHER INFORMATION CONTACT:** Amber C. Vogel or Marie C. Milnes-Vasquez, (202) 622–7530 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 22, 2005, the IRS and Treasury Department published in the **Federal Register** (70 FR 8552) a notice of proposed rulemaking (REG–131128–04) under section 1502 proposing guidance as to how multiple consolidated group members (distributee members) that acquire assets in a liquidation to which section 332 applies succeed to and take into account the items of the liquidating corporation. The proposed regulations apply single-entity principles and allocate the items of the liquidating corporation that could be used to offset the income or tax liability of the group or any member to each distributee member to the extent that such items would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under the principles of § 1.1502–32(c) if, immediately before the liquidation, any stock of the liquidating corporation

owned by nonmembers had been redeemed, and then such items had been taken into account.

The proposed regulations also provide allocation rules for the credits and earnings and profits of the liquidating corporation. Under the proposed regulations, each distributee member succeeds to the credits of the liquidating corporation to the extent that the items of income, gain, loss, or deduction attributable to the activities that gave rise to the credit would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under the principles of § 1.1502–32(c) if, immediately before the liquidation, any stock of the liquidating corporation owned by nonmembers had been redeemed, and then such items had been taken into account. The proposed regulations provide similar rules for allocating the liquidating corporation's earnings and profits to the distributee members.

Under the proposed regulations, a distributee member generally succeeds to any other items of the liquidating corporation if, immediately before the liquidation, such distributee owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502–34. In contrast, a distributee member that does not meet the ownership requirements of section 1504(a)(2) without regard to the application of § 1.1502–34 (a non-80-percent distributee) succeeds to any remaining items of the liquidating corporation only to the extent that it would have succeeded to those items if it had purchased, in a taxable transaction, the assets or businesses of the liquidating corporation that it received in the liquidation and had assumed the liabilities that it assumed in the liquidation.

In addition, the proposed regulations also provide guidance regarding the method for allocating the intercompany items of a liquidating subsidiary in cases in which multiple members acquire the assets of a liquidating subsidiary in a complete liquidation to which section 332 applies. The IRS and Treasury Department continue to study those rules. Accordingly, that portion of the notice of proposed rulemaking is withdrawn, and the final regulations do not apply to the intercompany items of the liquidating corporation. For rules applicable to the treatment of those items, see § 1.1502–13(j)(2)(ii).

No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After

consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed in this preamble.

### Explanation and Summary of Comments

#### *The Complete Liquidation Rules*

Section 332(a) provides that no gain or loss shall be recognized on the receipt by a corporation of property distributed in complete liquidation of another corporation. Section 332(b) provides, in part, that a distribution shall be considered to be in complete liquidation only if the corporation receiving such property was, on the date of the adoption of the plan of liquidation and at all times thereafter until the receipt of the property, the owner of stock meeting the requirements of section 1504(a)(2) and the distribution is made in complete cancellation or redemption of all of the stock of the liquidating corporation. Section 1.1502-34 provides that in determining the stock ownership of a member in another corporation (the issuing corporation) for purposes of determining the application of section 332(b)(1) there shall be included the stock of the issuing corporation owned by all other members of the group.

Section 337(a) provides that the liquidating corporation shall not recognize gain or loss on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies. Section 337(c) provides that, for purposes of section 337, the term "80-percent distributee" means only the corporation that meets the 80-percent stock ownership requirements of section 332(b) without regard to the application of any consolidated return regulation. If section 337(a) does not apply, under section 336, the liquidating corporation will generally recognize gain or loss on the distribution of property in complete liquidation as if such property were sold to the distributee at its fair market value. Therefore, a complete liquidation to which section 332 applies may be taxable in whole or in part to the liquidating corporation but tax-free to the distributee members.

#### *Deferred Income Items of the Liquidating Corporation*

Section 1.451-5 generally allows accrual method taxpayers to defer the inclusion in gross income of advance payments for goods until the taxable year in which properly accruable under the taxpayer's method of accounting for tax purposes if such method results in

gross income inclusion no later than when such items are included in gross income under the taxpayer's method of accounting for financial reporting purposes. However, if in a taxable year the taxpayer ceases to exist in a transaction other than one to which section 381(a) applies, or the liability under the agreement otherwise ends, then deferred income amounts are includable in the taxpayer's gross income for such taxable year.

Rev. Proc. 2004-34 (2004-1 CB 991) (see § 601.601(d)(2)(ii)(b) of this chapter) allows taxpayers a limited deferral beyond the taxable year of receipt for certain advance payments. However, inclusion of deferred income is accelerated to the taxable year of receipt if, in such taxable year, the taxpayer ceases to exist in a transaction other than a transaction to which section 381(a) applies or the taxpayer's obligation with respect to the advance payment is satisfied or otherwise ends other than in certain types of section 351(a) transfers or in a transaction to which section 381(a) applies.

Section 455 provides accrual method taxpayers with an election to include prepaid subscription income in gross income in the taxable year in which the liability exists to furnish or deliver a newspaper, magazine, or other periodical. However, if the liability to furnish or deliver the periodical ends or the taxpayer ceases to exist, then the amount of prepaid subscription income not previously included in the taxpayer's gross income is included in the taxpayer's gross income for the taxable year in which the liability ends. If the taxpayer's liability to furnish or deliver the periodical ends as a result of a transaction to which section 381(a) applies, the prepaid subscription income will generally not be included in the taxpayer's gross income, and the acquiring corporation must continue to defer the prepaid subscription income under section 455. Treas. Reg. § 1.455-4 (citing section 381(c)(4) and the regulations under that section).

Section 381(a) applies to a distribution to which section 332 applies. As described in this preamble, a complete liquidation to which section 332 applies is taxable to the liquidating corporation to the extent that it distributes property to a non-80-percent distributee. In particular, the liquidating corporation is treated as if it had sold the property distributed to the non-80-percent distributee at its fair market value. If the liquidating corporation had sold a business with regard to which income items had been deferred (for example, deferred prepaid subscription income under section 455) and the

purchaser had assumed the liquidating corporation's obligation or liability to perform the services or provide the goods relating to the deferred income, then the liquidating corporation would have recognized the deferred income. However, the liquidating corporation would also have been entitled to a deduction under section 162 for any amount paid (or deemed paid) to the purchaser for its assumption of the obligation or liability related to the deferred income. See Rev. Rul. 68-112 (1968-1 CB 62) (see § 601.601(d)(2)(ii)(b) of this chapter). The amount paid (or deemed paid) by the liquidating corporation to the purchaser for its liability assumption would have been includable in the purchaser's gross income. See Rev. Rul. 71-450 (1971-2 CB 78) (see § 601.601(d)(2)(ii)(b) of this chapter).

The IRS and Treasury Department believe that it is appropriate for any deferred income items of a liquidating corporation attributable to assets and/or liabilities transferred to a non-80-percent distributee to be taken into account under applicable principles of law as a result of the liquidation despite the fact that the transaction is described in section 381(a). Likewise, section 332(a) does not apply in determining the recognition or nonrecognition of any income realized by the non-80-percent distributee attributable to its assumption of an obligation or liability related to the deferred income because such income is not gain or loss recognized with respect to the stock of the liquidating corporation. These final regulations include such rules.

#### *Allocation of Items Specific to Property or a Business*

The IRS and Treasury Department also believe that it is appropriate to allocate the full amount of deferred income items or deferred deductions of the liquidating corporation that are attributable to specific property or a specific business to the distributee member that receives such property or business in the liquidation. These final regulations include such a rule.

#### *Succession to Credits of the Liquidating Corporation*

As described in this preamble, the proposed regulations allocate credits to distributee members based on the items of income, gain, loss, or deduction attributable to the activities that gave rise to the credits. Comments were received indicating that it was unclear how to allocate credits that are not clearly associated with items of income, gain, loss, or deduction (for example, the section 53 minimum tax credit). The

IRS and Treasury Department agree with those comments. Accordingly, these final regulations revise the credit allocation rule and provide that credits will be allocated proportionally based on the value of the stock of the liquidating corporation owned by each distributee member. The IRS and Treasury Department believe that this rule represents a reasonable and administrable approach to allocating credits.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file a consolidated return, which tend to be larger businesses. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Amber C. Vogel of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

### Partial Withdrawal of Proposed Regulations

Accordingly, we are not adopting the amendments to § 1.1502-13 as proposed in the notice of proposed rulemaking (REG-131128-04) that was published in the **Federal Register** on Tuesday, February 22, 2005 (70 FR 8552).

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. \* \* \*  
Section 1.1502-80 also issued under 26 U.S.C. 1502. \* \* \*

■ **Par. 2.** Section 1.1502-80 is amended by:

- 1. Removing the second sentence from paragraph (a).
- 2. Revising the third sentence of paragraph (a).
- 3. Adding paragraph (g).

The revision and addition read as follows:

#### § 1.1502-80 Applicability of other provisions of law.

(a) \* \* \* For example, sections 269 and 482 apply for any consolidated year. \* \* \*

\* \* \* \* \*

(g) *Special rules for liquidations to which section 332 applies.*

Notwithstanding the general rule of section 381, if multiple members (distributee members) acquire assets of a corporation in a liquidation to which section 332 applies (regardless of whether any single member owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2)), such members succeed to and take into account the items of the liquidating corporation (including items described in section 381(c), but excluding intercompany items under § 1.1502-13) as provided in this paragraph (g) to the extent not otherwise prohibited by any applicable provision of law. This paragraph (g) does not apply to the intercompany items of the liquidating corporation. See § 1.1502-13(j)(2)(ii).

(1) *Income offset items and deferred income.* Except as otherwise provided in this paragraph (g)(1), each distributee member succeeds to and takes into account the items of the liquidating corporation that could be used to offset the income of the group or any member (including deferred deductions, net operating loss carryovers, and capital loss carryovers) (income offset items) to the extent that such items would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under § 1.1502-32(c) if, immediately prior to the liquidation, any stock of the liquidating corporation owned by nonmembers had been redeemed and then such items had been taken into account. However, each distributee member succeeds to the full amount of any deferred deduction or deferred income item attributable to the

particular property or business operations distributed to such distributee in the liquidation to the extent that such item is not taken into account in the determination of the income or loss of the liquidating corporation with regard to the liquidation under chapter 1 of the Internal Revenue Code (Code). If the liquidating corporation is not a member of the group at the time of the liquidation, the rules of this paragraph (g)(1) are applied as if the liquidating corporation had been a member of the group.

(2) *Accounting for deferred income items.* Solely for the purpose of determining whether deferred income items of a liquidating corporation are taken into account under applicable principles of law as a result of a liquidation to which section 332 applies, the transfer of property to, and the assumption of liabilities by, a distributee member that does not own stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34 immediately prior to the liquidation is not treated as part of a transaction to which section 381(a) applies. In addition, section 332(a) does not apply in determining the recognition or nonrecognition of any income realized by the distributee member under applicable principles of law on account of consideration received (or deemed received) on the assumption of the liquidating corporation's obligation or liability attributable to any deferred income item.

(3) *Credits and earnings and profits.* Each distributee member succeeds to and takes into account a percentage of each credit of the liquidating corporation equal to the value of the stock of the liquidating corporation owned by such distributee at the time of the liquidation divided by the total value of all the stock of the liquidating corporation owned by members of the group at the time of the liquidation. Except to the extent that the distributee member's earnings and profits already reflect the liquidating corporation's earnings and profits, each distributee member succeeds to and takes into account under the principles of § 1.1502-32(c) the earnings and profits, or deficit in earnings and profits, of the liquidating corporation (determined after taking into account the amount of earnings and profits properly applicable to distributions to non-member shareholders under § 1.381(c)(2)-1(c)(2)). If the liquidating corporation is not a member of the group at the time of the liquidation, the rules of this

paragraph (g)(3) are applied as if the liquidating corporation had been a member of the group.

(4) *Other items.* With regard to items to which neither paragraph (g)(1) nor (g)(3) of this section applies, a distributee member that, immediately prior to the liquidation, owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34 succeeds to the items of the liquidating corporation in accordance with section 381 and other applicable principles. A distributee member that, immediately prior to the liquidation, does not own stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34 succeeds to the items of the liquidating corporation to the extent that it would have succeeded to those items if it had purchased, in a taxable transaction, the assets or businesses of the liquidating corporation that it received in the liquidation and had assumed the liabilities that it assumed in the liquidation.

(5) *Determination of the items of a liquidating subsidiary.* For purposes of this section, the items of a liquidating subsidiary include the amount of any consolidated tax attribute attributable to the liquidating subsidiary that is determined pursuant to the principles of § 1.1502-21(b)(2)(iv). In addition, if the liquidating subsidiary is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502-21(b)(2)(iv).

(6) *Examples.* The following examples illustrate the application of this paragraph (g):

*Example 1. Liquidation—80 percent distributee.* (i) *Facts.* X has only common stock outstanding. On January 1 of year 1, X acquired equipment with a 10-year recovery period and elected to depreciate the equipment using the straight-line method of depreciation. On January 1 of year 7, M1 and M2 own 80 percent and 20 percent, respectively, of X's stock. X is a domestic corporation but is not a member of the group that includes M1 and M2. On that date, X distributes all of its assets to M1 and M2 in complete liquidation. The equipment is distributed to M1. Under section 334(b), M1's basis in the equipment is the same as it would be in X's hands. After computing its tax liability for the taxable year that includes the liquidation, X has net operating losses of \$100, business credits of \$40, and earnings and profits of \$80.

(ii) *Succession to items described in section 381(c).* (A) *Losses.* Under paragraph (g)(1) of this section, each distributee member succeeds to X's items that could be used to

offset the income of the group or any member to the extent that such items would have been reflected in investment adjustments to the stock of X it owned under § 1.1502-32(c) if, immediately prior to the liquidation, such items had been taken into account.

Accordingly, M1 and M2 succeed to \$80 and \$20, respectively, of X's net operating loss. (B) *Credits and earnings and profits.* Under paragraph (g)(3) of this section, because, immediately prior to the liquidation, M1 and M2 hold 80 percent and 20 percent, respectively, of the value of the stock of X, M1 and M2 succeed to \$32 and \$8, respectively, of X's \$40 of business credits. In addition, because M1's and M2's earnings and profits do not reflect X's earnings and profits, X's earnings and profits are allocated to M1 and M2 under the principles of § 1.1502-32(c). Therefore, M1 and M2 succeed to \$64 and \$16, respectively, of X's earnings and profits.

(C) *Depreciation of equipment's basis.* Under paragraph (g)(4) of this section, because M1 owns stock in X meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502-34, M1 is required to continue to depreciate the equipment using the straight-line method of depreciation over the remaining recovery period of 4.5 years (assuming X used a half-year convention).

*Example 2. Liquidation—no 80 percent distributee.* (i) *Facts.* The facts are the same as in *Example 1* except that M1 and M2 own 60 percent and 40 percent, respectively, of X's stock. In addition, on January 1 of year 6, X entered into a long-term contract with Y, an unrelated party. The total contract price is \$1000, and X estimates the total allocable contract costs to be \$500. At the time of the liquidation, X had received \$250 in progress payments under the contract and incurred costs of \$125. X accounted for the contract under the percentage of completion method described in section 460(b). In the liquidation, M1 assumes X's contract obligations and rights.

(ii) *Succession to items described in section 381(c).* (A) *Losses.* Under paragraph (g)(1) of this section, each distributee member succeeds to X's items that could be used to offset the income of the group or any member to the extent that such items would have been reflected in investment adjustments to the stock of X it owned under § 1.1502-32(c) if, immediately prior to the liquidation, such items had been taken into account. Accordingly, M1 and M2 succeed to \$60 and \$40, respectively, of X's net operating loss.

(B) *Credits and earnings and profits.* Under paragraph (g)(3) of this section, because, immediately prior to the liquidation, M1 and M2 hold 60 percent and 40 percent, respectively, of the value of the stock of X, M1 and M2 succeed to \$24 and \$16, respectively, of X's \$40 of business credits. In addition, because M1's and M2's earnings and profits do not reflect X's earnings and profits, X's earnings and profits are allocated to M1 and M2 under the principles of § 1.1502-32(c). Therefore, M1 and M2 succeed to \$48 and \$32, respectively, of X's earnings and profits.

(C) *Depreciation of equipment's basis.* Under section 334(a), M1's basis in the

equipment is its fair market value at the time of the distribution. Pursuant to section 168(i)(7), to the extent that M1's basis in the equipment does not exceed X's adjusted basis in the equipment at the time of the transfer, M1 is required to continue to depreciate the equipment using the straight-line method of depreciation over the remaining recovery period of 4.5 years (assuming X used a half-year convention). Any portion of M1's basis in the equipment that exceeds X's adjusted basis in the equipment at the time of the transfer is treated as being placed in service by M1 in the year of the transfer. Thus, M1 may choose any applicable depreciation method, recovery period, and convention under section 168 for such excess basis.

(D) *Method of accounting for long-term contract.* Under paragraph (g)(4) of this section, M1 does not succeed to X's method of accounting for the contract. Rather, under § 1.460-4(k)(2), M1 is treated as having entered into a new contract on the date of the liquidation. Under § 1.460-4(k)(2)(iii), M1 must evaluate whether the new contract should be classified as a long-term contract within the meaning of § 1.460-1(b) and account for the contract under a permissible method of accounting.

*Example 3. Liquidation—deferred items.* (i) *Facts.* X has only common stock outstanding, and M1 and M2 (who are members of the same group) own 80 percent and 20 percent, respectively, of X's stock. X operates two divisions, each of which defers prepaid subscription income pursuant to an election under section 455. X distributes all of its assets in complete liquidation. M1 receives all of the assets of Division 1, including prepaid subscription income, and assumes X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income received by M1 relates. M2 receives all of the assets of Division 2, including prepaid subscription income, and assumes X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income received by M2 relates.

(ii) *Acceleration of deferred income items and succession to other deferred items.* Under paragraph (g)(1) of this section, M1 succeeds to the full amount of the deferred prepaid subscription income of X attributable to Division 1. Under applicable law, X does not recognize the deferred prepaid subscription income attributable to Division 1 because X's liability to furnish or deliver the newspaper, magazine, or other periodical ends as a result of a transaction to which section 381(a) applies. Under paragraph (g)(2) of this section, solely for purposes of determining whether the deferred income items of X attributable to Division 2 are taken into account as a result of the liquidation, the distribution of property to M2 is not treated as a transaction to which section 381(a) applies. Therefore, under applicable law, X's deferred prepaid subscription income attributable to Division 2 is taken into account in the determination of X's income or loss with regard to the liquidation. Further, under paragraph (g)(2) of this section, section 332(a) does not apply in determining the recognition or

nonrecognition of any income that M2 realizes on account of consideration received (or deemed received) on its assumption of X's liability to furnish or deliver the newspaper, magazine, or other periodical to which the prepaid subscription income relates.

(7) *Effective/applicability date.* This paragraph (g) applies to transactions occurring after April 14, 2008.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: January 8, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4022 and 4044

#### Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in February 2008. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective February 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest

assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during February 2008, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during February 2008, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during February 2008.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 5.50 percent for the first 20 years following the valuation date and 4.57 percent thereafter. These interest assumptions represent an increase (from those in effect for January 2008) of 0.08 percent for the first 20 years following the valuation date and 0.08 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for January 2008) of 0.25% in the immediate rate and are otherwise

unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during February 2008, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

#### List of Subjects

##### 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

##### 29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

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

■ 1. The authority citation for part 4022 continues to read as follows:

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

■ 2. In appendix B to part 4022, Rate Set 172, as set forth below, is added to the table.

#### Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

\* \* \* \* \*