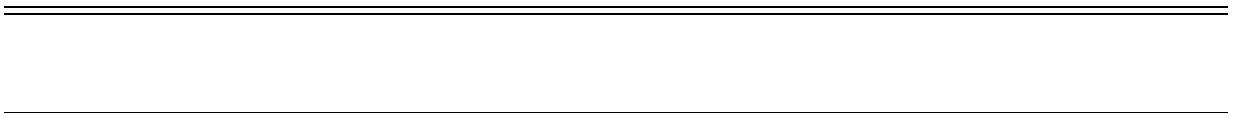


# **2006 Enrolled Actuaries Meeting**

## **Questions to the PBGC and Summary of Their Responses**

**March 2006**



Summary of Discussions between the Enrolled Actuaries Program Committee  
and Staff of the Pension Benefit Guaranty Corporation  
on January 31 and February 14, 2006

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on January 31 and February 14, 2006, 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:

Harold J. Ashner, Keightley & Ashner LLP  
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Curtis M. Cartolano, Hewitt Associates LLC  
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Jay P. Rosenberg, Buck Consultants  
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The following representatives of the Pension Benefit Guaranty Corporation took part in the discussions:

C. David Gustafson, Acting Director, Policy, Research and Analysis Department  
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Catherine B. Klion, Attorney, Legislative and Regulatory Department  
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The Program Committee would like to thank the practitioners who submitted questions for this booklet.

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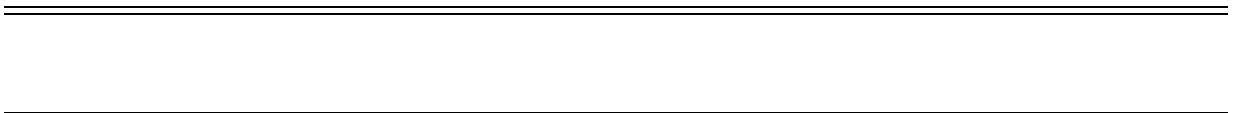
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## QUESTION 1

### Standard Terminations — Pre-Audit Determinations on Proposed Distributions

The PBGC conducts its standard termination audits after the plan administrator has completed the distribution and filed the post-distribution certification, and does not consider itself bound by an IRS Determination Letter. Under what circumstances, if any, would the PBGC be willing to make an advance determination as to the validity of a proposed distribution?

#### RESPONSE:

As a general rule, the PBGC does not provide advance determinations on proposed distributions, largely because many of the problems it finds on audit (e.g., delayed lump sums resulting in a new stability period and, therefore, a different “applicable interest rate”) cannot be anticipated in advance. However, the PBGC will continue to provide guidance on Title IV interpretive issues. If you have Title IV interpretative questions or other questions about a specific termination, please call the Standard Termination Compliance Division at 1-800-736-2444 or 202-326-4242 or e-mail [standard@pbgc.gov](mailto:standard@pbgc.gov).

## QUESTION 2

### Standard Terminations — Selection of Plans to Audit

The responses to Question 12 and 13 of the 2001 PBGC Blue Book described certain procedures concerning the PBGC's standard termination audit program. The response to Question 12 noted that the PBGC "currently" divides plans into two strata, selecting for audit all plans with 500 or more participants and a random sample from among the smaller plans. The response made clear, however, that the PBGC may from time to time change its procedures for selecting plans to audit, including the number of strata and the thresholds between strata. The response to Question 13 described the timing of the PBGC's audit selection. Is the information in the responses to Questions 12 and 13 of the 2001 Blue Book still current? Does the PBGC have any current plans to make changes in this area?

### RESPONSE:

The information in the response to Question 12 of the 2001 Blue Book is still current. However, the PBGC is considering making changes in this area. (The PBGC has no current plans to make any changes in the timing of audits described in the response to Question 13 of the 2001 Bluebook.) If you have questions about standard termination audits, please call the Standard Termination Compliance Division at 1-800-736-2444 or 202-326-4242 or e-mail [standard@pbgc.gov](mailto:standard@pbgc.gov).

### QUESTION 3

#### **Standard Terminations — Enforceability of Sufficiency Commitment**

Assume that a contributing sponsor makes a commitment to make a plan sufficient as part of a standard termination and the plan's enrolled actuary relies on that commitment in certifying to the plan's sufficiency in the Schedule EA-S submitted along with the PBGC Form 500. Assume further that, for whatever reason, the contributing sponsor later decides that it does not want to honor that commitment. Is the contributing sponsor bound by the commitment?

#### **RESPONSE:**

The contributing sponsor is bound by the commitment unless the standard termination is withdrawn or is nullified by the PBGC or a court. However, because a standard termination is a voluntary termination, it may be withdrawn by the contributing sponsor, which effectively nullifies the commitment. See Q&A 8 of the 2005 Bluebook for requirements related to the withdrawal of a standard termination. (This answer assumes there is no contractual or other obligation on the part of the contributing sponsor to proceed with the termination or to make the plan sufficient.)

## QUESTION 4

### Standard Terminations — Failure to File Form 500 by Deadline

What options are available if you fail to file a Standard Termination Notice (Form 500) with the PBGC on or before the 180th day after the proposed termination date?

#### RESPONSE:

You have several options if you fail to file a Standard Termination Notice (Form 500) with the PBGC on or before the 180th day after the proposed termination date.

One option is to move the proposed termination date to a later date, provided that the new date is no more than 90 days after the date the first notice of intent to terminate was issued. This would move the Form 500 filing deadline. If you move the proposed termination date, you must include the new proposed termination date in the notice of plan benefits, reflect additional accruals, if any, in the notice of plan benefits and in the distribution, and promptly issue the notice of intent to terminate and the notice of plan benefits to additional affected parties, if any, as of the later proposed termination date. You should check whether any statutory or regulatory requirement (e.g., regarding qualification) will apply to the plan as a result of using the later termination date.

Another option is to request an extension under § 4041.30(a) for filing the Form 500. There is no prescribed format for requesting an extension. Any request that is filed later than 15 days before the deadline expires must include a justification for not filing the request earlier. The PBGC will grant an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator to take the action until the later date and the delay is brief. Because the PBGC will consider the length of the delay and whether ordinary business care and prudence in attempting to meet the deadline is exercised, the request should focus on these factors. Requests for extension must be in writing and mailed to Manager, Processing and Technical Assistance Branch, Standard Termination Compliance Division, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Suite 930, Washington, D.C. 20005-4026, e-mailed to: [standard@pbgc.gov](mailto:standard@pbgc.gov), or faxed to: (202) 326-4001.

Finally, you may start over. Starting over requires issuing a new notice of intent to terminate, which may be included in the same envelope as the notice of plan benefits. Although the new proposed termination date must be at least 60 days after the notice of intent to terminate is issued, that 60-day minimum period may run concurrently with the PBGC's 60-day review period if the Form 500 is filed immediately. (Remember that day zero of the 60-day minimum period before the proposed termination date is the date the last notice of intent to terminate is issued (e.g., mailed), while day zero of the PBGC's 60-day review period is the date the standard termination notice is received by the PBGC.) Although starting over need not significantly delay the distribution date, it will delay the termination date, which could present issues such as additional accruals or additional participants.

## QUESTION 5

### Guaranteed Benefit — Multiemployer plans

If a single-employer defined benefit plan is merged into a multiemployer defined benefit plan, and the multiemployer plan subsequently receives financial assistance from the PBGC, is the benefit of any former participant (active, deferred, or in pay status) in the single-employer plan subject to the PBGC's guarantee limit for multiemployer plans or the guarantee limit for single-employer plans?

#### **RESPONSE:**

The entire accrued benefit of a participant whose benefit liabilities are transferred to a multiemployer plan would be subject to the multiemployer guarantee limit under Section 4022A(c) of ERISA.



## QUESTION 6

### **Guaranteed Benefit — Multiemployer plans**

Plan M is a multiemployer plan. Because of withdrawals, only one employer is required to make contributions to Plan M. Is the plan subject to the PBGC's guarantee limit for multiemployer plans or the guarantee limit for single-employer plans?

### **RESPONSE:**

The accrued benefit of a participant in Plan M would be subject to the multiemployer guarantee limit under Section 4022A(c) of ERISA. See Opinion Letter 01-2.

## QUESTION 7

### Valuations — Cash Balance Plan with Variable Index

When the PBGC is valuing benefits under ERISA section 4044 for a cash balance plan that uses a variable index for its interest credits, how does the PBGC determine the amounts of future annuity benefits that depend on the performance of that variable index?

#### RESPONSE:

In general, for valuing such benefits for purposes of allocating plan assets under section 4044, if the plan uses one of the indices permitted under IRS Notice 96-8, the PBGC first will project interest credits on the hypothetical cash balance account from the date of plan termination to the participant's expected retirement age using the 30-year treasury rate applicable to the date of plan termination under plan terms, decreased by the "Associated Margin" (for variations from 30-year Treasuries) for the variable index used by the plan, as set forth in IRS Notice 96-8, and increased or decreased by any plan margin. For example, if the plan uses 1-year Treasury Constant Maturities plus 25 basis points, PBGC would project interest credits at the 30-year rate less 75 basis points. (This 75 basis point reduction reflects a reduction of 100 basis points for the Associated Margin and an increase of 25 basis points for the plan margin.) Next, the PBGC will convert the hypothetical account at the participant's expected retirement age into an annuity commencing at that age using the plan's conversion factors. If the plan's conversion factors use a variable index, it is subject to the PBGC's rules for variable indices, as listed above. Finally, the PBGC will discount that annuity back to the date of plan termination using the PBGC's interest and mortality assumptions under the valuation regulation.

For purposes of computing the participant's full plan benefit when he or she retires, the PBGC will use the actual performance of the plan's variable index. However, the PBGC will determine the extent to which any nonguaranteed portion of that full plan benefit may be paid from plan assets in accordance with ERISA section 4044 or from employer liability recoveries in accordance with ERISA section 4022(c) based on the results of the valuation methodology described above.

## QUESTION 8

### Valuations — Liabilities Under Section 4044

In its new regulation on valuation of liabilities under section 4044 of ERISA, the PBGC published healthy-life mortality rates from the 1994 GAM table. Why do these rates differ from those in the 1994 GAM Static Table?

#### RESPONSE:

The rates used in the PBGC's regulation are from the 1994 GAM "Basic" table. That is, they are the smoothed rates derived from experience but before a 7% load (reduction in mortality rates) was applied. That loaded table, in contrast to the "Basic" table, is known as the 1994 GAM "Static" table. These tables are described in a paper at <http://library.soa.org/library/tsa/1990-95/TSA95V4722.pdf>.

The 1994 GAM Basic table is identical to the 1994 Uninsured Pensioner (UP-94) Mortality Table. This table is widely available and is included in the Society of Actuaries' "Table Manager" software.

## QUESTION 9

### Valuations — Effect of Updated Mortality on PBGC's Derived Interest Factors

On December 2, 2005, the PBGC published a final rule amending its valuation regulation to update the mortality assumptions used for various purposes, including determining employer liability when a plan terminates in a distress or involuntary termination. The amendments went into effect for plans with termination dates on or after January 1, 2006.

There was a 170 basis point increase in January 2006 in the PBGC's select rate (from 4% to 5.7%), and no change in the PBGC's ultimate rate (4.75%), as compared to the rates in effect for December 2005. How much of the 170-basis-point increase was attributable to the updating of the PBGC's mortality assumptions as opposed to the annual recalibration of the PBGC's derived interest factors with the ACLI survey results?

### RESPONSE:

Of the 170-basis-point increase, about 100 basis points was attributable to the updating of the PBGC's mortality assumptions. The remainder of the increase (about 70 basis points) was attributable to the annual recalibration. The recalibration reflected ACLI survey data as of June 30 and September 30, 2005, updated to take into account changes in bond yields from the dates of the surveys through the end of November 2005.

The final rule amending the valuation regulation can be found at <http://www.pbgc.gov/docs/05-23554.pdf>.

## QUESTION 10

### Participant Notice — Enforcement

The PBGC announced as part of its initiation of the Participant Notice Voluntary Correction Program that it “is expanding its Participant Notice enforcement program with a view toward more actively auditing compliance and assessing penalties for noncompliance” (69 Fed. Reg. 25792 (May 7, 2004)). What are the PBGC’s current and planned enforcement activities in this area?

### RESPONSE:

The PBGC is actively enforcing Participant Notice requirements and assessing penalties where appropriate. The PBGC performs electronic data analysis of Form 1 and Form 5500 data in order to identify plans that may not have complied with Participant Notice requirements. Given the lag in the availability of 5500 data, at this point, the PBGC is focusing primarily on enforcing Participant Notice requirements for the 2002 through 2004 plan years.

The PBGC looks primarily at situations where a plan administrator certified that a Participant Notice was not required but the PBGC's preliminary data analysis suggests that a Participant Notice in fact was required. In some cases, the PBGC may look at situations where a plan administrator certified that a Participant Notice was issued as required, for purposes of determining whether all requirements were met (e.g., the Participant Notice included all required information and was issued timely to all persons entitled to receive it). Before taking enforcement action, the PBGC provides the plan administrator an opportunity to demonstrate compliance with Participant Notice requirements or participation in the Voluntary Correction Program, which covers violations for the 2002 and 2003 plan years only. (The deadline for participating in the Voluntary Correction Program has passed.) The PBGC also may take enforcement action where a plan administrator disclosed that a Participant Notice was not issued timely or there was some area of noncompliance.

In terms of common errors found, the greatest area of concern is failure to issue a Participant Notice. Close coordination between the actuary and the plan administrator is of key importance, especially because some plan administrators are now required to issue Participant Notices (based on funding and asset value changes) that had not been required to do so in the past. In addition, some plan administrators do not follow the model Participant Notice or fail to include all required information (e.g., the month and year of issuance).

## QUESTION 11

### Participant Notice – Correcting Participant Notice Failures

A plan administrator failed to provide a Participant Notice under section 4011 of ERISA as required for one or more prior plan years. How can the plan administrator correct the failure?

#### RESPONSE:

The PBGC encourages plan administrators to correct Participant Notice failures as soon as possible, both to ensure that participants receive more timely information and to minimize penalty exposure. Voluntarily coming forward to the PBGC about a Participant Notice violation may also reduce penalties.

For purposes of correcting two or more missed Participant Notices, a plan administrator generally may issue a corrective notice that combines the missed Participant Notices, provided that the corrective notice includes all of the information (e.g., funding percentages for the applicable plan years) required to be included in the missed Participant Notices. Depending on the timing, a plan administrator might choose to combine into a single document the information required to be included in a missed Participant Notice with a Participant Notice for a later plan year (regardless of whether a Participant Notice is required for that later plan year). If the plan administrator combines the information required to be included in a missed Participant Notice with a Participant Notice for a later plan year, the PBGC (in its enforcement discretion) generally will not treat the Participant Notice for that later plan year as violating the requirement in § 4011.10(d) that additional information may be included only if it is in a separate document. *(Note: This modifies the PBGC's response to Question 18 of the 1998 Bluebook, which stated that two Participant Notices may not be combined into a single document.)*

A plan administrator that filed an erroneous certification on the annual PBGC premium filing regarding Participant Notice compliance for the prior plan year must file an amended certification.

Plan administrators may request compliance assistance regarding Participant Notice requirements and additional guidance on correcting a Participant Notice failure by contacting the PBGC at [pnotice@pbgc.gov](mailto:pnotice@pbgc.gov) or by calling 1-800-736-2444. Also see Question 10 for information on the PBGC's enforcement activities in this area.

## QUESTION 12

### Reportable Events — Active Participant Reduction

Assume that a calendar-year plan has a reduction in active participants from 1000 as of the beginning of 2005 to 500 active participants on December 1, 2005. That is a reportable event (active participant reduction) because the number of active participants is reduced to less than 80% of the number of active participants at the beginning of the current plan year (i.e., the beginning of 2005). The plan sponsor reports this event in 2005 (for 2005) since neither a waiver nor an extension applies.

In 2006, the number of active participants is still 500. As that number of active participants is less than 750 (75% of the active participant count at the beginning of 2005), must the plan sponsor file a second notice of reportable event for 2006?

### RESPONSE:

Yes. Each plan year starts a new reporting cycle, and the first day of that plan year on which the active participant count is less than 80% of the count at the beginning of the plan year or is less than 75% of the count at the beginning of the preceding plan year is the date on which an active participant reduction reportable event occurs. A later decline in the active participant count during the 2006 plan year (even if the number of active participants has in the interim increased to 750 or above), is not an active participant reduction reportable event, unless the number is reduced to less than 80 percent of the number of active participants as of the beginning of 2006 (in this example to 399 or below), in which case it would be a new reportable event.

### QUESTION 13

#### **Reportable Events — Active Participant Reduction with a Plan Freeze**

Assume a plan is frozen. Under 29 CFR § 4043.22, the reportable events notice for amendments reducing benefits is waived. However, under 29 CFR § 4043.23, a significant reduction in the number of active participants does create a reportable event. Does freezing the plan create a reportable event due to a reduction in the number of active participants?

#### **RESPONSE:**

No. If the participants continue to work for the company, even though they do not earn benefit accrual service, they continue to meet the definition of active participant under 29 CFR § 4043.23.



## QUESTION 14

### Reportable Events — Spinoffs Resulting in Non-Spinoff Reportable Events

Assume that Plan A, a single-employer plan that is not a multiple employer plan, spins off Plan B; that Plan B is transferred to another controlled group as part of a sale of assets to that other controlled group; that all benefit liabilities for half of the active participants in Plan A are transferred to Plan B as part of the spinoff; and that the spinoff is not reportable under 29 CFR § 4043.32 (“Transfer of benefit liabilities”) because of the applicability of one or both of the waivers in § 4043.32(c)(3) (“Section 414(l) safe harbor”) and .32(c)(4) (“fully funded plans”).

- (a) Is the transaction reportable as an active participant reduction under § 4043.23? *(Note: The response to Question 19 of the 2005 Blue Book treats a similar situation involving a multiple employer plan as an active participant reduction.)*
- (b) If so, did the reportable event occur with respect to Plan A, Plan B, or both?
- (c) Would the response to (a) be different if all of Plan A's active participants remained within the controlled group, but half of them were transferred, along with the Plan A benefit liabilities due them, to another group member?
- (d) Would the responses to (a) or (b) be different if Plan A had instead spun off all of its liabilities to two other plans, Plan B and Plan C? Does it matter if Plan B or Plan C (or both) existed before the transfer?
- (e) Would such a transaction also be reportable under 29 CFR § 4043.29 (“change in contributing sponsor or controlled group”), subject to applicable waivers in § 4043.29(c), regardless of whether the benefit liabilities for half, or some lesser portion, of the active participants in Plan A had been transferred to Plan B as part of the spinoff?
- (f) Does the PBGC have authority to waive reporting where warranted by the circumstances?

### RESPONSE:

- (a) The transaction is reportable as an active participant reduction. The reduction in active participants is 50%, which fits the literal language of § 4043.23.
- (b) The reportable event under § 4043.23 would occur with respect to Plan A, as that was the plan that experienced the active participant reduction.
- (c) Under the literal terms of § 4043.23, such a spinoff would constitute a reportable active participant reduction. However, in the case of a single-employer plan that is not a multiple employer plan, the PBGC, based on its practice, would be unlikely to assess a penalty for failure to provide the notice of an active participant reduction where all the plan's active participants remain within the controlled group and the transfer of participants and liabilities is within the controlled group.

[Response continues on next page.]

- (d) Section 4043.20 of the PBGC’s regulations provides that “if there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.” Because Plan A would no longer exist at the time the notice would be due to the PBGC (30 days after the plan administrator or contributing sponsor knows or has reason to know that the reportable event has occurred), the PBGC would view this as a change in plan administrator from the plan administrator of Plan A to the plan administrators of Plans B and C. Thus those plan administrators and the sponsors of their plans would have the reporting obligation. We do not see any difference arising from any previous existence of Plans B and C.
- (e) The spinoff of Plan B, and its transfer from seller’s controlled group to buyer’s controlled group would result in all members of the seller’s controlled group ceasing to be members of the controlled group of the Plan B “portion” of pre-transaction Plan A, and thus would be a reportable event under § 4043.29, subject to applicable waivers in § 4043.29(c). This is the case regardless of the portion (e.g., 1%) of Plan A’s participants whose benefit liabilities had been transferred as part of the spinoff.
- (f) Under section 4043.4(d), the PBGC may extend any deadline or waive any other requirement under part 4043 where it “finds convincing evidence that the waiver or extensions is appropriate under the circumstances.”

## QUESTION 15

### Reportable Events — Use of 4010 Optional Assumptions for Reporting Waiver

Several reportable events include waivers from reporting where the plan would have no unfunded vested benefits (“UVBs”) if UVBs were determined in accordance with the assumptions and methodology in § 4010.4(b)(2) of the PBGC’s regulations (the “4010 Optional Assumptions”). See 29 CFR § 4043.23(c)(2)(iii), .27(c)(2)(ii), .29(c)(3)(iii), .30(c)(2)(iii), .31(c)(5)(iii), and .34(c)(2)(iii). That paragraph was removed from the PBGC’s regulations in the PBGC final rule published at 70 Fed. Reg. 11540 (March 9, 2005). Starting with the annual reports due (for calendar-year filers) on April 17, 2006, (April 15, 2006, falls on a Saturday), the 4010 Optional Assumptions are no longer available for determining if a 4010 filing is required. However, the final rule did not remove the various references to the 4010 Optional Assumptions in the reportable events regulation.

- (a) May the funding-based waivers in the reportable events regulation that are tied to the 4010 Optional Assumptions continue to be used even after those assumptions are no longer available for determining if a 4010 filing is required.
- (b) If so, it is not entirely clear which mortality assumptions must be used as part of the 4010 Optional Assumptions in the case of a calendar year plan. This is because the optional assumption rules require that new mortality assumptions be used “for any plan year ending on or after the effective date” of a PBGC amendment to the mortality assumptions it uses under its valuation of benefits regulation (29 CFR Part 4044, Subpart B). The PBGC adopted such an amendment, moving from a version of GAM-83 to a version of GAM-94, effective for plan terminations on or after January 1, 2006 (70 Fed. Reg. 72205, Dec. 2, 2005). If a reportable event occurs in the 2006 calendar plan year, would the old or new mortality assumptions apply for purposes of this waiver? (For the 2006 calendar plan year, the “event year” ends on or after January 1, 2006. This would suggest using the new mortality table. But the “testing date” for the event year (generally) is the last day of the preceding plan year, i.e., December 31, 2005. The plan year containing that testing date ends before January 1, 2006. This would suggest using the old mortality table.

### RESPONSE:

- (a) Yes, pending further guidance from the PBGC. See the instructions to the PBGC’s Form 10, which have recently been amended.
- (b) The old mortality assumptions must be used. The “plan year” that must end on or after January 1, 2006, in order to trigger the requirement to use the new mortality assumptions generally is not the event year. Rather, it is the plan year that contains the “testing date” (as defined at 29 CFR § 4043.2) for the event year. The testing date under the reportable events regulation is the same as the premium snapshot date used for premium purposes, and thus is usually the last day of the preceding plan year. Thus, in the case of a calendar-year plan where the event year is the 2006 plan year and the testing date is December 31, 2005, the amended mortality assumptions need not be used because the 2005 plan year does not end on or after January 1, 2006. However, if the testing date for the event year were January 1, 2006 (e.g., because of the special merger-spinoff rule in 29 CFR § 4006.5(e)), the amended mortality assumptions would have to be used.

## QUESTION 16

### Employer Reporting —Interest Assumptions for \$50 Million UVB Test

One of the triggers for having to file information under ERISA section 4010 is that the controlled group maintains plans that have aggregate unfunded vested benefits (“UVBs”) (excluding any plans with no UVBs) exceeding \$50 million (“4010 Gateway Test”). For this purpose, UVBs of each plan maintained by the controlled group are determined as of the last day of the plan year ending within the Information Year (“4010 Gateway Testing Date”).

The Pension Funding Equity Act of 2004 (PFEA) temporarily changed the interest rate basis for the 4010 Gateway Test from 85% of the annual yield on 30-year Treasury securities ("Snap-back 85% Treasury Rate") to 85% of the annual rate of interest on amounts invested conservatively in long-term investment grade corporate bonds ("PFEA 85% Corporate Rate"). As a result of the expiration of PFEA, for 4010 Gateway Testing Dates on or after December 31, 2005, employers are supposed to use the Snap-back 85% Treasury Rate. Pending legislation, if enacted, would extend the PFEA 85% Corporate Rate for another year for this purpose.

What interest rate should be used for determining UVBs for the 4010 Gateway Test for a plan year ending on or after December 31, 2005?

#### **RESPONSE:**

The PBGC does not have the authority to change the basis for the 4010 Gateway Test. However, the PBGC may waive 4010 reporting requirements in appropriate cases. In Technical Update 06-1, the PBGC temporarily waived the 4010 reporting requirements for filers who would not have to file if the PFEA 85% Corporate Rate continued to be the interest rate for the 4010 Gateway Test. This temporary relief applies only to information years ending on or after December 31, 2005, and on or before June 30, 2006. Technical Update 06-1 has no effect on the determination of premiums or on any other reporting requirements.

The PFEA 85% Corporate Rate is available at the link <http://www.pbgc.gov/practitioners/interest-rates/content/page15546.html>.

**[Response continues on next page.]**

A summary of the interest rates to use to determine if the waiver applies follows:

**Information years ending on or after December 31, 2005 and on or before June 30, 2006**

4010 Gateway Testing Date	Rate to determine if waiver applies	
	Rate	Description
On or after December 31, 2005 and before January 31, 2006	4.86%	85% of the <i>December</i> Corporate Rate
On or after January 31, 2006 and before February 28, 2006	4.80%	85% of the <i>January</i> Corporate Rate
On or after February 28, 2006 and before March 31, 2006	To be posted in March, 2006	85% of the <i>February</i> Corporate Rate
On or after March 31, 2006 and before April 30, 2006	To be posted in April 2006	85% of the <i>March</i> Corporate Rate
On or after April 30, 2006 and before May 31, 2006	To be posted in May 2006	85% of the <i>April</i> Corporate Rate
On or after May 31, 2006 and before June 30, 2006	To be posted in June 2006	85% of the <i>May</i> Corporate Rate
On June 30, 2006	To be posted in July 2006	85% of the <i>June</i> Corporate Rate

Unless legislation is enacted or the PBGC issues additional relief, 4010 reporting for information years ending after June 30, 2006, will be required if aggregate UVBs exceed \$50 million, determined using the Snap-back 85% Treasury Rate for plan years ending on or after December 31, 2005.

## QUESTION 17

### Employer Reporting — Mortality table used to Determine Benefit Liabilities

29 CFR § 4010.8 provides that benefit liabilities at the end of the plan year ending within the filer's information year be reported. For this calculation, benefit liabilities are to be determined using ERISA section 4044 assumptions.

Effective January 1, 2006, the PBGC adopted a new mortality table for purposes of section 4044. When does the new table take effect for purposes of reporting benefit liabilities under § 4010.8?

#### RESPONSE:

It depends on the plan year of the plan in question, and not the information year of the filer. For plan years ending in 2005, including December 31, 2005, the prior mortality table should be used. For plan years ending on or after January 1, 2006, the new table should be used.

#### Example:

Consider a company with an information year July 1, 2005 – June 30, 2006. Further, assume that members of this controlled group sponsor two non-exempt defined benefit plans: one with a calendar year plan year and one with a July 1-June 30 plan year. For the 4010 filing due October 15, 2006, plan actuarial information should be calculated as follows:

Plan year	Measurement date	Mortality table
1/1/2005 — 12/31/2005	12/31/2005	Old 4044 table
7/1/2005 — 6/30/2006	6/30/2006	New 4044 table

For filers with calendar year information years, the filing due April 17, 2006, (April 15, 2006, falls on a Saturday) will include benefit liabilities for non-exempt plans calculated as of the end of the plan year that ended in 2005. This means that all benefit liabilities reported for the filing due April 17, 2006, will be based on the old 4044 mortality table.

*Note: The 4044 mortality table is used for reporting benefit liabilities. This table is not used to determine whether a filing is required (i.e., the 4010 Gateway Test). The 4010 Gateway Test uses the current liability mortality table.*

## QUESTION 18

### Employer Reporting — Multiple Employer Plans

Consider an employer (Employer A) that sponsors a single-employer plan that is not a multiple employer plan (Plan A) with unfunded vested benefits (UVBs) of \$55 million, and thus is subject to the reporting requirements of ERISA section 4010. In addition, Employer A is one of the contributing employers of a multiple employer plan, and the UVBs for the multiple employer plan, in total, including participants of all employers, are \$25 million.

- (a) Must Employer A submit plan identifying information and plan actuarial information for the multiple employer plan pursuant to ERISA section 4010?
- (b) Does the answer to (a) change if another participating employer of the multiple employer plan has already filed the same information?
- (c) What financial information must be reported?
- (d) Would the answer to any of these questions be different if Plan A had total UVBs of only \$40 million and, therefore, reporting would not be triggered for Employer A but for the additional underfunding in the multiple employer plan. (Note: The response to Question 20 of the 2002 Blue Book makes clear that both the \$40 million in UVBs and the \$25 million in UVBs are aggregated for purposes of the \$50 million underfunding test of section 4010. But the response also says that a potential filer may contact the PBGC to discuss a waiver “where inclusion of the UVBs of the multiple employer plan in applying the \$50 million underfunding test would lead to a reporting requirement that would not further the purposes of the statute.”)
- (e) Would the answer to question (d) change if the multiple employer plan has UVBs in excess of \$50 million.

### RESPONSE:

- (a) Yes. Employer A is a “filer” as defined under 29 CFR § 4010.4.
- (b) It is Employer A’s responsibility to provide the plan identifying and actuarial information. However, if another employer has provided the required actuarial information for the multiple employer plan as part of its 4010 filing, it is not necessary for Employer A to file what would be duplicate information. In this situation, Employer A may include a comment on Schedule I (of the web-based 4010 application) reporting the name, EIN and plan number of the multiple employer plan and the name of the filer that submitted this information. Reporting actuarial information by reference does not relieve Employer A of its filing requirement. If the information filed by that other filer is incomplete or erroneous, the PBGC may assess a filing penalty against Employer A.

The PBGC recommends that Employer A obtain a hard copy of the signed Schedule P (of the web-based 4010 application) that was filed by the other employer for the multiple employer plan to keep in its files. Alternatively, Employer A may contact the PBGC and request a waiver for this portion of the reporting requirement.

- (c) Employer A must report financial information for all non-exempt members of the controlled

group to which Employer A belongs. It is not necessary for Employer A to report financial information for contributing sponsors of the multiple employer plan who are not part of Employer A's controlled group.

- (d) Technically the reporting requirements are the same. However, a potential filer may contact the PBGC's Department of Insurance Supervision and Compliance (DISC) at 202-326-4070 to request a waiver where inclusion of the total UVBs of a multiple employer plan in applying the \$50 million underfunding test would lead to a reporting requirement that would not exist if the multiple employer plan were excluded from the 4010 Gateway Test. *(Note: This is a clarification to what was said in the response to Question 20 of the 2002 Blue Book regarding when an employer should contact the PBGC to request a waiver in these situations. As stated in Section 4010.11 of the PBGC's regulations, the PBGC will exercise its discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension may be subject to conditions.)*
- (e) The PBGC is extremely unlikely to waive reporting unless at least one employer provides the required identifying and actuarial information for the multiple employer plan and identifying and financial information for the larger employers who participate in the multiple employer plans as part of its 4010 filing. Filers in this situation should contact the PBGC to discuss alternatives.



## QUESTION 19

### **Employer Reporting — Identifying and Financial Information for Foreign Controlled Group Members**

29 CFR § 4010.7(a) and § 4010.9(a) require reporting identifying and financial information with respect to each member of the controlled group (excluding exempt entities). Does this include members outside of the U.S. (for example, foreign subsidiaries)?

#### **RESPONSE:**

Yes. Also see Question 19 of the 2003 Blue Book.

## QUESTION 20

### **Employer Reporting — Additional Information Where Consolidated Financial Statements are Used**

29 CFR § 4010.9 provides that if consolidated financial statements are used to satisfy the financial information reporting requirement, additional information must be provided with respect to each controlled group member included in the consolidated financial statements (other than an exempt entity). Specifically, revenues and operating income for the information year and net assets at the end of the information year must be reported on Schedule I.

- (a) Does this requirement apply to non-exempt members of the controlled group who do not sponsor pension plans?
- (b) Can you provide additional information about what constitutes “revenues,” “operating income,” and “net assets”?
- (c) Is this information required even if it is not readily available?

### **RESPONSE**

- (a) For information years ending on or after December 31, 2004, this information is required for all non-exempt members of the controlled group with financial information included in consolidated financial statements. This includes foreign subsidiaries.
- (b) In general, these terms refer to the following:
  - Revenues for the information year include total dollar payments for goods and services that are credited to an income statement. This amount may also be called net sales or net revenues. In general, it is the proceeds resulting from a sales transaction, before the cost of the product or service is subtracted.
  - Operating income for the information year includes income for the period after subtracting out expenses that are directly attributable to the generation of the income. In general, it does not take into consideration costs of financing the enterprise, such as interest expense or income taxes. This amount is developed by taking net revenues for the period and subtracting out direct costs of producing those revenues (including items such as cost of sales and sales, general and administrative expenses).
  - Net assets at the end of the information year are determined by subtracting the total liabilities (excluding owner’s equity) from the total assets.
- (c) Yes. This information must be reported for all non-exempt entities whose financial information is combined with other entities in the consolidated financial statements.

## QUESTION 21

### Other Reporting — Substantial Cessation of Operations

A plan sponsor ceases operations at a facility and more than 20% of a plan's active participants are separated as a result. Must the plan sponsor report this to the PBGC under ERISA section 4063(a)(1) under the following circumstances?

- (a) The plan sponsor files a reportable event notice for an active participant reduction using the Form 1 extension.
- (b) The plan sponsor files a reportable event notice for an active participant reduction without an extension (30 days after the event occurred).
- (c) The plan sponsor does not file a reportable event notice for an active participant reduction because a funding-based waiver applies.

### RESPONSE:

- (a) Yes. Any extension for reporting the reportable event has no effect on the 60-day time limit for reporting the cessation of operations under ERISA section 4062(e) in accordance with ERISA section 4063(a).
- (b) Yes. The reportable events filing requirement is separate from the filing requirement (under ERISA section 4063(a)) when there is a 4062(e) event. The reportable events notice will not necessarily state that the active participant reduction constitutes a cessation of operations within the meaning of ERISA section 4062(e), nor will it necessarily request (as is required by ERISA section 4063(a)(2)) that the PBGC make a liability determination. However, if the filer submits the 4062(e) notice at the same time as or earlier than the reportable events notice, the reportable events notice may incorporate by reference any information that is already in the 4062(e) notice.
- (c) Yes. Any waiver from reporting the reportable event has no effect on the 60-day time limit for reporting the cessation of operations under ERISA section 4062(e) in accordance with ERISA section 4063(a).

## QUESTION 22

### **Other Reporting — Form and Manner of Notice under ERISA section 4063(a)**

Assume that a plan administrator is required to report to the PBGC under ERISA section 4063(a), either because there has been a withdrawal of a substantial employer from a multiple employer plan or because there has been a cessation of operations within the meaning of ERISA section 4062(e). To which office of the PBGC is the report to be submitted, and what information must the report contain?

### **RESPONSE:**

The report must contain the information required by the statute, i.e., (1) notification of the cessation of operations within the meaning of ERISA section 4062(e) or of the withdrawal of a substantial employer from a multiple employer plan, and (2) request for a liability determination. There is no prescribed format for the report. The report must be filed with the PBGC's Department of Insurance Supervision and Compliance within 60 days of the withdrawal or cessation. It may be mailed to DISC at 1200 K Street, NW, Washington, DC 20005-4026, faxed to 202-842-2643, or e-mailed to [4063.report@pbgc.gov](mailto:4063.report@pbgc.gov).

## QUESTION 23

### Other Reporting — New Schedule B Instructions for More Detailed Plan Provisions

The instructions for the summary of plan provisions attachment for the 2005 Schedule B have been expanded to include the following:

“including the status of the plan (e.g., eligibility frozen, service/pay frozen, benefits frozen), optional forms of benefits, special plan provisions (including those that apply only to a subgroup of employees (e.g., those with imputed service), supplemental benefits”

- (a) Some plans cover only inactive participants whose benefits are all frozen. Is it necessary to include an attachment that lists all benefit and eligibility provisions that applied to any of the participants with frozen benefits, or is it sufficient to state that the actuary valued the liability for the frozen benefits, without attaching a summary of the plan provisions on which the frozen benefits were based?
- (b) Some plans have been amended numerous times to change benefit accrual levels and eligibility conditions. Is it necessary for the summary of plan provisions attached to a 2005 Schedule B to include information on all benefit levels and eligibility conditions that apply to all active participants, including provisions that applied to benefit accrual rates for any period of past service, or is it sufficient to show only those benefit provisions that apply for current and future accruals?

#### RESPONSE:

- (a) The summary may indicate that frozen benefits that have been previously calculated were used to value the liabilities for participants whose accruals have ceased. The summary should also include any special benefit provisions such as optional forms of benefits, early commencement eligibility, early commencement adjustment factors, and supplemental benefits.
- (b) The summary of principal eligibility and benefit provisions should provide sufficient detail to describe how benefits were determined for each of the 5 years prior to the valuation, for current year accruals, and for future years' accruals for participants included in the valuation.

## QUESTION 24

### **Other Reporting — Disclosure of Benefit Provisions on Schedule B**

The instructions for Line 6 of the Schedule B require that the actuary attach a summary of the principal benefit provisions on which the valuation is based. For a dollar-times-service plan, the dollar multiplier is the key benefit provision. However, the plan sponsor specifically requests that the schedule of dollar multipliers (which varies by location) not be disclosed in the attachments as the sponsor views this as confidential and competitive information. Can the actuary honor the sponsor's request?

### **RESPONSE:**

The Schedule B (with attachments) must disclose the principal eligibility and benefit provisions upon which the valuation is based. The description must describe the benefit multipliers in sufficient detail to meet this requirement. It may be possible to satisfy this requirement without explicitly listing the benefit multipliers for each of the locations (for example, showing a range of multipliers or showing the average multiplier).