PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011, 4022, 4041A, 4044, 4050, 4281

RIN 1212–AA88

Valuation and Payment of Lump Sum Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulations to increase the maximum value of benefits that the PBGC may pay in lump sum form, and certain other lump sum thresholds, from $3,500 to $5,000. The proposed amendments do not affect lump sum benefits paid by ongoing plans.

DATES: Comments must be received on or before June 1, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Marc L. Jordan, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 203(e) of ERISA specifies the maximum value that a plan may provide it will pay in a lump sum (*i.e.*, single installment) to a participant or surviving spouse without consent. The Taxpayer Relief Act of 1997 increased the section 203(e) maximum from $3,500 to $5,000 effective for plan years beginning after August 5, 1997.

The PBGC proposes to amend its regulations to increase various $3,500 thresholds to $5,000 and to make other changes relating to lump sum payments:

• Under the amendment, the PBGC may make a lump sum payment of a benefit that has a value of $5,000 or less as of the plan's termination date. The amendment provides rules for applying the lump sum threshold where the PBGC issues a determination on title IV benefits before it issues a determination on benefits payable under ERISA section 4022(c). Consistent with its current practice, the PBGC will give the participant the option to receive the benefit in the form of an annuity if the monthly benefit (at normal retirement age in the normal form for an unmarried participant) is equal to or greater than $25.

Applicability: The amendment will apply to any initial determination issued on or after the amendment's effective date. For any initial determination issued before the amendment's effective date, the PBGC may make a lump sum payment of a benefit with a value of $5,000 or less, provided (1) the benefit is not yet in pay status, and (2) the participant (with spousal consent) or beneficiary elects the lump sum payment.

• Under the amendment, the lump sum threshold under § 4044.52(b), which is used for determining whether lump sum or annuity assumptions are used to value benefits for purposes of allocating assets to benefits under ERISA section 4044, is $5,000.

Applicability: The amendment will apply to any plan with a termination date on or after the amendment's effective date.

• The reference to the lump sum threshold in the PBGC's Model Participant Notice (29 CFR part 4011) is changed from $3,500 to $5,000.

Applicability: This amendment will apply to any Participant Notice issued on or after the amendment's effective date. However, for a reasonable time period, the PBGC will not treat a Participant Notice as failing to satisfy the Participant Notice requirements merely because it refers to the $3,500 threshold.

• The dollar thresholds in the Missing Participants regulation are increased from $3,500 to $5,000. *See* §§ 4050.2 (definition of *missing participant annuity assumptions*) and 4050.5(a)(2) (*de minimis* lump sum).

Applicability: This amendment will apply to missing participants for whom the deemed distribution date is on or after the amendment's effective date.

• The dollar threshold up to which the plan sponsor of a terminated multiemployer plan that is closing out may make a lump sum payment of nonforfeitable benefits is increased from $3,500 to $5,000.

Applicability: This amendment will apply to any distribution made on or after the amendment's effective date.

• In the case of participant deaths after the termination date, the amendment allows the PBGC to make a lump sum payment of a qualified preretirement survivor annuity with a value of $5,000 or less if the surviving spouse elects a lump sum.

Applicability: This amendment will apply to any lump sum payment made on or after the amendment's effective date.

• The amendment allows the PBGC to make a lump sum payment, without regard to amount, of any benefits due to an estate (*e.g.*, under a certain and continuous benefit where the designated beneficiary predeceases the participant) if the estate elects a lump sum.

Applicability: This amendment will apply to any payment made on or after the amendment's effective date.

Finally, the amendment (1) eliminates, as unnecessary, two provisions in its multiemployer valuation regulation that refer to the $3,500 limit, and (2) makes clear that the lump sum value of a benefit is calculated by valuing the monthly annuity benefit (which excludes the value of certain preretirement death benefits, such as a qualified preretirement survivor annuity).

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. The amendments will affect only *de minimis* benefits and will have an immaterial effect on liabilities associated with plan termination. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4022, 4041A

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

29 CFR Part 4011, 4050, 4281

Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC proposes to amend parts 4011, 4022, 4041A, 4044, 4050, and 4281 of 29 CFR chapter XL as follows:

PART 4011—DISCLOSURE TO PARTICIPANTS

1. The authority citation for part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1311.

Appendix A to Part 4011 [Amended]

2. Appendix A to Part 4011 is amended by removing the sentence ''The PBGC does not pay lump sums exceeding $3,500.'' which immediately precedes the heading ''WHERE TO GET MORE INFORMATION'', and adding in its place the sentence ''The PBGC generally does not pay lump sums exceeding $5,000.''

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

Authority: 29 U.S.C. 1302 and 1322.

4. In § 4022.7, paragraph (b)(1) is revised, and new paragraph (d) is added, to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

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

(i) *In general.* If the lump sum value of a benefit payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit may be paid in a lump sum. In determining whether the lump sum value of a benefit is $5,000 or less, the value of any amounts returned under paragraph (b)(2) of this section is disregarded. If the PBGC determines a title IV benefit before it determines the benefit payable under section 4022(c) of ERISA, the $5,000 threshold shall apply separately to the title IV benefit. The section 4022(c) benefit shall be paid in annuity form if the title IV benefit is paid in annuity form, and otherwise shall be separately subject to the $5,000 threshold.

(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 is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC shall provide the participant (or the beneficiary of a participant who is deceased as of the termination date) the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a 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 may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Certain and continuous payments to estates.* The PBGC may pay any benefits payable to an estate (*e.g.,* in the case of benefits under a certain and continuous annuity where the designated beneficiary predeceases the participant) in a lump sum without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The payments shall be discounted using the immediate interest rate that would be applicable to the plan under § 4044.52(b) if the termination date had been the date of death (or, if later, [effective date of final rule]).

* * * * *

(d) *Determination of lump sum amount.* The lump sum value of a benefit shall be determined in accordance with § 4044.52(b).

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

5. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

§ 4041A.43 [Amended]

6. In § 4041A.43, paragraph (b)(1) is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

7. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.52 [Amended]

8. In section 4044.52, the introductory text to paragraph (b) is revised to read as follows:

§ 4044.52 Valuation of benefits.

* * * * *

(b) *Benefits payable as lump sums.* For valuing benefits payable as lump sums (including the return of accumulated employee contributions upon death), and for determining whether the lump sum value of a benefit exceeds $5,000, the plan administrator shall determine the lump sum value of a benefit by valuing, in accordance with paragraph (a) of this section, the monthly annuity benefits payable in the form determined under § 4044.51(a) and commencing at the time determined under § 4044.51(b), except that—

* * * * *

§ 4044.54 [Amended]

9. Section 4044.54 is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4050—MISSING PARTICIPANTS

10. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 4050.2 [Amended]

11. In § 4050.2, paragraph (5) of the definition of *Missing participant annuity assumptions* is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

§ 4050.5 [Amended]

12. In § 4050.5, paragraph (a)(2) is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

Appendix A to Part 4050 [Amended]

13. In Appendix A, the heading is amended by adding at the end, the words ''in Plans With Deemed Distribution Dates on and After [effective date of final rule]''; the introductory text to Example 1 is amended by removing ''$1,750'' and adding, in its place, ''$3,500''; paragraph (1) to Example 1 is amended by removing ''$1,700'' each time it appears and adding, in each place, ''$3,000''; paragraph (2) to Example 1 is amended by removing ''$3,700'' and adding, in its place, ''$5,200'' and removing ''$3,200'' each time it appears and adding, in each place, ''$4,700''; paragraph (3) to Example 1 is amended by removing ''$3,400'' and adding, in its place, ''$4,900'' and removing ''$3,450'' each time it appears and adding, in each place, ''$4,950''; and paragraph (1) of Example 2 is amended by removing ''$3,500'' and adding, in its place, ''$5,000''.

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

14. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

§ 4281.13 [Amended]

15. In section 4281.13, paragraph (b) is removed, the introductory text to paragraph (a) is amended by removing the paragraph designation, the heading, and the words ''paragraph (b) of this section (regarding the valuations of benefits payable as lump sums under trusteed plans) and'', and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a) through (e).

§ 4281.14 [Amended]

16. In section 4281.14, the section heading is amended by removing the phrase ''—in general'', and paragraph (a) is amended by removing the words

''Except as otherwise provided in § 4281.15 (regarding the valuation of benefits payable as lump sums under trusteed plans), and subject'' and adding, in their place, the word ''Subject''.

§ 4281.15 [Removed and Reserved]

17. Section 4281.15 is removed and reserved.

Issued in Washington, D.C. this 24th day of April, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 317, 351, 353, and 370

Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury hereby publishes a proposed rule governing the issue and offering of United States Savings Bonds. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

DATES: Submit comments on or before June 1, 1998.

ADDRESSES: Comments should be sent to the attention of Wallace L. Earnest, Director, Division of Staff Services, Room 507, Bureau of the Public Debt, 200 3rd St., Parkersburg, WV 26106–1328. Additionally, comments may be sent by e-mail to the following address: <Savbonds@bpd.treas.gov>. When sending comments by e-mail, please provide your full name and mailing address, and send the comments in ASCII format. Comments received will be available for public inspection and copying at the Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220. Individuals wishing to visit the library should call (202) 622–0990 for an appointment. Copies of this proposed rule can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <http://www.savingsbonds.gov>.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Director, Division of Staff Services, at (304) 480–6319 or by e-mail at <wearnest@bpd.treas.gov>; Troy D. Martin, Senior Program Analyst, Division of Staff Services, at (304) 480–6545 or by e-mail at <tmartin@bpd.treas.gov>; Edward C. Gronseth, Deputy Chief Counsel, at (304) 480–5192 or by e-mail at <egronset@bpd.treas.gov>; or Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, at (202) 219–3320 or by e-mail at <gtill@bpd.treas.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

The growth of electronic commerce and the World Wide Web have led to a flourishing of financial service providers and new payment methods. However, the Bureau of the Public Debt has been unable to take full advantage of these developments in the sale of United States Savings Bonds because of apparent restrictions in existing regulations. This document proposes changes to create new categories of savings bond issuing agents and to clarify and expand the means by which bonds may be sold, including electronic means.

The most important proposed changes are directed at four areas in title 31 of the Code of Federal Regulations. First, changes in §§ 317.2 and 317.3 would amend the rules used to determine which organizations may serve as issuing agents and the procedures used to qualify these organizations as issuing agents. Second, changes to § 351.5 would expand the means by which issuing agents may sell savings bonds. Third, a new subpart in part 370 would address the use of Automated Clearing House debit entries for the sale of bonds issued through the Bureau of the Public Debt. Fourth, another new subpart in part 370 would address the electronic submission of purchase applications and remittances for the sale of bonds issued through the Bureau of the Public Debt. This second new subpart in part 370 would facilitate Treasury's intention to sell savings bonds through remittances by credit cards at the World Wide Web site of the Bureau of the Public Debt.

II. Summary of Amendments

A. Regulations Governing Agencies for Issue of Savings Bonds (31 CFR Part 317)

(1) Definitions (§ 317.1)

The revised definition of ''issuing agent'' would note the authority of the Commissioner of the Public Debt or the Commissioner's designee to qualify issuing agents, as explained in § 317.2. The definition also would clarify that an issuing agent acts as an agent of the purchaser in handling the remittance. The proposed language addressing the handling of the remittance is consistent with current practice. The Secretary of the Treasury collects purchase funds from issuing agents, not the public. If an issuing agent discovers that the remittance is uncollectible or must be returned after the issuance of a bond, the Secretary is nonetheless entitled to payment from the issuing agent. The issuing agent bears the risk of loss for non-collection or return of the remittance.

(2) Organizations Eligible to Serve as Issuing Agents (§ 317.2)

Currently, issuing agent eligibility is limited to financial institutions (such as banks and credit unions), agencies of the United States and state and local governments, and employers operating payroll savings plans. This document proposes to expand the types of organizations that are eligible to serve as issuing agents.

One proposed change, in § 317.2(c), would allow organizations that operate payroll savings plans on behalf of employers to serve as issuing agents. The proposed change is designed to bolster payroll savings plan sales from small businesses, which often do not have the resources to maintain such plans themselves. As is the case with employer organizations, an organization operating a payroll service plan on behalf of an employer organization would be eligible for issuing agent fees under the proposed rule only if it inscribes savings bonds.

Another proposed addition, set out in § 317.2(d), would give the Commissioner of the Bureau of the Public Debt or the Commissioner's designee the authority to qualify issuing agents when to do so would be in the public interest. The Commissioner or the Commissioner's designee could use such process as deemed to be appropriate in selecting the issuing agent. The selected issuing agent would also be subject to such conditions as deemed to be appropriate.

The new § 317.2(d) would be used for the selection of entities to sell bonds in unique ways as new methods of sales emerge. In particular, this provision would facilitate the qualification of issuing agents to sell savings bonds through electronic methods, such as those offered by financial services providers through World Wide Web access.