NEWS

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ERISA AGENCIES ANNOUNCE IMPLEMENATATION
GUIDELINES ON ASSET REVERSIONS

The Pension Benefit Guaranty Corporation (PBGC) announced today that along with the Treasury Department and the Department of Labor, it has agreed to joint implementation guidelines for dealing with pension plan terminations in which the employer recovers excess assets. The agencies are now proceeding to process cases in accordance with these guidelines. Appropriate steps will be taken by each agency through regulations and otherwise to establish the indicated procedures.

"We believe that the implementation guidelines we are adopting reflect a fair balancing of the rights of plan participants, plan sponsors, and the public interest," said Charles Tharp, executive director of the PBGC. "It is important that plan participants receive the full benefits to which they are entitled at termination, while recognizing the rights of plan sponsors to any surplus above

-morethat. And we believe it is essential that policies in this area encourage the establishment and maintenance of defined benefit pension plans."

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ATTACHMENT: Joint Implementation Guidelines

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IMPLEMENTATION GUIDELINES

The following has been adopted by the Department of the Treasury, the Department of Labor and the Pension Benefit Guaranty Corporation to provide guidelines for processing defined benefit pension plan terminations involving asset reversions to the plan sponsor.

1. In accordance with current law, when an employer terminates a defined benefit pension plan, it may not recover any surplus assets until it has fully vested all participants' benefits and has purchased and distributed annuity contracts, to protect participants against the risk that their accrued benefits may be jeopardized by future market fluctuations or other factors.

2. At present, upon plan termination, employers can make lump sum payments to certain participants. In some cases, these lump sums have been calculated on the basis of interest rates that are higher than those available to individuals, thereby reducing the value of those benefits. This problem must be addressed. If employees are offered lump sum payments in lieu of future pensions, the amount of the lump sum must fairly reflect the value of the pension to the individual. The Pension Benefit Guaranty Corporation is developing guidelines for determining appropriate lump sum values.

3. An employer that terminates a sufficient defined benefit pension plan may establish a new defined benefit plan covering the same group of employees. The new plan may grant past service credit for the period during which an employee was covered by the terminated plan (subject to the limitations of Section 415 of the Internal Revenue Code). The prior plan and the new plan, in combination, may provide benefits for each participant equivalent to those to which the participant would have been entitled if the prior plan had continued without interruption. The PBGC will clarify the fact that a successor plan is exempt from the five year phase-in of benefit guarantees that applies to newly established plans. The above is one example of what will be deemed a successor plan by the PBGC.

4. In the case of a so-called "spin-off/termination", generally no termination will be recognized and any attempt to recover surplus assets will be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries unless the following conditions are satisfied:

* The benefits of all employees (including those covered by the ongoing plan) must be fully vested and non-forfeitable as of the date of termination.

* All benefits accrued as of the date of termination in the ongoing plan must be provided for by the purchase of annuity contracts which represent irrevocable commitments for the benefit of each individual participant.

* All employees who were covered by the original plan must be given advance notice of the transaction in similar time and manner as if the entire original plan were being terminated.

5. In the case of a so-called "spin-off/termination" and a so-called "termination/re-establishment" transaction, generally any attempt to recover surplus assets will be treated as a diversion of assets for a purpose other than the exclusive benefit of employees and beneficiaries unless the following conditions are satisfied:

(a) In the case of an ongoing plan described in number 4 above, the funding method for the ongoing plan must be changed on the date of termination by combining and off-setting amortization bases in accordance with §412(b)(4) of the Code. The amortization period for this base will be the lesser of the combined amortization period and the weighted average future remaining working lifetime of all covered employees. The employer must request and obtain IRS approval for this change in funding method.

(b) In the case of a new plan established with credit for past service as described in number 3 above, in order to obtain a reversion of surplus assets from the terminated plan, the future amortization period for the unfunded past service liability for the new plan, under Section 412 of the Code, will be the lesser of 30 years and the weighted average future remaining working lifetime of all covered employees. The employer must request and obtain IRS approval for this change in funding method for the new plan.

The agencies' analysis indicates that, in spinoff/terminations where the conditions in numbers 4 and 5a are satisfied, the security of participants' benefits is protected by the purchase and distribution of annuities, the statutory minimum funding rules, including the rules described in number 5(a), and PBGC insurance coverage.

6. Employers are reminded that one of the requirements for plan qualification is that the plan be intended to be permanent. In any case, the funding rules generally require that plan funding be on a going-concern basis rather than on a termination basis. Thus, the tax consequences of multiple "termination/re-establishments" or "spin-off/terminations" are unaffected by these guidelines and will be determined without regard to whether the specific guidelines described above are satisfied with regard to each of the transactions. Generally, an employer may not engage in either a termination/re-establishment or spin-off/termination transaction, involving reversion of assets, any earlier than 15 years following any such transaction.

7. The federal income tax consequences of the receipt of reversions, of deductions for contributions to ongoing or successor plans and of the funding of such plans, after the change in funding method, are unaffected by these guidelines.

8. The PBGC will continue to process and the IRS will now proceed to process all pending termination cases.