

meet the requirements of sections 401(a) or 404(a)(2) of the Code, respectively, and issues a subsequent notice stating that the trust or plan meets such requirements; or

(3) The plan amendment is revoked retroactively to its original effective date.

**Subpart C—Calculation and Payment of Unfunded Non-guaranteed Benefits [Reserved]**

**Subpart D—Benefit Reductions in Terminating Plans**

**§ 4022.61 Limitations on benefit payments by plan administrator.**

(a) *General.* When § 4041.42 of this chapter requires a plan administrator to reduce benefits, the plan administrator shall limit benefit payments in accordance with this section.

(b) *Accrued benefit at normal retirement.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant that exceeds the participant's accrued benefit payable at normal retirement age under the plan. For the purpose of applying this limitation, post-retirement benefit increases, such as cost-of-living adjustments, are not considered to increase a participant's benefit beyond his or her accrued benefit payable at normal retirement age.

(c) *Maximum guaranteeable benefit.* Except to the extent permitted by paragraph (d) of this section, a plan administrator may not pay that portion of a monthly benefit payable with respect to any participant, as limited by paragraph (b) of this section, that exceeds the maximum guaranteeable benefit under section 4022(b)(3)(B) of ERISA and § 4022.22(b) of this part, adjusted for age and benefit form, for the year of the proposed termination date.

(d) *Estimated benefit payments.* A plan administrator shall pay the monthly benefit payable with respect to each participant as determined under § 4022.62 or § 4022.63, whichever produces the higher benefit.

(e) *PBGC authority to modify procedures.* In order to avoid abuse of the plan termination insurance system, inequitable treatment of participants and beneficiaries, or the imposition of unreasonable burdens on terminating plans, the PBGC may authorize or direct the use of alternative procedures for determining benefit reductions.

(f) *Examples.* This section is illustrated by the following examples:

*Example 1—Facts.* On October 10, 1992, a plan administrator files with the PBGC a notice of intent to terminate in a distress termination that includes December 31, 1992, as the proposed termination date. A participant who is in pay status on December 31, 1992, has been receiving his accrued benefit of \$2,500 per month under the plan. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount (i.e., \$1,250 per month) to his surviving spouse following the death of the participant. On December 31, 1992, the participant is age 66, and his wife is age 56.

*Benefit reductions.* Paragraph (b) of this section requires the plan administrator to cease paying benefits in excess of the accrued benefit payable at normal retirement age. Because the participant is receiving only his accrued benefit, no reduction is required under paragraph (b).

Paragraph (c) of this section requires the plan administrator to cease paying benefits in excess of the maximum guaranteeable benefit, adjusted for age and benefit form in accordance with the provisions of subpart B. The maximum guaranteeable benefit for plans terminating in 1992, the year of the proposed termination date, is \$2,352.27 per month, payable in the form of a single life annuity at age 65. Because the participant is older than age 65, no adjustment is required under § 4022.23(c) based on the annuitant's age factor. The benefit form is a joint and survivor annuity (contingent basis), as defined in § 4022.23(d)(2). The required benefit reduction for this benefit form under § 4022.23(d) is 10 percent. The corresponding adjustment factor is 0.90 (1.00-0.10). The benefit reduction factor to adjust for the age difference between the participant and the beneficiary is computed under § 4022.23(e). In computing the difference in ages, years over 65 years of age are not taken into account. Therefore, the age difference is 9 years (65-56). The required percentage reduction when the beneficiary is 9 years younger than the participant is 9 percent. The corresponding adjustment factor is 0.91 (1.00-0.09).

The maximum guaranteeable benefit adjusted for age and benefit form is \$1,926.51 (\$2,352.27×0.90×0.91) per month. Therefore, the

plan administrator must reduce the participant's benefit payment from \$2,500 to \$1,926.51. If the participant dies after December 31, 1992, the plan administrator will pay his spouse \$963.26 ( $0.50 \times \$1,926.51$ ) per month.

*Example 2—Facts.* The benefit of a participant who retired under a plan at age 60 is a reduced single life annuity of \$400 per month plus a temporary supplement of \$400 per month payable until age 62 (*i.e.*, a step-down benefit). The participant's accrued benefit under the plan is \$450 per month, payable from the plan's normal retirement age. On the proposed termination date, June 30, 1992, the participant is 61 years old.

The maximum guaranteeable benefit adjusted for age under § 4022.23(c) of this chapter is \$1,693.63 ( $\$2,352.27 \times 0.72$ ) per month. Since the benefit is payable as a single life annuity, no adjustment is required under § 4022.23(d) for benefit form.

*Benefit reductions.* The plan benefit of \$800 per month payable until age 62 exceeds the participant's accrued benefit at normal retirement age of \$450 per month. Paragraph (b) of this section requires that, except to the extent permitted by paragraph (d), the plan benefit must be reduced to \$450 per month. Since the levelized benefit of \$404.10 ( $(0.082 \times 50) + \$400$ ) per month, determined under § 4022.23(f), is less than the adjusted maximum guaranteeable benefit of \$1,693.63 per month, no further reduction in the \$450 per month benefit payment is required under paragraph (c) of this section. The plan administrator next would determine the amount of the participant's estimated benefit under paragraph (d).

*Example 3—Facts.* A retired participant is receiving a reduced early retirement benefit of \$1,100 per month plus a temporary supplement of \$700 per month payable until age 62. The benefit is in the form of a single life annuity. On the proposed termination date, November 30, 1992, the participant is 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$1,200 per month. The maximum guaranteeable benefit adjusted for age is \$1,152.61 ( $\$2,352.27 \times 0.49$ ) per month. A form adjustment is not required.

*Benefit reductions.* The plan benefit of \$1,800 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age of \$1,200 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the temporary supplement to \$100 per month.

For the purpose of determining whether the reduced benefit, *i.e.*, a level-life annuity of \$1,100 per month and a temporary annuity supplement of \$100 per month to age 62, exceeds the maximum guaranteeable benefit adjusted for age, the temporary annuity supplement of \$100 per month is converted to a level-life annuity equivalent in accordance

with § 4022.23(f) of this chapter. The level-life annuity equivalent is \$38.70 ( $\$100 \times 0.387$ ). This, added to the life annuity of \$1,100 per month, equals \$1,138.70. Since the maximum guaranteeable benefit of \$1,152.61 per month exceeds \$1,138.70 per month, no further reduction is required under paragraph (c) of this section.

The plan administrator next would determine the participant's estimated benefit under paragraph (d). Assume that the estimated benefit under paragraph (d) is \$780 per month until age 62 and \$715 per month thereafter. The plan administrator would pay the participant \$780 per month, reduced to \$715 per month at age 62, subject to the final benefit determination made under title IV.

*Example 4—Facts.* A retired participant is receiving a reduced early retirement benefit of \$2,650 per month plus a temporary supplement of \$800 per month payable until age 62. The benefit is in the form of a joint and survivor annuity (contingent basis) that will pay 50 percent of the participant's benefit amount to his surviving spouse following the death of the participant. On the proposed termination date, December 20, 1992, the participant and his spouse are each 56 years old.

The participant's accrued benefit at normal retirement age under the plan is \$3,000 per month. The maximum guaranteeable benefit adjusted for age and the joint and survivor annuity (contingent basis) annuity form is \$1,037.35 per month. An adjustment for age difference is not required because the participant and his spouse are the same age.

*Benefit reductions.* The plan benefit of \$3,450 per month payable from age 56 to age 62 exceeds the participant's accrued benefit at normal retirement age, which is \$3,000 per month. Therefore, under paragraph (b) of this section, the plan administrator must reduce the participant's benefit so that it does not exceed \$3,000 per month.

The level-life equivalent of the participant's reduced benefit, determined using the § 4022.23(f) adjustment factor, is \$2,785.45 ( $(\$350 \times 0.387) + \$2,650$ ) per month. Since this benefit exceeds the participant's maximum guaranteeable benefit of \$1,037.35 per month, the plan administrator must reduce the participant's benefit payment so that it does not exceed the maximum guaranteeable benefit.

The ratio of (i) the participant's maximum guaranteeable benefit to (ii) the level-life equivalent of the participant's reduced benefit (computed under the "accrued for normal retirement age" limitation) is used in converting the level-life maximum guaranteeable benefit to the step-down benefit form. The level-life equivalent of the reduced benefit computed under the "accrued for normal retirement age" limitation is 37.24 percent ( $\$1,037.35/\$2,785.45$ ). Thus, the plan administrator must reduce the participant's level-life benefit of \$2,650 per month to

\$986.86 ( $\$2,650 \times 0.3724$ ) and must further reduce the reduced temporary benefit of \$350 per month to \$130.34 ( $\$350 \times 0.3724$ ). Under paragraph (c) of this section, therefore, the participant's maximum guaranteeable benefit is \$1,117.20 ( $\$986.86 + \$130.34$ ) per month to age 62 and \$986.86 per month thereafter, subject to any adjustment under paragraph (d) of this section.

Assume that the estimated benefit under paragraph (d) is \$1,005.48 per month to age 62 and \$888.17 per month thereafter. The plan administrator would reduce the participant's benefit from \$3,450 per month to \$1,005.48 per month and pay this amount until age 62, at which time the benefit payment would be reduced to \$888.17 per month, subject to the final benefit determination made under title IV.

[61 FR 34028, July 1, 1996, as amended at 62 FR 60428, Nov. 7, 1997]

**§ 4022.62 Estimated guaranteed benefit.**

(a) *General.* The estimated guaranteed benefit payable with respect to each participant who is not a substantial owner is computed under paragraph (c) of this section. The estimated guaranteed benefit payable with respect to each participant who is a substantial owner is computed under paragraph (d) of this section.

(b) *Rules for determining benefits.* For the purposes of determining entitlement to a benefit and the amount of the estimated benefit under this section, the following rules apply:

(1) *Participants in pay status on the proposed termination date.* For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(2) *Participants who enter pay status after the proposed termination date.* For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his or her service and compensation as of the proposed termination date.

(3) *Participants with new benefits or benefit improvements.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) of this section, only new benefits and benefit im-

provements that affect the benefit of the participant or beneficiary for whom the determination is made are taken into account.

(4) *Limitations on estimated guaranteed benefits.* For the purpose of determining the estimated guaranteed benefit under paragraph (c) or (d) of this section, the benefit determined under paragraph (b)(1) or (b)(2) of this section is subject to the limitations set forth in § 4022.61 (b) and (c).

(c) *Estimated guaranteed benefit payable with respect to a participant who is not a substantial owner.* For benefits payable with respect to a participant who is not a substantial owner, the estimated guaranteed benefit is determined under paragraph (c)(1) of this section, if no portion of the benefit is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA. In any other case, the estimated guaranteed benefit is determined under paragraph (c)(2). "Benefit subject to phase-in" means a benefit that is subject to the phase-in of plan termination insurance guarantees set forth in section 4022(b)(1) of ERISA, determined without regard to section 4022(b)(7) of ERISA.

(1) *Participants with no benefits subject to phase-in.* In the case of a participant or beneficiary with no benefit improvement (as defined in paragraph (c)(2)(ii)) or new benefit (as defined in paragraph (c)(2)(i)) in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section.

(2) *Participants with benefits subject to phase-in.* In the case of a participant or beneficiary with a benefit improvement or new benefit in the five years preceding the proposed termination date, the estimated guaranteed benefit is the benefit to which he or she is entitled under the rules in paragraph (b) of this section, multiplied by the multiplier determined according to paragraphs (i), (ii), and (iii), but not less than the benefit to which he or she would have been entitled if the benefit improvement or new benefit had not been adopted.

(i) From column (a) of Table I, select the line that applies according to the