

§ 4044.2

(a) *Subpart A.* Sections 4044.1 through 4044.4 set forth general rules for applying §§ 4044.10 through 4044.17. Sections 4044.10 through 4044.17 interpret the rules and describe procedures for allocating plan assets to priority categories 1 through 6.

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trustee under title IV and plans which are not trustee. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies to all terminating single-employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trustee plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date. (See Note at beginning of part 4044.)

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has received a Notice of Sufficiency

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issued by PBGC pursuant to part 2617 of this chapter and has not been placed into trusteeship by PBGC. (See Note at beginning of part 4044.)

§ 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, basic-type benefit, Code, distribution date, ERISA, fair market value, guaranteed benefit, insurer, IRS, irrevocable commitment, mandatory employee contributions, nonbasic-type benefit, non-forfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, substantial owner, termination date, and voluntary employee contributions.

(b) For purposes of this part:

Deferred annuity means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

Earliest retirement age at valuation date means the later of (a) a participant's age on his or her birthday nearest to the valuation date, or (b) the participant's attained age as of his or her Earliest PBGC Retirement Date (as determined under § 4022.10 of this chapter).

Early retirement benefit means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

Expected retirement age (XRA) means the age, determined in accordance with §§ 4044.55 through 4044.57, at which a participant is expected to begin receiving benefits when the participant has not elected, before the allocation date, an annuity starting date. This is the age to which a participant's benefit payment is assumed to be deferred for valuation purposes. An XRA is equal to or greater than the participant's earliest retirement age at valuation date but less than his or her normal retirement age.

Non-trusteed plan means a single-employer plan which receives a Notice of Sufficiency from PBGC and is able to close out by purchasing annuities in

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the private sector in accordance with part 2617 of this chapter. (See Note at beginning of part 4044.)

Notice of Sufficiency means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of ERISA and this subpart. (See Note at beginning of part 4044.)

Priority category means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

Trusteed plan means a single-employer plan which has been placed into trusteeship by PBGC.

Unreduced retirement age (URA) means the earlier of the normal retirement age specified in the plan or the age at which an unreduced benefit is first payable.

Valuation date means (1) for non-trusteed plans, the date of distribution and (2) for trusteed plans, the date of termination.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

Age means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next highest year. This is also known as the "insurance age."

(d) For purposes of §§ 4044.55 through 4044.57:

Monthly benefit means the guaranteed benefit payable by PBGC.

(e) For purposes of §§ 4044.71 through 4044.75:

Lump sum payable in lieu of an annuity means a benefit that is payable in a single installment and is derived from an annuity payable under the plan.

Other lump sum benefit means a benefit in priority category 5 or 6, determined under subpart A of this part, that is payable in a single installment (or substantially so) under the terms of the plan, and that is not derived from an annuity payable under the plan. The benefit may be a severance pay benefit,

a death benefit or other single installment benefit.

Qualifying bid means a bid obtained from an insurer in accordance with § 2617.14(b) of this chapter. (See Note at beginning of part 4044.)

[61 FR 34059, July 1, 1996, as amended at 67 FR 16959, Apr. 8, 2002]

§ 4044.3 General rule.

(a) *Asset allocation.* Upon the termination of a single-employer plan, the plan administrator shall allocate the plan assets available to pay for benefits under the plan in the manner prescribed by this subpart. Plan assets available to pay for benefits include all plan assets (valued according to § 4044.41(b)) remaining after the subtraction of all liabilities, other than liabilities for future benefit payments, paid or payable from plan assets under the provisions of the plan. Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. Except as provided in § 4044.4(b), an irrevocable commitment by an insurer to pay a benefit, which commitment is in effect on the date of the asset allocation, is not considered a plan asset, and a benefit payable under such a commitment is excluded from the allocation process.

(b) *Allocation date.* For plans that close out pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter, assets shall be allocated as of the date plan assets are to be distributed. For other plans, assets shall be allocated as of the termination date. (See Note at beginning of part 4044.)

§ 4044.4 Violations.

(a) *General.* A plan administrator violates ERISA if plan assets are allocated or distributed upon plan termination in a manner other than that prescribed in section 4044 of ERISA and this subpart, except as may be required to prevent disqualification of the plan under the Code and regulations thereunder.

(b) *Distributions in anticipation of termination.* A distribution, transfer, or allocation of assets to a participant or to an insurance company for the benefit of a participant, made in anticipation of plan termination, is considered to be an allocation of plan assets upon