

**§ 4022.26**

increase has been in effect, each complete 12-month period ending on or before the termination date during which such benefit increase was in effect constitutes one year.

(d) *Multiple benefit increases.* In applying the formula contained in paragraph (b) of this section, multiple benefit increases within any 12-month period ending on or before the termination date and calculated from that date are aggregated and treated as one benefit increase.

(e) Notwithstanding the provisions of paragraph (b) of this section, a benefit increase described in paragraph (a) of this section shall be guaranteed only if PBGC determines that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by PBGC.

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

**§ 4022.26 Phase-in of benefit guarantee for participants who are substantial owners.**

(a) *Scope.* This section shall apply to the guarantee of all benefits described in subpart A (subject to the limitations in § 4022.21) with respect to participants who are substantial owners at the termination date or who were substantial owners at any time within the 5-year period preceding that date.

(b) *Phase-in formula when there have been no benefit increases.* Benefits provided by a plan under which there has been no benefit increase, other than the adoption of the plan, shall be guaranteed to the extent provided in the following formula: The monthly amount computed under § 4022.22 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the substantial owner was an active participant under the plan, and the denominator of which is 30. Active participation under a plan commences at the later of the date on which the plan is adopted or becomes effective.

(c) *Phase-in formula when there have been benefit increases.* If there has been a benefit increase under the plan, other than the adoption of the plan, benefits provided by each such increase shall be guaranteed to the extent provided in

the following formula: The amount of the guaranteeable benefit increase computed under § 4022.24 multiplied by a fraction not to exceed 1, the numerator of which is the number of full years prior to the termination date that the benefit increase was in effect and during which the substantial owner was an active participant under the plan, and the denominator of which is 30. However, in no event shall the total benefits guaranteed under all such benefit increases exceed the benefits which are guaranteed under paragraph (b) of this section with respect to a plan described therein.

(d) For the purpose of computing the benefits guaranteed under this section, in the case of a substantial owner who becomes an active participant under a plan after a benefit increase (other than the adoption of the plan) has been put into effect, the plan as it exists at the time he commences his participation shall be deemed to be the original plan with respect to him.

[61 FR 34028, July 1, 1996, as amended at 62 FR 67729, Dec. 30, 1997]

**§ 4022.27 Effect of tax disqualification.**

(a) *General rule.* Except as provided in paragraph (b) of this section, benefits accrued under a plan after the date on which the Secretary of the Treasury or his delegate issues a notice that any trust which is part of the plan no longer meets the requirements of section 401(a) of the Code or that the plan no longer meets the requirements of section 404(a) of the Code or after the date of adoption of a plan amendment that causes the issuance of such a notice shall not be guaranteed under this part.

(b) *Exceptions.* The restriction on the guarantee of benefits set forth in paragraph (a) of this section shall not apply if:

(1) The Secretary of the Treasury or his delegate issues a notice stating that the original notice referred to in paragraph (a) of this section was erroneous;

(2) The Secretary of the Treasury or his delegate finds that, subsequent to the issuance of the notice referred to in paragraph (a) of this section, appropriate action has been taken with respect to the trust or plan to cause it to