

PBGC Retirement Date would be that earlier date. In this example, the PBGC generally would determine under the facts and circumstances that the participant's Earliest PBGC Retirement Date is the date the participant reaches age 50. If the plan instead had provided for early retirement before age 50, the PBGC would consider all the facts and circumstances (including the plan's normal retirement age and the age at which employees customarily retire in the airline industry) in determining whether to treat the date the participant reaches the plan's early retirement age as the participant's Earliest PBGC Retirement Date.

(e) *Special rule for "window" provisions.* For purposes of paragraphs (a), (b), and (c) of this section, the PBGC will treat a participant as being able, under plan provisions, to separate from service with the right to receive an immediate annuity on a date before the plan's termination date only if—

(1) Eligibility for that immediate annuity continues through the earlier of—

- (i) The plan's termination date; or
- (ii) The date the participant actually separates from service with the right to receive an immediate annuity; and

(2) The participant satisfies the conditions for eligibility for that immediate annuity on or before the plan's termination date.

[67 FR 16955, Apr. 8, 2002]

**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 on or before the plan's termination date 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 joint-life annuity benefit payable to other than—

- (1) Natural persons; or
- (2) A trust or estate for the benefit of one or more natural persons.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002]

**§ 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 under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan.

(1) As used in this paragraph, "gross income" means "earned income" as defined in section 911(b) of the Code, determined without regard to any community property laws.

(2) For the purposes of this paragraph, if the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

(b) \$750 multiplied by the fraction  $x/13,200$  where "x" is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

**§ 4022.23 Computation of maximum guaranteeable benefits.**

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)-(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs

(c), (d), and (e) of this section shall be added to or subtracted from a base of 1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be  $\frac{1}{12}$  of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be  $\frac{1}{12}$  of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be  $\frac{2}{12}$  of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be  $\frac{1}{2}$  of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date: