2000 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Responses

March 2000

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on February 10, 18, and 28, 2000

The following pages set forth the questions posed to Staff of the Pension Benefit Guaranty Corporation at discussions on February 10, 18, and 28, 2000, 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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Premiums

QUESTION 1

Premiums — Changing Filing Methods

May a plan make a premium filing using the alternative calculation method (ACM) and then amend the filing later (*e.g.*, when more information becomes available) to use the general rule — or vice versa?

RESPONSE:

Yes, a premium filing may be amended (and the filing method changed) where the filer (because of new information or recomputation or for any other reason) realizes that it is more advantageous to file under the other method. (Premium filings *must* be amended if new information becomes available that would change the figures reported on the premium forms.) However, the PBGC will not pay premium refunds based on claims made after the statutory limitations period expires (generally 6 years after payment).

QUESTION 2

Premiums — ACM Accruals for Frozen Plans

Under the PBGC's regulation on Premium Rates (at 29 CFR § 4006.4(c)(1)), a plan using the alternative calculation method (ACM) must increase vested current liability (determined as of the beginning of the prior year) by 7 percent "to reflect the increase in vested benefits attributable to accruals" during the prior year. If accruals were frozen under a plan throughout the prior year, must this accrual adjustment still be applied?

RESPONSE:

Yes, all ACM filers must use the 7 percent accrual assumption, regardless of actual accruals. In the interest of simplicity, the PBGC adopted a uniform accrual factor for all plans that choose to use the ACM. ACM filers' premiums may be higher in some cases, and lower in others, than the premium that would be calculated using the general rule method. However, the use of the ACM is optional, and a filer that believes it would be disadvantaged by using the ACM may use the general rule method instead.

QUESTION 3

Premiums — Year-end Mergers and Spinoffs

Under the PBGC's regulation on Premium Rates (at 29 CFR § 4006.5(e)), a plan that engages in a merger or spinoff may be required to determine its premium as of the first day of the premium payment year (rather than the last day of the prior year) if the transaction "is effective on the first day of the plan's

premium payment year." For purposes of this rule, is there any difference between a transaction that is effective at the end of the prior year and one that is effective as of the beginning of the premium payment year?

RESPONSE:

The purpose of the special merger/spinoff rule is to avoid double counting and non-counting in computing premiums. For example, in the case of a spinoff from a calendar-year plan, the intent is to avoid a situation where the transferor plan would use a 12/31/00 snapshot date and the new plan's snapshot date would be 1/1/01, resulting in double counting of the spunoff participants for 2001 (who would be in the transferor plan on 12/31/00 and in the new plan on 1/1/01). Similarly, for a merger of two calendar-year plans, the intent is to avoid non-counting of the transferred participants, who would not be in the surviving plan at the end of the prior year, but also would not be counted for premium purposes by the disappearing plan in the current year because the disappearing plan would cease to exist at the end of the prior year.

Thus, the rule is meant to capture situations where the pre-transaction status ends at the end of the prior year and the post-transaction status begins at the beginning of the current year. The language used by the parties is considered in determining the timing of the transaction. The documents describing a transaction that falls within the rule might describe it as occurring "on 12/31/00" or describe it as occurring "on 1/1/01."

Note that where the snapshot date is the first day of the premium payment year, the participant count will also include individuals who enter the plan on that day. In addition, any new valuation assumptions or methods adopted for the premium payment year (such as a new asset valuation method) will be used in determining the variable-rate premium instead of those used for the prior year.

QUESTION 4

Premiums — Change to 100% of 30-year Treasuries

Under ERISA section 4006 and the PBGC's regulation on Premium Rates, the interest rate for computing unfunded vested benefits for purposes of calculating the variable-rate premium is the "applicable percentage" of the 30-year Treasury rate. When will the applicable percentage increase from 85 percent to 100 percent?

RESPONSE:

Under ERISA section 4006(a)(3)(E)(iii)(II) and the PBGC's premium rates regulation (at 29 CFR § 4006.4(b)(1)(iii)), the timing of the change in the applicable percentage depends on when the Secretary of the Treasury prescribes new mortality tables for determining current liability under ERISA section 302(d)(7)(C)(ii)(II) and Internal Revenue Code section 412(*l*)(7)(C)(ii)(II). Under both ERISA section 4006 and the premium rates regulation, the applicable percentage will be 100 percent for the first premium

payment year to which the new tables apply and for all subsequent years. (The Secretary of the Treasury might have made new tables effective for plan years as early as 2000, but has not yet done so. IRS Announcement 2000-7 (January 21, 2000) states that the IRS and the Treasury Department "anticipate that in no event would there be any change in the mortality tables for plan years beginning before January 1, 2001.")

For example, if the Treasury Department made new tables effective for plan years beginning on or after 1/1/01, the rate for computing the variable-rate premium for the 2001 plan year and later years would be 100 percent of the 30-year Treasury rate. Note that for most filers, the new tables themselves would not apply to the computation of the 2001 premium, which is based generally on unfunded vested benefits valued as of the end of the prior year (2000). (Under current rules, the new tables *would* apply to filers whose snapshot date was the first day of the 2001 plan year — *e.g.*, those affected by the special rule for mergers and spinoffs in § 4006.5(e) of the premium rates regulation — if they used the general rule filing method. However, the new tables would *not* apply if the filer used the alternative calculation method (ACM), which is based on prior year figures from Schedule B to Form 5500. The PBGC does not view this change in tables as a significant event under § 4006.4(d)(2) of the premium rates regulation.)

For plan years for which the applicable percentage is 100 percent, the statute and regulation also prescribe the use of the market value of assets in computing unfunded vested benefits.

QUESTION 5

Premiums — Multiple-employer VRP Determinations

Should variable-rate premium determinations for a multiple-employer plan (amount of UVBs and eligibility for the FFL exemption) be based on the funding status of the plan as a whole or on the status of funding accounts maintained for individual contributing employers pursuant to section 413(c) of the Internal Revenue Code (IRC)?

RESPONSE:

Variable-rate premium determinations for a multiple-employer plan are governed by the funding status of the plan as a whole. The PBGC recently issued an opinion letter on this subject (Opinion Letter 99-1), on which the following discussion is based.

The question arises because the variable-rate premium provisions in the statute refer to two terms — "unfunded current liability" and "full funding limitation" — that are defined in other statutory provisions, dealing with plan funding. Although the two definitions do not themselves distinguish between multiple-employer plans and other single-employer plans, IRC section 413(c) contains special requirements for applying plan funding rules generally to multiple-employer plans. The requirements of section 413(c) raise the question whether the variable-rate premium provisions operate the same way for multiple-employer plans as they do for other single-employer plans.

Under ERISA section 4006(a)(3)(E)(ii), the variable-rate premium is $9 per $1,000 of "unfunded vested benefits *under the plan*" (emphasis supplied), and the exemption from the variable-rate premium in section 4006(a)(3)(E)(iv) operates if "contributions *to the plan*" are not less than the full funding limitation (emphasis supplied). The statutory language thus indicates that the variable-rate premium and the full funding limit exemption are based on the funding status of a plan as a whole.

This is consistent with the purpose of PBGC premiums, which is to fund the termination insurance program under Title IV of ERISA. Under sections 4022, 4044, and 4061 of ERISA, the PBGC's insurance obligations are based on the funding status of a plan in its entirety, even if the plan is one that maintains separate funding accounts for individual contributing employers.

Accordingly, section 4006 is to be read as referring to the unfunded current liability and full funding limitation of a plan as a whole, even if section 413(c) requires, for other purposes, that they be determined employer-by-employer. Thus, a multiple-employer plan is to determine its unfunded vested benefits for purposes of calculating its variable-rate premium, and determine whether it qualifies for the full funding limit exemption from the variable-rate premium, in the same way as a plan that has a single contributing employer.

Similarly, the plan administrator of a multiple-employer plan should make a single premium filing with a single premium payment covering the plan as a whole.

QUESTION 6

Premiums — Contributions Includable in Plan Assets

May contributions made for the premium payment year be included in plan assets for purposes of computing the variable-rate premium?

RESPONSE:

This practice is impermissible. Upon learning that one or more actuaries might be taking this approach in preparing premium filings, the PBGC issued the following statement:

> The PBGC wants to bring to the urgent attention of actuaries a premium calculation practice we learned about today that we believe is impermissible but that some actuaries may think they can use. While we do not have details, it appears that some actuaries may be including contributions made for the premium payment year in plan assets for purposes of computing the variable-rate premium.
>
> Contributions for the premium payment year may not be included in the assets used in determining UVBs for premium purposes. The plan year for which a contribution is made is the plan year for which the contribution is credited to the funding standard account as 'the amount considered

contributed by the employer to or under the plan for the plan year' pursuant to section 412(b)(2)(A) of the Code and section 302(b)(2)(A) of ERISA. See 29 CFR § 4006.4(b)(2)(iv) and (c)(4); instructions for line 3(c) of Schedule A (for both the general rule and the ACM); preamble to the final premium payment regulation published July 10, 1989 (54 Fed.Reg. 28944 at 28949).

QUESTION 7

Premiums — Phasing in Pre-participation Service

Does the current liability pre-participation service phase-in apply in computing UVBs using the alternative calculation method (ACM)?

RESPONSE:

Under ERISA section 302(d)(7)(D) and Internal Revenue Code section 412(*l*)(7)(D), pre-participation service is phased in over five years (from 0 percent for the first year to 100 percent for the fifth year) for purposes of determining current liability for participants who have no accrued benefits under any other plan of the contributing sponsor or any member of the contributing sponsor's controlled group, unless the employer elects not to have this provision apply. Since unfunded vested benefits (UVBs) for premium purposes are based on current liability, this phase-in clearly affects the amount of the variable-rate premium computed under the general rule method. The question arises because the ACM is based on liability figures reported in item 2b of Schedule B to Form 5500, and the instructions for that item say to "include all assets and liabilities under the plan" except for those attributable to rollovers (or other individual accounts) and annuitized benefits.

Pre-participation service is phased in under the ACM in the same way as under the general rule. The reference to "all liabilities" in the item 2b instructions does not mean that amounts other than current liability figures are to be entered in this item. (Since a new plan typically bases both its first-year and its second-year premiums on current liability for its first year, the phase-in percentage is typically zero for both those years and reaches 100 percent for the sixth year. The phase-in works the same whether the plan uses the general rule or the ACM.)

Standard Terminations

QUESTION 8

Standard Terminations — Distribution Deadline; IRS Determination Letter

How can a plan qualify for a distribution deadline of 120 days after receipt of an IRS determination letter?

RESPONSE:

In order to qualify for a distribution deadline of 120 days after receipt of an IRS determination letter, the plan administrator must file the determination letter request with the IRS by the time the Form 500 is filed with the PBGC. The plan administrator may request an extension of the deadline for filing the determination letter request (for purposes of qualifying for this distribution deadline). As with any other extension request, the plan administrator should provide a basis for granting the extension and, if the request is filed later than 15 days before the deadline, must include a justification for not filing the request earlier. Merely stating in the Form 500 an intention to file a request for a determination letter in the future does not constitute a request for an extension. A request for an extension is deemed granted if the PBGC does not notify the plan administrator otherwise within 60 days after it receives the request.

QUESTION 9

Standard Terminations — Conversion to DC Plan

May a defined benefit plan covered by Title IV of ERISA be converted to a defined contribution plan without terminating the defined benefit plan?

RESPONSE:

No. Conversion of a defined benefit plan that is covered by Title IV to a defined contribution plan is a termination of the defined benefit plan and the Title IV termination rules must be followed. Further discussion is provided in the Frequently Asked Questions (FAQs) on the PBGC's web site (www.pbgc.gov).

QUESTION 10

Standard Terminations — Withholding on Designated Benefits

When plan administrators send missing participants' designated benefits to the PBGC, should they withhold 20 percent and send it to the IRS?

RESPONSE:

No, the IRS has advised the PBGC that a transfer to the PBGC of a missing participant's designated benefit is not an eligible rollover distribution under Internal Revenue Code (IRC) section 402(c)(4), and that the 20 percent withholding under IRC section 3405(c)(1) does not apply. Accordingly, plan administrators should send 100 percent of a participant's designated benefit to the PBGC. The PBGC will withhold when it pays the participant. (The IRS has also advised the PBGC that the withholding

provisions do not apply if the plan administrator purchases an annuity for the missing participant.) See the Frequently Asked Questions (FAQs) on the PBGC's web site (www.pbgc.gov).

QUESTION 11

Standard Terminations — Wording of NOPB

Does a notice of plan benefits (NOPB) have to be in a specific format? Does the PBGC have a model NOPB?

RESPONSE:

The PBGC has not specified a particular format or provided a model NOPB because the notices are tailored to the individual circumstances of participants and beneficiaries. However, the details of the notice requirement are spelled out in the PBGC's regulation on Termination of Single-employer Plans (at 29 CFR § 4041.24).

QUESTION 12

Standard Terminations — Benefit Liabilities

For purposes of Title IV of ERISA, what is the meaning of "benefit liabilities"?

RESPONSE:

The Pension Protection Act of 1987 (PPA) amended Title IV of ERISA to provide: (1) that a single-employer defined benefit plan may not terminate in a standard termination unless the plan is sufficient for all "benefit liabilities"; (2) that the contributing sponsor (and members of its controlled group) of a plan that terminates in a distress or involuntary termination is liable to the PBGC for unfunded "benefit liabilities"; and (3) that the PBGC must pay participants in distress and involuntary terminations a portion of the plan's unfunded nonguaranteed benefits, which is dependent on the value of "benefit liabilities."

PPA defined "benefit liabilities" as the benefits under the plan within the meaning of section 401(a)(2) of the Internal Revenue Code. (Section 401(a)(2) uses the term "liabilities.") In the absence of post-PPA guidance from the Internal Revenue Service on the meaning of "liabilities" in section 401(a)(2), the PBGC applies the following rules for processing terminations.

The liability for any benefit provided under the terms of a single-employer plan as of the termination date is a benefit liability unless the plan specifically provides that the conditions for the benefit must be satisfied before plan termination or that the benefit will not be paid after plan termination. A plan amendment may eliminate a benefit liability other than an Internal Revenue Code section 411(d)(6)-protected benefit. If a

plan amendment eliminates or reduces a section 411(d)(6)-protected benefit, the provision of the amendment that eliminated or reduced the section 411(d)(6)-protected benefit is disregarded, and the benefit treated as if it were a benefit under the terms of the plan in effect on the termination date. (For the PBGC's rules on post-termination amendments, see § 4041.8 of the PBGC's regulation on Termination of Single-Employer Plans (29 CFR § 4041.8).)

A favorable determination letter issued by the IRS on plan termination is *prima facie* evidence, in accordance with ERISA section 3001(d), of initial compliance with the rules on benefit liabilities. Thus, for a plan with a favorable letter, the PBGC will ordinarily presume that a benefit eliminated or reduced by a plan amendment is not a section 411(d)(6)-protected benefit. However, if, in reviewing a plan, the PBGC has reason to believe that the amendment eliminated or reduced a section 411(d)-protected benefit, the PBGC will examine the amendment further.

The value of the accrued benefit of a nonvested participant who, as of the termination date, has not separated from service covered under the plan is a benefit liability in priority category (PC) 6 under ERISA section 4044(a)(6). The value of the nonvested portion of the accrued benefit of a partially vested participant who has not separated from covered service under the plan would also be a benefit liability in PC 6.

In addition, the PBGC treats as a benefit liability the value of the accrued nonvested benefit of a nonvested or partially-vested participant who, as of the termination date, (1) has separated from service covered under the plan and (2) has not incurred a one-year break in service (determined in accordance with plan provisions), except that —

- A partially-vested separated participant who receives a mandatory or elective distribution of his or her entire nonforfeitable accrued benefit has no benefit liabilities remaining under the plan, provided the distribution was made in compliance with plan terms that satisfy the cashout rules of ERISA section 204(d) and Code section 411(a)(7)(B) and do not violate ERISA section 205(g) and Code sections 411(a)(11) and 417(e), and

- A nonvested separated participant shall be treated as cashed out (and thus as having no remaining benefit liabilities under the plan) if the plan provides for a deemed cashout. A plan shall be considered to provide for a deemed cashout if the plan provides for mandatory cashouts of accrued benefits not in excess of a specific amount (which cannot be greater than $5,000) or contains another provision (*e.g.*, a forfeiture provision) that has the effect of providing for deemed cashouts.

QUESTION 13

Standard Terminations — Post-termination Addition of Lump-sum Option

Would the PBGC treat a post-termination amendment that added an option to receive a consensual lump sum on plan termination as decreasing the value of a participant's benefit for purposes of § 4041.8 of the PBGC's regulation on Termination of Single-employer Plans?

RESPONSE:

No. Under § 4041.8, a post-termination amendment is taken into account with respect to a participant to the extent that it does not reduce the participant's benefit below its value on the plan termination date or eliminate or restrict any form of benefit available on that date. The PBGC will not treat a post-termination amendment to add an option to receive a consensual lump sum on plan termination as decreasing the value of a participant's benefit for purposes of § 4041.8. Of course, if the participant could already receive a more favorable lump sum under plan provisions in effect on the termination date, the participant would be entitled to the higher lump sum amount.

QUESTION 14

Standard Terminations — Pre-1996 Missing Participants

Is the PBGC's missing participants program available to a plan that terminated in a sufficient, non-PBGC trusteeship before the January 1, 1996, effective date of the program?

RESPONSE:

In general, no. Under the PBGC's regulation on Missing Participants (at 29 CFR § 4050.1), the missing participants program applies to a plan if the plan's "deemed distribution date" is in a plan year beginning on or after January 1, 1996. (The "deemed distribution date" is a date selected by the plan administrator that is between the date when distributions to non-missing participants are completed and the end of the permissible distribution period.) This would exclude plans that completed their terminations before 1996.

However, in some circumstances the program is available where the PBGC makes certain termination-related determinations. Section 4050.1 also makes the missing participants program applicable to a plan that makes certain supplemental or corrective payments in a plan year beginning on or after after January 1, 1996, even if the "deemed distribution date" was in a plan year beginning before January 1, 1996. The types of payments covered by this provision are described in § 4050.12 of the missing participants regulation. For example, under § 4050.12(f), payments made as the result of a PBGC audit are subject to the missing participants program if the PBGC determines that they must be made in order for the plan termination to be valid.

QUESTION 15

Standard Terminations — Late PDCs

What are the consequences if a post-distribution certification (PDC) is filed late in a standard termination?

RESPONSE:

PDCs are required under the PBGC's regulation on Termination of Single-employer Plans (at 29 CFR § 4041.29). If a PDC is filed late, the PBGC may assess penalties under ERISA section 4071. The PBGC will assess a penalty for late filing of a PDC only to the extent that it is filed more than 90 days after the distribution deadline. See § 4041.29(b) of the single-employer plan termination regulation. The PBGC will not nullify an otherwise valid standard termination simply because the PDC is filed late.

In general, section 4071 penalties are $25 per day for the first 90 days and $50 per day thereafter, with a limit of $100 times the number of participants in a plan. The daily penalty is generally reduced for smaller plans. For guidance, see ERISA section 4071, the PBGC's regulation on Penalties for Failure to Provide Certain Notices or Other Material Information (29 CFR Part 4071), and the PBGC's Statement of Policy on penalties published in the Federal Register July 18, 1995 (at 60 FR 36837). The PBGC plans to update and codify its penalty policy in appendices to its regulations. The codification will include guidance on "reasonable cause."

QUESTION 16

Standard Terminations/Premiums — Plans That Become Substantial Owner Plans

Suppose that a plan's only active participants are substantial owners of the contributing sponsor and that the plan, in the normal course of administration, pays out all benefits of all participants except the substantial owners.

(a) Does the payment of all benefits of non-substantial owners constitute a Title IV plan termination? If not, what (if anything) should the plan administrator do?

(b) Is the termination of the plan at a later date, without the admission of any non-substantial owner participants, a Title IV plan termination?

(c) If the plan later admits one or more non-substantial owner participants and then terminates, is that a Title IV termination?

RESPONSE:

(a) The elimination of non-substantial owner participants by paying out all their benefits is not a Title IV plan termination. However, to avoid needless correspondence with the PBGC, the plan administrator should notify the PBGC of this occurrence by writing to PBGC, Technical Assistance Branch, Suite 930, 1200 K Street NW, Washington, DC 20005-4026 so that the PBGC will know that the plan should be removed from the premium database.

(b) After eliminating non-substantial owner participants, the plan would no longer be covered by Title IV. Thus its termination would not be a Title IV plan termination.

(c) If the plan continues and non-substantial-owner employees subsequently enter the plan, the plan will become covered by Title IV again. The plan administrator of the plan will be required to resume paying premiums beginning with the plan year in which the plan becomes covered again, and the plan's subsequent termination will be a Title IV plan termination.

For further information, see the Frequently Asked Questions (FAQs) on the PBGC's web site (www.pbgc.gov).

Participant Notices

QUESTION 17

Participant Notices — Due Date; 5500 Extensions

Does the due date for the Participant Notice depend on whether the plan has an extension of the due date for the Form 5500 filing?

RESPONSE:

The Participant Notice for a year is due two months after the due date (including extensions) for the prior year's Form 5500 (*i.e.*, during the current plan year). See the PBGC's regulation on Disclosure to Participants (at 29 CFR § 4011.8). Thus, the deadline for furnishing the Participant Notice depends on whether the Form 5500 due date has been extended. For example, for a calendar year plan, the 2000 Participant Notice must be given by two months after the due date for the plan's 1999 Form 5500 — *e.g.*, by October 2, 2000, if the 5500 due date is July 31, 2000; by November 15, 2000, if the 5500 due date is September 15, 2000; or by December 18, 2000, if the 5500 due date is October 16, 2000. (Due dates that fall on a weekend or Federal holiday are extended to the next business day.)

QUESTION 18

Participant Notices — Current Liability Measure

How, if at all, do the rules for calculating a plan's current liability for purposes of the PBGC's Participant Notice rules modify the calculation for the DRC "gateway" rules in ERISA section 302(d)(9) and Internal Revenue Code (IRC) section 412(*l*)(9)?

RESPONSE:

The current liability calculations are similar. For example, both calculations may use the pre-participation service phase-in of ERISA section 302(d)(7)(D) and IRC section 412(*l*)(7)(D) and both are done as of the valuation date. The intent was to "piggyback" on a plan's existing calculations. However, the PBGC has some simplified rules for small plans.

If a plan is small for a plan year (meets the small plan exemption of ERISA section 302(d)(6)(A) and IRC section 412(*l*)(6)(A), *i.e.*, generally 100 or fewer participants on each day of the prior plan year), it will not have done the gateway calculations for the additional funding requirement (AFR) of ERISA section 302(d) and IRC section 412(*l*). It will have calculated and reported a current liability on the Schedule B to Form 5500, but that liability may not be as of the valuation date and it may not be at the highest interest rate in the corridor.

To give small plans an alternative to doing calculations of the additional funding requirement solely for purposes of the notice, PBGC created the following rules for small plans. These rules use information that is already available for small plans.

(1) Use of schedule B data. For any plan year for which the plan is small, the plan's current liability as of the first day of the plan year (from the Schedule B) may be substituted for the current liability as of the valuation date. Note in this case market value of assets as of the first day of the plan year must be substituted for the actuarial value of assets as of the valuation date.

(2) Interest rate adjustment. If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under ERISA section 302(d)(7)(C) and IRC section 412(*l*)(7)(C), the current liability at the higher rate may be calculated by reducing the current liability calculated using a lower interest rate by one percent for each tenth of a percentage point by which the highest rate allowable exceeds the rate used. This rule of thumb was added by PBGC to eliminate the need for extra actuarial calculations.

Reportable Events

QUESTION 19

Reportable Events — Sale of Controlled Group Members With No DB Plans

Suppose the parent of a controlled group that maintains one or more defined benefit plans sells a subsidiary that does not itself maintain a defined benefit plan. Who (if anyone) must file a reportable events notice?

RESPONSE:

A reportable event has occurred because the sale results in one or more persons' ceasing to be members of the plans' controlled group. See the PBGC's regulation on Reportable Events and Certain Other Notification Requirements (at 29 CFR §§ 4043.29 and 4043.62 (dealing with a change in contributing sponsor or controlled group)). Since the controlled group members that were sold are not themselves either plan administrators or contributing sponsors of any plan in the original controlled group, they have no filing obligation. Assuming no waivers apply, however, the plan administrators and contributing sponsors of the plans must file a reportable events notice.

QUESTION 20

Reportable Events — Reporting Missed Quarterlies After Payment

If there is a failure to make required quarterly contributions during the plan year, but eventually the full contribution is made to avoid a funding deficiency for the year, must the failure still be reported to the PBGC?

RESPONSE:

The plan administrator and contributing sponsor of the plan are required to file a reportable event notice with the PBGC if there is a failure to make a required quarterly contribution on time unless: (1) the plan qualifies for the small plan reporting relief under PBGC Technical Update 97-6 (described below); or (2) the missed quarterly contribution is paid in full within 30 days after its due date. Payment more than 30 days late does not negate the reportable event filing requirement even if the payment avoids a funding deficiency for the year.

The reporting relief described in Technical Update 97-6 does not affect the requirement to file a Form 200 with the PBGC if the total of missed quarterly contributions and other missed payments required under Code section 412 and ERISA section 302 (including interest) is $1 million or more. In such circumstances, the Form 200 must be filed with the PBGC regardless of: (1) whether the plan qualifies for relief from the

reportable events requirements under Technical Update 97-6, or (2) whether or when the missed contributions are paid.

Failure to comply with the reportable events or Form 200 reporting requirements for missed contributions may lead to the assessment of significant penalties.

Technical Update 97-6 applies to a plan for which: (1) the employer had 100 or fewer participants in its defined benefit plans; or (2) the employer had 500 or fewer participants in its defined benefit plans and a Participant Notice for the plan under section 4011 of ERISA: (a) was not required for the plan year for which the quarterly contribution is owed; or (b) was not required for the prior plan year. The number of participants must be determined in a manner consistent with section 302(d)(6) of ERISA, including the provisions requiring aggregation of all defined benefit plans maintained by the same employer (or any member of the employer's controlled group). The employer must have met the applicable participant count requirement on each day of the plan year preceding the plan year for which the quarterly contribution is owed. If Technical Update 97-6 applies to the plan, there is no requirement to file a reportable event notice for the failure to make required quarterly contributions (but, as discussed above, there may still be a requirement to file a Form 200).

Employer Reporting

QUESTION 21

Employer Reporting — Extension of Alternative Due Date

Does the alternative due date for filing actuarial information under the PBGC's regulation on Annual Financial and Actuarial Information Reporting depend on whether the plan has an extension of the due date for the Form 5500 filing?

RESPONSE:

Yes. Under the regulation (at 29 CFR § 4010.10(b)), the alternative due date for filing certain actuarial information (if the required notice is given to the PBGC) is "15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year." If the Form 5500 due date for a plan is extended, the alternative due date is correspondingly extended. The date when the Form 5500 is actually filed is irrelevant for this purpose.

QUESTION 22

Employer Reporting — "Gateway" Calculation of Liabilities

Must the plan actuary calculate benefit liabilities using PBGC termination assumptions to determine if the plans sponsored by members of a controlled group total $50 million in underfunding?

RESPONSE:

No. There are two underfunding calculations used for ERISA section 4010:

- The “gateway” calculation determines whether or not a controlled group is above the $50 million threshold and must therefore file under 4010. The liability measure for the gateway is basically the PBGC premium unfunded vested benefits liability. However, exemptions and special rules under § 4006.5 of the PBGC's regulation on Premium Rates (29 CFR § 4006.5) are disregarded in performing the "gateway" calculation. Alternatively, any plan may be valued under the "general rule" method using 100 percent (rather than 85 percent) of the 30-year Treasury rate and the market value (rather than the actuarial value) of assets.

- If the "gateway" calculation shows that filing is required, the plan must use a version of PBGC termination assumptions to calculate underfunding for all non-exempt plans sponsored by the controlled group. A simplified version of PBGC termination assumptions is also used to determine whether a plan is an exempt plan. (See question 25 below.)

See the PBGC's regulation on Annual Financial and Actuarial Information Reporting (at 29 CFR § 4010.4) and Technical Update 96-3 for more details. Both are available at www.pbgc.gov.

QUESTION 23

Employer Reporting — Change in Section 4010 Filing Status

If a controlled group is required to file under section 4010 for one information year, and is not required to file in the next information year, is an actuarial certification of the non-filer status required?

RESPONSE:

No notice is required to inform the PBGC that a controlled group is not required to file under section 4010 for an information year. In general, the filing threshold for a controlled group is reached if —

- aggregate unfunded vested benefits under all controlled group plans exceeds $50 million; or

- a required contribution is not made within ten days after its due date and as a result a lien arises under ERISA section 302(f)(1) and Internal Revenue Code (IRC) section 412(n)(1); or

- any controlled group plan has outstanding funding waivers under ERISA section 303 and IRC section 412(d) totalling over $1 million as of the end of the plan year ending within the information year.

QUESTION 24

Employer Reporting — Leap Year Due Date

When are ERISA section 4010 filings due for controlled groups whose information year is calendar 1999?

RESPONSE:

Section 4010 filings are due 105 days after the end of the information year. For calendar year filers, this is ordinarily April 15th. In leap years, however, the date is April 14th. The year 2000 is a leap year. To maintain consistency with prior years, the PBGC has issued Technical Update 00-1, granting an automatic one-day extension for reporting for controlled groups whose 105-day reporting period includes February 29th. For calendar year filers, the extension takes the due date to April 15th, which is a Saturday; under the PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010), a filing date that falls on a weekend or Federal holiday is automatically extended to the next day that is not a weekend or Federal holiday. Thus, the filing deadline for calendar year filers will be April 17, 2000. For a filer with an information year that ended November 30, 1999, the 105th day after the end of the fiscal year is Tuesday, March 14, 2000. That filing deadline is extended until Wednesday, March 15, 2000. Filers do not have to request a due date extension to take advantage of this automatic extension. The extension applies only to section 4010 filings.

QUESTION 25

Employer Reporting — Turnover and Retirement Assumptions

When valuing benefit liabilities using PBGC termination assumptions for a filing under ERISA section 4010, may the plan actuary use valuation assumptions for turnover and retirement?

RESPONSE:

The actuary must use all the assumptions specified in the regulations, including the specified retirement ages and administrative expense adjustment, as well as the specified interest and mortality basis.

In general, a participant's expected retirement age (XRA) should be determined by using the full accrued plan 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, without regard to the participant's vesting status. (See Q&A 27 in PBGC Technical Update 96-3 (March 15, 1996).) (The exception is that retirement assumptions used for determining current liability may be used instead of the PBGC's XRA assumptions in determining whether a plan is an exempt plan (*i.e.*, one for which actuarial information need not be filed under the PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010)).)

There are no turnover assumptions in PBGC regulations, so the plan actuary may use reasonable turnover assumptions for the plan when valuing possible "grow-in" liabilities in Priority Category 6.