(or beneficiary) had satisfied the conditions of the plan necessary to establish the right to the benefit other than death or designation of a beneficiary.

(b) If none of the conditions set forth in paragraph (a) of this section is met, the PBGC will determine whether the participant is entitled to a benefit on the basis of the provisions of the plan and the circumstances of the case.

§ 4022.5 Determination of nonforfeitable benefits.

(a) A guaranteed benefit payable to a surviving beneficiary is not considered to be forfeitable solely because the plan provides that the benefit will cease upon the remarriage of such beneficiary or his attaining a specified age. However, the PBGC will observe the provisions of the plan relating to the effect of such remarriage or attainment of such specified age on the surviving beneficiary's eligibility to continue to receive benefit payments.

(b) Any other provision in a plan that the right to a benefit in pay status will cease or be suspended upon the occurrence of any specified condition does not automatically make that benefit forfeitable. In each such case the PBGC will determine whether the benefit is forfeitable.

(c) A benefit guaranteed under § 4022.6 shall not be considered forfeitable solely because the plan provides that upon recovery of the participant the benefit will cease.

§ 4022.6 Annuity payable for total disability.

(a) Except as provided in paragraph (b) of this section, an annuity which is payable (or would be payable after a waiting period described in the plan, whether or not the participant is in receipt of other benefits during such waiting period), under the terms of a plan on account of the total and permanent disability of a participant which is expected to last for the life of the participant and which began before the termination date is considered to be a pension benefit.

(b) In any case in which the PBGC determines that the standards for determining such total and permanent disability under a plan were unreasonable, or were modified in anticipation of termination of the plan, the disability benefits payable to a participant under such standard shall not be guaranteed unless the participant meets the standards of the Social Security Act and the regulations promulgated thereunder for determining total disability.

(c) For the purpose of this section, a participant may be required, upon the request of the PBGC, to submit to an examination or to submit proof of continued total and permanent disability. If the PBGC finds that a participant is no longer so disabled, it may suspend, modify, or discontinue the payment of the disability benefit.

§ 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is payable in a single installment or substantially so under the terms of the plan, or an option elected under the plan by the participant, the benefit will not be guaranteed or paid as such, but the PBGC will guarantee the alternative benefit, if any, in the plan which provides for the payment of equal periodic installments for the life of the recipient. If the plan provides more than one such annuity, the recipient may within 30 days after notification of the proposed termination of the plan elect to receive one of those annuities. If the plan does not provide such an annuity, the PBGC will guarantee an actuarially equivalent life annuity.

(b)(1) *Payment in lump sum.* Notwithstanding paragraph (a) of this section:

(i) *In general.* If the lump sum value of a benefit payable by the PBGC is $5,000 or less and the benefit is not yet in pay status, the benefit may be paid in a lump sum. In determining whether the lump sum value of a benefit is $5,000 or less, the value of any amounts returned under paragraph (b)(2) of this section is disregarded. If the PBGC determines a title IV benefit before it determines the benefit payable under section 4022(c) of ERISA, the $5,000 threshold shall apply separately to the title IV benefit. The section 4022(c) benefit shall be paid in annuity form if the title IV benefit is paid in annuity form, and otherwise shall be separately subject to the $5,000 threshold.

(ii) *Annuity option.* If the PBGC would otherwise make a lump sum payment in accordance with paragraph (b)(1)(i) of this section and the monthly benefit is equal to or greater than $25 (at normal retirement age and in the normal form for an unmarried participant), the PBGC shall provide the participant (or the beneficiary of a participant who is deceased as of the termination date) the option to receive the benefit in the form of an annuity.

(iii) *Election of QPSA lump sum.* If the lump sum value of a qualified preretirement survivor annuity is $5,000 or less, the benefit is not yet in pay status, and the participant dies after the termination date, the benefit may be paid in a lump sum if so elected by the surviving spouse.

(iv) *Certain and continuous payments to estates.* The PBGC may pay any benefits payable to an estate (*e.g.,* in the case of benefits under a certain and continuous annuity where the designated beneficiary predeceases the participant) in a lump sum without regard to the threshold in paragraph (b)(1)(i) of this section if so elected by the estate. The payments shall be discounted using the immediate interest rate that would be applicable to the plan under § 4044.52(b) if the termination date had been the date of death (or, if later, July 16, 1998).

(2) *Return of employee contributions*—(i) *General.* Notwithstanding any other provision of this part, the PBGC may pay in a single installment (or a series of installments) instead of as an annuity, the value of the portion of an individual's basic-type benefit derived from mandatory employee contributions, if:

(A) The individual elects payment in a single installment (or a series of installments) before the sixty-first (61st) day after the date he or she receives notice that such an election is available; and

(B) Payment in a single installment (or a series of installments) is consistent with the plan's provisions. For purposes of this part, the portion of an individual's basic-type benefit derived from mandatory employee contributions is determined under § 4044.12 (priority category 2 benefits) of this chapter, and the value of that portion is computed under the applicable rules contained in part 4044, subpart B, of this chapter.

(ii) *Set-off for distributions after termination.* The amount to be returned under paragraph (b)(2)(i) of this section is reduced by the set-off amount. The set-off amount is the amount by which distributions made to the individual after the termination date exceed the amount that would have been distributed, exclusive of mandatory employee contributions, if the individual had withdrawn the mandatory employee contributions on the termination date.

Example: Participant A is receiving a benefit of $600 per month when the plan terminates, $200 of which is derived from mandatory employee contributions. If the participant had withdrawn his contributions on the termination date, his benefit would have been reduced to $400 per month. The participant receives two monthly payments after the termination date. The set-off amount is $400. (The $600 actual payment minus the $400 the participant would have received if he had withdrawn his contributions multiplied by the two months for which he received the extra payment.)

(c) *Death benefits*—(1) *General.* Notwithstanding paragraph (a) of this section, a benefit that would otherwise be guaranteed under the provisions of this subpart, except for the fact that it is payable solely in a single installment (or substantially so) upon the death of a participant, shall be paid by the PBGC as an annuity that has the same value as the single installment. The PBGC will in each case determine the amount and duration of the annuity based on all the facts and circumstances.

(2) *Exception.* Upon the death of a participant the PBGC may pay in a single installment (or a series of installments) that portion of the participant's accumulated mandatory employee contributions that is payable under the plan in a single installment (or a series of installments) upon the participant's death.

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1)(i) through (iii) of this section, the lump sum value of a benefit shall be calculated by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter.

The actuarial assumptions used shall be those described in § 4044.52, except that—

(1) *Loading for expenses.* There shall be no adjustment to reflect the loading for expenses;

(2) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part shall apply; and

(3) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

(e) *Publication of lump sum rates.* The PBGC will provide two sets of lump sum interest rates as follows—

(1) In appendix B to this part, the lump sum interest rates for PBGC payments, as provided under paragraph (d)(2) of this section; and

(2) In appendix C to this part, the lump sum interest rates for private-sector payments.

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Subpart B—Limitations on Guaranteed Benefits

§ 4022.21 Limitations; in general.

(a)(1) Subject to paragraphs (b), (c) and (d) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date. If the plan does not provide a straight life annuity either as its normal form of retirement benefit or as an option to the normal form, the PBGC will for purposes of this paragraph convert the plan's normal form benefit to a straight life annuity of equal actuarial value as determined by the PBGC.

(2) The limitation of paragraph (a)(1) of this section shall not apply to:

(i) A survivor's benefit payable as an annuity on account of the death of a participant that occurred before the plan terminates and before the participant retired;

(ii) A disability pension described in § 4022.6 of this part; or

(iii) A benefit payable in non-level installments that in combination with Social Security, Railroad Retirement, or workman's compensation benefits yields a substantially level income if the projected income from the plan benefit over the expected life of the recipient does not exceed the value of the straight life annuity described in paragraph (a)(1) of this section.

(b) The PBGC will not guarantee the payment of that part of any benefit that exceeds the limitations in section 4022(b) of ERISA and this subpart B.

(c)(1) Except as provided in paragraph (c)(2) of this section, the PBGC does not guarantee a benefit payable in a single installment (or substantially so) upon the death of a participant or his surviving beneficiary unless that benefit is substantially derived from a reduction in the pension benefit payable to the participant or surviving beneficiary.

(2) Paragraphs (a) and (c)(1) of this section do not apply to that portion of accumulated mandatory employee contributions payable under a plan upon the death of a participant, and such a benefit is a pension benefit for purposes of this part.

(d) The PBGC will not guarantee a benefit payable to other than natural persons, or a trust or estate for the benefit of one or more natural persons.

§ 4022.22 Maximum guaranteeable benefit.

Subject to section 4022B of ERISA and part 4022B of this chapter, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65 equal to the lesser of the amounts computed in paragraphs (a) and (b) of this section.

(a) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant