

## Pension Benefit Guaranty Corporation

## § 4022.4

distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusteed plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

[61 FR 34028, July 1, 1996, as amended at 62 FR 67728, Dec. 30, 1997]

### § 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, employer, ERISA, guaranteed benefit, mandatory employee contributions, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, proposed termination date, substantial owner, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

*Accumulated mandatory employee contributions* means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

*Benefit in pay status* means that one or more benefit payments have been made or would have been made except for administrative delay.

*Benefit increase* means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments. In the case of a plan under which the amount

of benefits depends on the participant's salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant's age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

*Covered employment* means employment with respect to which benefits accrue under a plan.

*Pension benefit* means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen's compensation benefits provide a substantially level income to the recipient.

*Straight life annuity* means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

### § 4022.3 Guaranteed benefits.

Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed the limitations in ERISA and in subpart B, if—

(a) The benefit is, on the termination date, a nonforfeitable benefit;

(b) The benefit qualifies as a pension benefit as defined in § 4022.2; and

(c) The participant is entitled to the benefit under § 4022.4.

[61 FR 34028, July 1, 1996; 61 FR 67943, Dec. 26, 1996]

### § 4022.4 Entitlement to a benefit.

(a) A participant or his surviving beneficiary is entitled to a benefit if under the provisions of a plan:

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(1) The benefit was in pay status on the date of the termination of the plan.

(2) A benefit payable at normal retirement age is an optional form of payment to the benefit otherwise payable at such age and the participant elected the benefit before the termination date of the plan.

(3) Except for a benefit described in paragraph (a)(2) of this section, before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) the participant had satisfied the conditions of the plan necessary to establish the right to receive the benefit prior to such date (prior to or on such date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) other than application for the benefit, satisfaction of a waiting period described in the plan, or retirement; or

(4) Absent an election by the participant, the benefit would be payable upon retirement.

(5) In the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon death, the participant (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.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002]

### § 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 sur-

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ving 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 on or 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.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16954, Apr. 8, 2002]

### § 4022.7 Benefits payable in a single installment.

(a) *Alternative benefit.* If a benefit that is guaranteed under this part is