

2003 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Their Responses

March 2003

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on January 23 and February 12, 2003

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on January 23 and February 12, 2003, 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:

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

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QUESTION 1

Premiums — ACM for Newly Covered Plan

May a newly covered plan that filed Form 5500 Schedule B for the prior plan year (when it was not a covered plan) use the alternative calculation method (“ACM”) to determine its variable rate premium for the current plan year?

RESPONSE:

Yes. For example, suppose a calendar year professional services plan that has never had more than 25 active participants (and thus, under ERISA section 4021(b)(13), has not been covered by Title IV of ERISA) acquires a 26th active participant on 1/1/03 and thus becomes covered and required to pay premiums for 2003. If (as required) the plan files Form 5500 Schedule B for 2002, the plan could use the ACM, based on its 2002 Schedule B, to determine its variable rate premium for 2003.

QUESTION 2

Premiums — Full Funding Limit Exemption for Newly Covered Plan

Suppose that a newly covered plan — such as a church plan that elects into Title IV coverage — was not subject to the funding requirements under Internal Revenue Code section 412 for the prior plan year (when it was not a covered plan) but can demonstrate that if it had been subject to those requirements, it would have been at the full funding limit for the prior plan year. May the plan claim the full funding limit exemption from the variable rate premium for the current plan year?

RESPONSE:

No. If the plan was not subject to the IRC section 412 funding requirements, it cannot be considered to have been at the full funding limit and it cannot claim the full funding limit exemption from the variable rate premium.

QUESTION 3

Premiums — ACM for Split-Funded Plan

Under a literal interpretation of the PBGC's alternative calculation method ("ACM"), a split-funded plan (a plan funded with a combination of insurance contracts that are not irrevocable commitments and a "side fund") that elects to exclude the value of insurance contracts from item 1b(2) of the Schedule B may end up with a "mismatch" of assets and liabilities under the ACM. This mismatch, which arises where the ACM assets figure *excludes* the value of these insurance contracts and the ACM liability figure *includes* the related liabilities, can serve only to *increase* the plan's variable rate premium. Is there any way to avoid this mismatch?

RESPONSE:

Under the PBGC's regulations governing the ACM, there is no way of avoiding the "mismatch," other than not making the election.

When using the alternative calculation method ("ACM"), if (as is common) a plan's funding valuation for the Schedule B plan year (the plan year preceding the premium payment year) is performed as of the first day of the Schedule B plan year, the ACM requires the plan administrator to use, as the assets figure, the actuarial value of plan assets as of that funding valuation date from item 1b(2) on Schedule B, Form 5500. In the less common case where the plan's funding valuation for the Schedule B plan year is performed as of some other day, the ACM requires the plan administrator to use instead the market value of assets as of the first day of the Schedule B plan year from item 2a of Schedule B. The liability figures under the ACM are always taken from item 2b on Schedule B ("RPA '94" current liability). Items 1c and 1d on Schedule B (accrued and current liability, etc., as of the funding valuation date) also show liabilities for benefits, but these figures are not used under the ACM.

A split-funded plan may elect to exclude the value of insurance contracts from item 1b(2) (but not from item 2a) of Schedule B, in which case the plan must exclude the related liabilities for benefits from items 1c and 1d (but may not exclude them from item 2b) of Schedule B. If (as is common) the split-funded plan's funding valuation is performed as of the first day of the Schedule B plan year, the ACM assets figure must come from item 1b(2) (from which the value of the insurance contracts is excluded) even though the liabilities figures must come from item 2b (which includes the related liabilities for benefits).

This mismatch may not be avoided by using the item 2a figure instead of the item 1b(2) figure. Nor does the ACM permit the actuarial value of the insurance contracts to be added back to the item 1b(2) figure from the Schedule B, or permit the value of the related liabilities to be subtracted from the item 2b figures.

The ACM was designed to be a simplified method of approximating the value of unfunded vested benefits. The emphasis on simplicity in the ACM can work to the advantage or disadvantage of a particular filer, as compared to the result the filer would get by using the

general rule method. For most plans, the actuarial value of assets in item 1b(2) of the Schedule B is consistent with the value of liabilities in item 2b (the source of the liability figures for the ACM). An inconsistency arises only where a split-funded plan reports a first-of-the-year assets figure in item 1b(2) that excludes the value of insurance contracts. In such a case, the filer may want to use the general rule method if that would result in a lower premium.

QUESTION 4

Premiums — Participant Count; Year-End \$0 Cashouts

If a plan provides that \$0 cashouts are deemed made on the last day of the plan year in which employment terminates, and that date is the premium snapshot date for the following plan year, is an individual who gets such a \$0 cashout considered to be a participant for purposes of the following year's premium?

RESPONSE:

In this circumstance, the PBGC would treat the individual as not being a participant for premium purposes.

QUESTION 5

Premiums — Participant Count; IRC Section 401(h) Account

If a plan has purchased an irrevocable commitment covering all benefits with respect to an individual under the plan, other than benefits provided by an Internal Revenue Code section 401(h) account, is the individual considered to be a participant for premium purposes? Are the section 401(h) benefits and assets included in determining the plan's variable rate premium?

RESPONSE:

IRS staff has advised the PBGC that section 401(h) assets are not available to pay benefits under the defined benefit portion of a plan that includes section 401(h) accounts and that section 401(h) benefits are not considered to be benefit liabilities.

An individual is considered to be a plan participant for premium purposes under § 4006.6 only if the plan has benefit liabilities with respect to the individual. Since section 401(h) benefits are not considered to be benefit liabilities, the individual in this question would not be a participant for premium purposes and would not be counted in determining the flat-rate premium.

Because a section 401(h) benefit is not included in benefit liabilities, it is not part of a plan's current liability and thus is disregarded in determining the variable rate premium. In addition, since section 401(h) assets are not available to pay benefits under the defined benefit portion of a plan, they are also excluded in determining the variable rate premium.

QUESTION 6

Premiums — Snapshot Date; Newly Created Plan

The response to question 10 in the 2001 Bluebook indicates that the plan administrator of a newly created plan that is adopted with a retroactive effective date may claim either the earlier date or the later date as both (1) the beginning of the plan year for purposes of determining whether premium proration is available (and what the proration fraction is) and (2) the premium snapshot date. Was that response intended to apply to all plan years, thus allowing a plan administrator to apply for a refund of premiums for a prior plan year in which the plan was a newly created plan and that would be affected by a change in the date used?

RESPONSE:

Yes. Note, however, that any request for a refund of premiums paid for a previous plan year must be requested within the period specified in the applicable statute of limitations (generally 6 years from the date of payment).

QUESTION 7

Premiums — Pre-Participation Service Phase-In

If a plan elects not to use the pre-participation service phase-in provided for in Internal Revenue Code section 412(l)(7)(D) to calculate current liability for funding purposes, may the plan nevertheless use the phase-in for purposes of determining the variable rate premium?

RESPONSE:

No. Unfunded vested benefits for premium purposes are based on current liability. Thus, whether the plan uses the alternative calculation method (based on Form 5500 Schedule B) or the general rule method to determine its unfunded vested benefits, an election not to use the phase-in under IRC section 412(l)(7)(D) for current liability would apply as well to the premium calculation.

QUESTION 8

Premiums — Full Funding Limit Exemption; Post-Merger Contribution

Plans A and B are calendar year plans. Plan A merges into Plan B on 2/1/03. (Since the merger occurs during the 2003 plan year, both plans must pay premiums for 2003; in the absence of any other merger or spinoff, both plans will use a premium snapshot date of 12/31/02.) Plan B (the surviving plan) qualifies for the full funding limit exemption from the variable rate premium (VRP) for 2003 based on its contributions for 2002. At the time of the merger, Plan A (the disappearing plan) does not qualify for the full funding limit exemption for 2003 because it has not received sufficient contributions for 2002. May Plan A's contributing sponsor qualify Plan A for the full funding limit exemption for 2003 by making a contribution for Plan A's 2002 plan year to the trust of surviving Plan B after the merger?

RESPONSE:

Yes. IRS staff has advised the PBGC that contributions on behalf of Plan A may be made to the trust for the surviving plan. The contributions would be designated as for Plan A and reported on a Schedule B for Plan A. A situation like this is described in paragraph (8) of section 4.07 of Rev. Proc. 2000-40. If such a contribution is made by September 15, 2003, on behalf of Plan A for the 2002 plan year in an amount sufficient to meet the full funding limit exemption from the VRP for 2003, Plan A would be exempt from the VRP for 2003. Otherwise it would owe a full-year VRP. (The premium for Plan A is not prorated, because the plan disappears by merger.) The premium filing is to be done by the plan administrator of the surviving plan.

QUESTION 9

Premiums — Counting Contributions Made After Early Filing

A single-employer plan makes a final premium filing before the final filing deadline, counting (for variable rate premium purposes) only those contributions for the prior plan year that were made on or before the date of the premium filing. The sponsor then makes an additional contribution for the prior plan year, after the premium filing date but before the final premium filing deadline. May the plan make an amended filing, on or before the final premium filing deadline, that takes into account the additional contribution? How about an amended filing made after the final premium filing deadline?

RESPONSE:

Section 4006.4(b)(2)(iv) of the PBGC's regulation on Premium Rates says that "[c]ontributions may be included only to the extent such contributions have been paid into the plan on or before the earlier of the due date for payment of the variable-rate portion of the premium under § 4007.11 or the date that portion is paid." However, the PBGC considers "the date that portion is paid" to refer to the last (original or amended) filing — whether or not the last filing is accompanied by a payment — because the intent of the provision is simply to prohibit variable rate premium computations based on contributions that the plan administrator may expect to be made but that have not in fact been made. Thus, the PBGC would permit the plan to make an amended filing in these circumstances, taking the additional contribution into account.

QUESTION 10

Premiums — Effect of Retroactive Benefit Increase

Suppose a plan amendment increasing benefits under a calendar-year plan is adopted on 2/15/03, and the plan's current liability as of 1/1/02 reflects the effect of the benefit increase. To what extent, if at all, must the plan's variable rate premium computation for 2003 also reflect the increase?

RESPONSE:

Unfunded vested benefits (“UVBs”) for premium purposes are based on vested current liability. Thus, if the plan's current liability reflects the effect of the benefit increase, the premium calculation must also reflect the increase to the extent the increase is vested. The benefit increase with respect to each participant is vested to the extent of the participant's vesting rights. For example, if the plan provides for 5-year cliff vesting, the benefit increase of each participant with at least five years of vesting service would be included in UVBs. The vesting service would be measured as of 1/1/02 if the plan were using the ACM and as of the premium snapshot date (generally 12/31/02) if the plan were using the general rule.

QUESTION 11

Standard Terminations — Electronic Missing Participant Data Submissions

When a terminating plan has a large number of missing participants, must a separate Attachment B to Schedule MP be completed for each missing participant?

RESPONSE:

No. The PBGC will accept the missing participant information as an electronic word processing or spreadsheet document downloaded to a diskette. The document should contain the same information for each missing participant that an Attachment B would contain.

QUESTION 12

Standard Terminations — Missing Participants; 20 Percent Tax Withholding

Assume that a plan administrator sends a check for a lump sum cashout — less 20 percent tax withholding — to a terminated vested participant and pays the withheld amount of taxes to the Internal Revenue Service. The check is then returned to the plan administrator as undeliverable. The plan later terminates in a standard termination, and the plan administrator determines that the participant is a “missing participant” under ERISA section 4050 and the PBGC’s Missing Participants regulation (29 CFR Part 4050).

- (a) If the plan administrator pays the missing participant’s designated benefit to the PBGC, may the plan administrator deduct from the designated benefit the 20 percent tax amount previously withheld?
- (b) If the plan administrator purchases an annuity for the missing participant, may the annuity reflect a reduction for the 20 percent tax amount previously withheld?
- (c) Can the plan administrator obtain a refund of the amount previously withheld and paid to the IRS and, if so, how?

RESPONSE:

- (a) Whenever a plan administrator pays a missing participant’s designated benefit — whether or not the plan administrator previously paid to the IRS taxes withheld with respect to that benefit — the amount must reflect the total value of the missing participant’s designated benefit without any reduction for tax withholding. The PBGC will withhold taxes, as appropriate, when the missing participant is found and paid.
- (b) Whenever a plan administrator purchases an annuity for a missing participant — whether or not the plan administrator previously paid to the IRS taxes withheld with respect to that benefit — the annuity must be based on the missing participant’s total benefit without any reduction for tax withholding. The insurer will be required to withhold taxes, as appropriate, when the missing participant is found and paid.
- (c) The Internal Revenue Service has advised the PBGC that a plan administrator may obtain a refund of an amount erroneously withheld for a missing participant by filing Form 843, Claim for Refund and Request for Abatement, and Form 941c, Supporting Statement to Correct Information. Generally, the plan administrator must act within 3 years of the withholding return due date or the date the return was filed, whichever is later. For this purpose, the due date of Form 945, Annual Return of Withheld Federal Income Tax, is April 15 of the year after the close of the tax year.

QUESTION 13

Guaranteed Benefits — Phase-In For Newly Covered Plans

If a plan was adopted and effective more than five years ago, but did not become covered by Title IV of ERISA until the current year, is the PBGC's guarantee of plan benefits phased in under ERISA section 4022(b)(7)? If so, when does the phase-in period start?

RESPONSE:

In the case of a plan that was not a covered plan on September 3, 1974 (the day after ERISA became effective), the PBGC's guarantee of plan benefits is phased in. The phase-in period begins on the date when the plan becomes a covered plan. ERISA section 4022(b)(1) states that,

—
except to the extent [phased in under section 4022(b)(7),] . . . no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranteed . . . ,

and section 4022 (b)(2) states that —

[f]or purposes of determining what benefits are guaranteed . . . in the case of a plan to which § 4021 does not apply on [September 3, 1974], the 60-month period referred to in [ERISA section 4022(b)(1)] shall be computed beginning on the first date on which [section 4021] does apply to the plan.

For example, under ERISA section 4021(b)(3), a church plan (as defined in Internal Revenue Code section 414(e)) is not covered by Title IV of ERISA unless the plan makes an election under Internal Revenue Code section 410(d) and notifies the PBGC that it wishes to be a covered plan. If a church plan that was adopted and effective more than five years ago opts for Title IV coverage in this manner, benefits under the plan are subject to phase-in under section 4022(b)(7), and the phase-in period begins on the latest of (1) the date the PBGC receives the notice described in ERISA §4021(b)(3), (2) the date the section 410(d) election is made, and (3) the date the section 410(d) election is effective.

The same principles apply to any pre-existing plan that first becomes covered by Title IV of ERISA after September 3, 1974, such as a professional services plan that has been excluded from Title IV coverage under ERISA section 4021(b)(13) because it has never had more than 25 active participants and then acquires a 26th active participant.

QUESTION 14

Valuations — XRA for Ages Outside the Table Range

How does the PBGC determine an Expected Retirement Age (XRA) using Tables II-A, II-B, and II-C from Appendix D to the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) when either or both of the ages needed to enter the tables (the unreduced retirement age and the earliest retirement age) are outside the range of ages shown in the table?

RESPONSE:

The PBGC uses an extended version of the tables. The [extended version of the tables](#) is available on the PBGC's web site (www.pbgc.gov).

The PBGC would consider the use of these extended tables by plan administrators to be a reasonable way to determine XRAs in cases where ages fall outside the range of the tables in Appendix D to the regulation. The PBGC would not consider it reasonable to simply use the age in the Appendix D table that is at the end of the range nearest the actual age for any age that is outside the range in the Appendix D table.

QUESTION 15

Participant Notices — Multiple-Employer Plan; DRC Exception Test

In the responses to question 5 in the 2000 Bluebook and to questions 20 and 21 in the 2002 Bluebook, the PBGC indicated that a multiple-employer plan is treated like any other single-employer plan — that is, on an aggregate basis — for purposes of variable rate premiums under ERISA section 4006 and employer reporting under ERISA section 4010, notwithstanding the applicability of Internal Revenue Code section 413(c) (which provides for certain funding determinations to be done on an employer-by-employer basis). Does this aggregate treatment also apply to the Deficit Reduction Contribution (“DRC”) Exception Test under the Participant Notice rules of ERISA section 4011 and the PBGC’s regulation on Disclosure to Participants (29 CFR Part 4011)? That is, must a plan determine whether the DRC Exception Test is met for the current or prior plan year on an aggregate basis in order to determine whether all plan participants must be notified of the plan’s funded status?

RESPONSE:

Yes. Section 4011(b) of ERISA provides an exception to the Participant Notice requirement for “any plan” that meets the DRC Exception Test for the current year. Section 4011.3(a) of the regulation similarly refers to “a plan” meeting the test (and broadens the exemption to cover plans that meet the test for the prior year). Furthermore, since all assets under a multiple-employer plan are available to pay the benefits of all participants, regardless of which contributing sponsor they are employed by, plan underfunding presents a risk to every participant, regardless of whether a particular participant’s employer is exempt from the deficit reduction contribution requirement under ERISA section 302(d) and Internal Revenue Code section 412(l). Accordingly, the PBGC reads ERISA section 4011 and its Participant Notice regulation as applying to a multiple-employer plan as a whole, even if IRC section 413(c) applies the deficit reduction contribution requirements on an employer-by-employer basis.

QUESTION 16

Participant Notices — Effect of JCWAA Changes to Interest Rates

In general, a plan is subject to the Participant Notice requirement for a plan year under section 4011 of ERISA if a variable rate premium is payable for the plan for the plan year and the plan does not pass the Deficit Reduction Contribution (“DRC”) Exception Test described in the PBGC’s regulation on Disclosure to Participants (29 CFR Part 4011). Section 405 of the Job Creation and Worker Assistance Act of 2002 (JCWAA) provides for a temporary increase, for 2002 and 2003 plan years, in the interest rate used to calculate unfunded vested benefits for purposes of the PBGC’s variable rate premium (from 85% to 100% of the annual yield on 30-year Treasury securities), and in the maximum interest rate that may be used to calculate current liability for purposes of the DRC (from 105% to 120% of the 4-year weighted average of the annual yield on 30-year Treasury securities). When determining whether a plan is subject to the Participant Notice requirement for a plan year under section 4011 of ERISA and 29 CFR Part 4011:

- (a) May the temporary JCWAA 100% rate be used to determine whether a variable rate premium was payable for the 2002 or 2003 plan year for purposes of determining whether a Participant Notice may be required for that plan year?
- (b) May the temporary JCWAA 120% rate be used to determine: (1) whether the plan meets the DRC Exception Test for the 2002 or 2003 plan year and therefore is exempt from the Participant Notice requirement for the 2002, 2003, or 2004 plan year; (2) whether the plan qualifies for the full-funding limit exemption from the variable rate premium for the 2003 or 2004 plan year and therefore is not subject to the Participant Notice requirement for that plan year; and (3) the “notice funding percentage” for the 2002 or 2003 plan year that may be disclosed in a Participant Notice for the 2002, 2003, or 2004 plan year?

RESPONSE:

- (a) JCWAA does not allow use of the temporary 100% rate (rather than the 85% rate) to determine whether a variable rate premium was payable for the 2002 or 2003 plan year for purposes of determining whether a Participant Notice may be required for that plan year. The PBGC does not have authority to waive the Participant Notice requirement. Therefore, a plan for which a variable rate premium is not payable for the 2002 or 2003 plan year may nonetheless be required to issue a Participant Notice for that plan year.
- (b) Under JCWAA, the temporary JCWAA 120% rate is used to make each of the determinations described in the question.

For additional details, see PBGC Technical Update 02-1, “PBGC Reporting Relief Relating to Use of 100% of 30-Year Treasury Yield” (5/01/02) and PBGC Technical Update 02-2, “2002 Model Participant Notice” (8/29/02).

QUESTION 17

Participant Notices — No Additional Funding Charge

Is a plan that is otherwise required to provide a Participant Notice for the current plan year under ERISA section 4011 and 29 CFR Part 4011 exempt from that requirement based on the fact that, for the current plan year or for the prior plan year, there is no additional funding charge under ERISA section 302(d)(1) (Internal Revenue Code section 412(l)(1))?

RESPONSE:

No. Except in the case of certain new and newly covered plans (29 CFR § 4011.5) and plans involved in certain merger, consolidation, or spinoff transactions (29 CFR § 4011.6), a Participant Notice is required for a plan for the current plan year if (1) a variable rate premium is payable for the plan for the current plan year (the response to the previous question notes special rules applying to the 2002 and 2003 plan years), and (2) the plan does not, for the current plan year or for the prior plan year, meet the DRC Exception Test (29 CFR § 4011.3(b)).

A plan meets the DRC Exception Test “if [the plan] is exempt from the requirements of section 302(d) of ERISA . . . by reason of [ERISA] section 302(d)(9), without regard to the small plan exemption in [ERISA] section 302(d)(6)(A).” (Section 4011.4(b) provides special rules that allow small plans to determine whether the DRC Exception Test is met.) In contrast, the DRC Exception Test is not met merely because there is no additional funding charge under ERISA section 302(d)(1). (There may be no such additional funding charge because (1) the application of the formula in ERISA section 302(d)(1) does not result in an additional funding charge, or (2) the plan meets the small plan exemption from the additional funding charge under ERISA section 302(d)(6)(A) (taking into account the aggregation rules in ERISA section 302(d)(6)(C)).)

QUESTION 18

Employer Reporting — Information Year; Short Plan Year

A controlled group's information year under § 4010.5 of the PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010) is the calendar year. One plan maintained by a controlled group member is amended to change its plan year from a year ending 6/30 to a calendar year. The last full year under the old cycle ends 6/30/03, and the short year ends 12/31/03. In determining whether the aggregate unfunded vested benefits ("UVBs") of plans maintained by controlled group members exceeds \$50 million, should the plan's UVBs be determined for the plan year ending 6/30/03 or 12/31/03?

RESPONSE:

The later plan year (ending 12/31/03) would be used. The reason for looking to the plan year "ending within . . . the information year" is to get the most up-to-date information. Commonly, the plan year coincides with the information year; when it does not, the plan year that ends within and nearest the end of the information year would be used.

QUESTION 19

Employer Reporting — Who Should File?

A controlled group includes a “U.S. parent” (a U.S. corporation that is the parent for all U.S. members of the group) and an “international parent” (a foreign corporation that is the parent of the U.S. parent and of group members in other countries). The U.S. parent files Forms 5500 for all U.S. plans of the controlled group. Is it the U.S. parent or the international parent that is required to make the filing with the PBGC under ERISA section 4010?

RESPONSE:

If the controlled group meets one of the three tests for being required to file under ERISA section 4010, each controlled group member (except “exempt entities”), regardless of whether U.S. or foreign, is a “filer” and has a filing obligation. Any one controlled group member — which need not be either the international parent or the U.S. parent — can file for all members of the group, but if no filing is made, each filer in the group is in violation of the filing requirement, and penalties for failure to timely file may be assessed against each filer.