

The system of records may contain information which relates to official federal investigation. The exemptions are necessary to protect law enforcement and investigatory information and functions as described in the proposed rule and will be applied only to the investigatory information contained in this system.

EFFECTIVE DATE: December 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Mary Cahill at 202-307-1823.

SUPPLEMENTARY INFORMATION: On September 5, 2000 (65 FR 53679) a proposed rule was published in the *Federal Register* with an invitation to comment. No comments were received.

Regulatory Flexibility Act: This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866: The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: November 21, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, CFR part 16 is amended as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR Part 16 is amended by adding to Subpart E § 16.104 to read as follows:

Subpart E—Exemption of Records Systems Under the Privacy Act

§ 16.104 Exemption of Office of Special Counsel—Waco System.

(a) The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): CaseLink Document Database for Office

of Special Counsel—Waco, JUSTICE/OSCW-001. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Only that portion of this system which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) Subsection (d)(2). Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsections (e)(1) and (5). It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete; but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(7) Subsection (e)(2). To collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(8) Subsection (e)(3). To inform individuals as required by this subsection would reveal the existence of an investigation and compromise law enforcement efforts.

(9) Subsection (e)(8). To serve notice would give persons sufficient warning to evade law enforcement efforts.

(10) Subsection (g). This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

[FR Doc. 00-30608 Filed 11-30-00; 8:45 am]

BILLING CODE 4410-EW-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212-AA58

Premium Rates; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule makes three amendments to the PBGC's premium regulations. One amendment allows plan administrators to pay a prorated premium for a short plan year rather than paying a full year's premium and requesting a refund. A second amendment simplifies and narrows the definition of "participant" for PBGC premium purposes. A third amendment simplifies the standard for claiming the variable-rate premium exemption for plans that are fully insured under section 412(i) of the Internal Revenue Code.

DATES: Effective January 1, 2001. The amendments made by this rule apply to plan years beginning after 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Deborah C. Murphy, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Employee Retirement Income Security Act of 1974 (ERISA) requires the payment of annual premiums to the PBGC for pension plans that Title IV of ERISA covers. ERISA section 4006 establishes the amount of the annual premium. For single-employer plans, there is a flat-rate premium of \$19 per participant and a variable-rate premium of \$9 per \$1,000 of unfunded vested benefits. For multiemployer plans, there is only a flat-rate premium of \$2.60 per participant.

Under the PBGC's premium regulations (29 CFR Parts 4006 and 4007), plan administrators count participants and calculate unfunded

vested benefits as of a "snapshot date," which in most cases is the last day of the plan year preceding the premium payment year. However, for certain plans involved in mergers or spinoffs and (in general) for new and newly-covered plans, the snapshot date is the first day of the premium payment year.

On April 10, 1992, the PBGC published in the **Federal Register** (at 57 FR 12666) a proposed amendment to its premium regulation. Among other things, the proposal would have revised the rules on prorating premiums for short plan years; would have redefined the term "participant" for premium purposes; and would have simplified the requirement for exemption from the variable-rate premium for fully insured plans. The PBGC is now making changes to its premium regulations in these three areas. (The PBGC is also eliminating an obsolete provision governing the 1998 plan years of certain public utility company plans.)

Short-Year Premiums

Section 4006.5(f) of the PBGC's regulation on Premium Rates (29 CFR Part 4006) currently provides for premium refunds for certain types of short plan years, with the annual premium prorated by months. The rule covers (1) a short first year of a new or newly-covered plan; (2) a short year created by a change in plan year; (3) a short year created by distribution of plan assets pursuant to a plan termination; and (4) a short year created by the appointment of a trustee for a single-employer plan under ERISA section 4042. The regulation requires the plan administrator to pay the full 12-month premium and then file for a refund (or claim a credit against a future premium payment).

The amendment adopted in this final rule gives the plan administrator of a plan that has a short plan year the option to pay a prorated premium for the short year (instead of paying a non-prorated premium and then requesting a refund or claiming a credit against a future premium payment). In most cases, the short plan year will have ended well before the premium due date, and the plan administrator will therefore know the length of the short plan year when filing. However, this is not required, and the plan administrator may anticipate that the plan will have a short plan year, estimate its length, and pay a prorated premium accordingly. For example, the plan administrator may anticipate the adoption of a plan amendment shortening the plan year or the distribution of plan assets in connection with the plan's termination. In such

circumstances, if it turns out—for whatever reason—that the plan year is longer than anticipated, the plan administrator must make up any premium underpayment (which is subject to interest and penalties from the due date forward).

The risk of error in anticipating the length of a plan year is clearly greater where the plan administrator of a plan with 500 or more participants is paying the flat-rate premium early in the plan year (typically with Form 1-ES). To address this, the amendment provides "safe harbor" penalty relief in certain cases for an underpayment of the flat-rate premium that is due by the early filing due date (the end of February for calendar-year plans). The safe harbor applies where a plan amendment that changes the plan year has been adopted, but the short year has not ended, by the early filing due date, and later events result in a plan year longer than anticipated because the expected change in plan year does not take place. This may happen, for example, if the amendment changing the plan year is rescinded before the end of the short year provided for in the amendment. In a situation of this kind, the new safe harbor rule waives any underpayment penalty accruing between the flat-rate payment due date (the end of February for calendar-year plans) and the due date for the reconciliation filing (October 15 for calendar-year plans) where the penalty arises from reliance on the short-year amendment.

The amendment clarifies that if a plan is amended to provide for a change in the plan year, the plan does not have a short plan year for PBGC premium purposes if the plan disappears in a multiple-plan transaction (such as a plan merger, consolidation, or spinoff) at or before the time the new plan year cycle begins.

The short-year proration amendment adopted in this final rule will provide broader relief than the PBGC's 1992 short-year proposal. As an alternative to refunds, that proposal would have allowed (1) payment of a prorated premium only for a short first year of a new or newly covered plan, and (2) a credit against the following year's premium for a short plan year created by a change in plan year. The three comments that addressed the proposal all favored the revision of the short-year rules.

Examples

The following examples illustrate the operation of the new short-year rules.

Example 1. Suppose that calendar-year Plan A, a small plan whose flat-rate and variable-rate premiums are both due on

October 15, is amended on January 15, 2001, to change to a plan year beginning March 15 and to provide for a short plan year beginning January 1, 2001, and ending March 14, 2001. Plan A's plan administrator may pay a prorated premium for the short plan year equal to $\frac{3}{12}$ of the premium otherwise payable for all of 2001 (*i.e.*, a premium for the months of January, February, and March). A full year's premium will be paid for the new, full plan year beginning March 15, 2001, and ending March 14, 2002. However, if Plan A merges into or consolidates with Plan B effective March 15, 2001, it is not eligible for payment of a prorated premium for the plan year beginning January 1, 2001.

Example 2. Suppose that Plan A in Example 1 is a large plan whose estimated flat-rate premium must be paid by February 28, 2001, and that the plan administrator pays a prorated estimated flat-rate premium based on the assumption that the new plan year cycle will begin in accordance with the amendment (*i.e.*, $\frac{3}{12}$ of 90 percent of the final flat-rate premium that would be due for 2001 in the absence of proration, or $\frac{3}{12}$ of 100 percent of the flat-rate premium that would be due for 2001 in the absence of proration if the 2001 participant count were the same as in 2000). If Plan A then merges into Plan B effective March 15, 2001, Plan A will not be eligible for payment of a prorated premium, and the estimate paid will in retrospect be insufficient. However, under the new safe harbor test, the PBGC will not assess a penalty if the estimated premium paid would have been at least enough to satisfy the safe harbor rules if the new plan year cycle had begun as contemplated by the plan year amendment.

"Participant" Definition

A plan's flat-rate premium is based on the number of participants in the plan on the premium snapshot date. The definition of "participant" in the premium rates regulation applies only for premium purposes. Whether an individual is a participant in a plan for premium purposes has no bearing on whether the individual is a participant in the plan for any other purpose under Title IV of ERISA, or for any purpose under Title I of ERISA or the Internal Revenue Code. Similarly, an individual is not considered to be a participant in a plan for premium purposes simply because the individual is a participant in the plan for other purposes.

The existing definition of "participant" in § 4006.2 of the premium rates regulation breaks participants down into three broad categories: active, inactive, and deceased (with surviving beneficiaries). A person is counted as an active participant if the person is "earning or retaining credited service under the plan," without reference to whether the plan is obligated to provide benefits with respect to the person. In contrast, a person is counted as an inactive participant if the person is entitled to

receive benefits from the plan and as a deceased participant if a beneficiary of the deceased person is entitled to receive benefits from the plan. Thus, the test for including a person in either the "inactive" or the "deceased" category is whether the plan has an obligation to provide benefits with respect to the person.

Amended Definition—In General

The amended definition counts as participants those individuals with respect to whom a plan has benefit liabilities. The amendment represents no substantive change regarding the "inactive" and "deceased" categories. However, the amendment excludes from the participant count—and thus eliminates premiums for—individuals who are earning or retaining credited service (and thus would be included as participants under the old definition) if, on the snapshot date, they have no accrued benefits (and the plan does not have any other benefit liabilities with respect to them). (An ongoing plan's liability for a benefit is not disregarded solely because the plan provides that the conditions for the benefit must be satisfied before the plan terminates or that the benefit will not be paid after the plan terminates.)

For example, suppose a plan requires an individual to perform 1,000 hours of service in a service computation period to earn any portion of an accrued benefit for that period. If, on the snapshot date, a new plan entrant has only 900 hours of service in the current service computation period, the PBGC would treat the individual as not having an accrued benefit under the plan for purposes of the amended "participant" definition. If the plan has no other benefit liabilities with respect to the individual, the individual would not be considered a participant.

Much of the discussion in this preamble focuses on accrued benefits rather than benefit liabilities because a plan necessarily has benefit liabilities for any individual who has an accrued benefit. However, in rare cases, a plan may have benefit liabilities for an individual who has no accrued benefit (e.g., because the individual has only an ancillary death benefit). In circumstances of that kind, the individual would count as a participant for PBGC premium purposes.

Under the new definition, the participant count for premiums will typically exclude plan participants in a plan that is frozen for benefit accruals either before their participation begins or so soon thereafter that they have not had time to accrue a benefit. It will also typically exclude plan participants in

permanent part-time jobs who work too few hours to meet their plans' minimum service requirements for accrual.

One result of this change is that newly created plans that do not grant past service credits will typically owe no flat-rate premium for their first year. This is because the premium snapshot date for a new plan comes at the beginning of the premium payment year, when participants have not yet earned "future service" credits (on which accrued benefits would be based).

When Individuals Are No Longer Counted as Participants

The amendment also makes a change in the rule governing when a non-vested individual is considered to no longer be a participant for premium purposes. The existing definition requires that a terminated non-vested participant who has not received a deemed cashout (or died) be included in the participant count until the first anniversary of separation from employment, even if under plan terms the participant incurs a one-year break in service before then. (See the preamble to the PBGC's 1989 final rule on premiums, 54 FR 28943, 28946 (July 10, 1989), where this is discussed.)

Thus, under the existing definition, a participant could incur a break in service for plan purposes, but not be considered to have incurred a break in service for premium purposes, in a situation where the participant's service computation period did not coincide with the plan year. For example, under the terms of a calendar-year plan, an individual might incur a one-year break in service before December 31, 2001 (the premium snapshot date for the 2002 premium) if the individual left employment on February 1, 2001, and did not perform 500 hours of service during a computation period ending on November 30, 2001, even though December 31, 2001, comes before the first anniversary of the individual's separation from employment.

Under the amended definition, a non-vested individual is considered to no longer be a participant after the individual incurs a one-year break in service as defined in the plan, regardless of whether the individual has been absent from employment until the first anniversary of separation. (The equivalent of a "one-year break in service" for an elapsed time plan would be a one-year period of severance, which typically coincides with the PBGC's existing rule; thus, the change would typically have no impact on elapsed time plans.)

The amended definition also makes clear that the PBGC treats a non-vested individual as no longer being a participant when the individual dies or receives a deemed cashout under the terms of the plan. Finally, the amended definition explicitly provides that a vested individual (or a deceased individual who was vested at death) ceases to be a participant in a plan when all benefit liabilities with respect to the individual have been provided for, either by payment from the plan or through purchase of an irrevocable commitment by an insurer to provide the benefits.

This amendment takes a different approach than the 1992 proposal, but addresses the concerns expressed in comments on that proposal. Under the 1992 proposal, the entire definition of "participant" would have been replaced by a cross-reference to the definition used for purposes of filing the Form 5500 annual report. Most commenters objected to this proposed change because some non-vested individuals who had incurred a one-year break in service (and thus would not be considered participants for PBGC premium purposes under the PBGC's existing definition) would have to be counted as participants under the Form 5500 definition.

Some commenters also argued that premiums should not be charged for a terminated non-vested individual who had a break in service because neither the plan nor the PBGC would ordinarily have any liability to pay benefits to the individual upon plan termination. The commenters believed such individuals would be included in the Form 5500 definition of "participant." The amendment that the PBGC is adopting is responsive to these comments by excluding from the definition of "participant" an individual with respect to whom a plan does not have benefit liabilities.

Fully Insured Plans

Section 412(h)(2) of the Internal Revenue Code exempts certain fully insured plans from plan funding requirements. To be exempt, a plan must meet the requirements of Code section 412(i). Section 4006.5(a)(3) of the premium rates regulation currently exempts a plan from the variable-rate premium if the plan is described in Code section 412(i) throughout the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, throughout the premium payment year up to the premium due date).

Under the amendment that the PBGC is adopting in this final rule, the

exemption for section 412(i) plans applies to a plan if it is described in section 412(i) of the Code on the premium snapshot date. This change makes it simpler to determine whether the exemption applies. The change is identical to that proposed in 1992, which generated no public comments.

Compliance With Rulemaking Guidelines and Paperwork Reduction Act

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

The changes made by this rule will have a modest positive economic impact on plans that are affected by it. For the vast majority of small plans, there will be little or no impact. The greatest effect will come from the change in the "participant" definition, which eliminates premiums for the first year of newly created plans that do not grant past service credits. There are very few small plans of this kind. Payment of a prorated premium under the new short plan year rules will save the interest on the excess amount that would otherwise have been paid and refunded, but for small plans this amount will typically be insignificant.

The PBGC therefore certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

This rule affects information collection requirements under the PBGC's regulation on Payment of Premiums (29 CFR Part 4007). A notice regarding those information collection requirements appears elsewhere in today's **Federal Register**.

List of Subjects

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

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

For the foregoing reasons, 29 CFR Parts 4006 and 4007 are amended as follows:

PART 4006—PREMIUM RATES

1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. In § 4006.2, the definition of "Participant" is revised to read as follows:

§ 4006.2 Definitions.

* * * * *

Participant has the meaning described in § 4006.6.

* * * * *

3. In § 4006.5, paragraph (a)(3) is amended by removing the words "at all times during" in the first sentence and adding in their place the words "on the last day of" and by removing the last sentence; paragraph (g) is removed; and paragraph (f) is revised to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(f) *Proration for certain short plan years.* The premium for a plan that has a short plan year as described in this paragraph (f) is prorated by the number of months in the short plan year (treating a part of a month as a month). The proration applies whether or not the short plan year ends by the premium due date for the short plan year. For purposes of this paragraph (f), there is a short plan year in the following circumstances:

(1) *New plan.* A new or newly-covered plan becomes effective for premium purposes on a date other than the first day of its first plan year.

(2) *Change in plan year.* A plan amendment changes the plan year, but only if the plan does not merge into or consolidate with another plan or otherwise cease its independent existence either during the short plan year or at the beginning of the full plan year following the short plan year.

(3) *Distribution of assets.* The plan's assets (other than any excess assets) are distributed pursuant to the plan's termination.

(4) *Appointment of trustee.* The plan is a single-employer plan, and a plan trustee is appointed pursuant to section 4042 of ERISA.

4. Section 4006.6 is added to read as follows:

§ 4006.6 Definition of "participant."

(a) *General rule.* For purposes of this part and part 4007 of this chapter, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date.

(b) *Loss or distribution of benefit.* For purposes of this section, an individual is treated as no longer being a participant—

(1) In the case of an individual with no vested accrued benefit, after—

(i) The individual incurs a one-year break in service under the terms of the plan,

(ii) The individual's entire "zero-dollar" vested accrued benefit is deemed distributed under the terms of the plan, or

(iii) The individual dies; and
(2) In the case of a living individual whose accrued benefit is fully or partially vested, or a deceased individual whose accrued benefit was fully or partially vested at the time of death, after—

(i) An insurer makes an irrevocable commitment to pay all benefit liabilities with respect to the individual, or

(ii) All benefit liabilities with respect to the individual are otherwise distributed.

(c) *Examples.* The operation of this section is illustrated by the following examples:

Example 1. Participation under a calendar-year plan begins upon commencement of employment, and the only benefit provided by the plan is an accrued benefit (expressed as a life annuity beginning at age 65) of \$30 per month times full years of service. The plan credits a ratable portion of a full year of service for service of at least 1,000 hours but less than 2,000 hours in a service computation period that begins on the date when the participant commences employment and each anniversary of that date. John and Mary both commence employment on July 1, 2000. On December 31, 2000 (the snapshot date for the plan's 2001 premium), John has credit for 988 hours of service and Mary has credit for 1,006 hours of service. For purposes of this section, Mary is considered to have an accrued benefit, and John is considered not to have an accrued benefit. Thus, the plan is considered to have benefit liabilities with respect to Mary, but not John, on December 31, 2000; and Mary, but not John, must be counted as a participant for purposes of computing the plan's 2001 premium.

Example 2. The plan also provides that a participant becomes vested five years after commencing employment and defines a one-year break in service as a service computation period in which less than 500 hours of service is performed. On February 1, 2002, John has an accrued benefit of \$18 per month beginning at age 65 based on credit for 1,200 hours of service in the service computation period that began July 1, 2000. However, John has credit for only 492 hours of service in the service computation period that began July 1, 2001. On February 1, 2002, John terminates his employment. On December 31, 2002 (the snapshot date for the 2003 premium), John has incurred a one-year break in service, and thus is not counted as a participant for purposes of computing the plan's 2003 premium.

Example 3. On January 1, 2004, the plan is amended to provide that if a vested participant whose accrued benefit has a present value of \$5,000 or less leaves employment, the benefit will be immediately

cash out. On December 30, 2005, Jane, who has a vested benefit with a present value of less than \$5,000, leaves employment. Because of reasonable administrative delay in determining the amount of the benefit to be paid, the plan does not pay Jane the value of her benefit until January 9, 2006. Under the provisions of this section, Jane is treated as not having an accrued benefit on December 31, 2005 (the snapshot date for the 2006 premium), because Jane's benefit is treated as having been paid on December 30, 2005. Thus, Jane is not counted as a participant for purposes of computing the plan's 2006 premium.

Example 4. If the plan amendment had instead provided for cashouts as of the first of the month following termination of employment, and the plan paid Jane the value of her benefit on January 1, 2006, Jane would be treated under the provisions of this section as having an accrued benefit on December 31, 2005, and would thus be counted as a participant for purposes of computing the plan's 2006 premium.

PART 4007—PAYMENT OF PREMIUMS

5. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

6. In section 4007.8, a new paragraph (i) is added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(i) *Safe harbor relief for certain plan amendments prospectively changing plan year.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i),—

(1) The plan has been amended to change its plan year and the amendment as in effect on that date makes the premium payment year a short year that will end after that date; and

(2) The plan administrator pays at least the lesser of—

(i) The amount determined under § 4007.8(g) based on the actual length of the premium payment year, or

(ii) The amount determined under § 4007.8(g) based on the length that the premium payment year would have if the new plan year cycle began as anticipated by the amendment.

Issued in Washington, DC, this 22nd day of November, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors

authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00-30322 Filed 11-30-00; 8:45 am]

BILLING CODE 7708-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 2001. This rule also amends the PBGC's regulation on Disclosure to Participants by adding information on 2001 maximum guaranteed benefit amounts to Appendix B (and updating the Internet address for obtaining the PBGC booklet "Your Guaranteed Pension"). The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 2001.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the

form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "\$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [\$13,200]." This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, \$59,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 2001. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: \$750 multiplied by \$59,700/\$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 2001 is \$3,392.05 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 2001. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of \$3,392.05 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 2001 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include