

2018 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Their Responses

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on March 13, 2018

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on March 13, 2018, with representatives of the Enrolled Actuaries Program Committee. Included also are summaries of the responses to those questions. The summary responses to the questions are intended to reflect as accurately as possible the statements made by the government representatives. However, those responses are merely the current views of the individuals and do not represent the positions of the Pension Benefit Guaranty Corporation or of any other governmental agency and cannot be relied upon by any person for any purpose. Moreover, PBGC has not in any way approved this booklet or reviewed it to determine whether the statements herein are accurate or complete.

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QUESTION #1

PBGC Premiums: PBGC Premiums in the Year of Standard Termination

A calendar year single-employer plan terminates on March 31, 2018 and pays lump sums in connection with the plan termination on October 1, 2018. A group annuity contract is purchased from an insurance company on November 20, 2018 for the remaining participants with the benefit obligation passing from the plan to the insurer on that date.

- a) How are 2018 premiums calculated?
 - i. Flat-rate premiums are prorated to a 10-month period for those paid lump sums and to an 11-month period for those included in the annuity purchase. The plan is exempt from variable rate premiums for 2018, or
 - ii. Flat-rate premiums are prorated to an 11-month period for all participants. The plan is exempt from variable rate premiums for 2018.
- b) Does the answer to (a) change if some of the participants who were paid lump sums do not cash their checks, the checks are canceled on December 14, 2018 (after the “cash-by date” based on the regulations) and the liabilities for these participants are transferred to PBGC in early 2019 under the missing participants program?
- c) Does the answer to (a) change if, during 2019, the premium paid is adjusted after reconciling the data and making some data corrections in connection with the annuity contract purchase?

RESPONSE

- a) The correct answer is (a)(ii). For purposes of pro-rating the flat-rate premium for the final (short) plan year of a terminating single-employer plan, the plan year is treated as ending on the date on which the distribution of the plan’s assets in satisfaction of all benefit liabilities was completed (i.e., the date that gets reported on line 3a of Form 501, the post-distribution certification, as the “last distribution date in satisfaction of plan benefits”). In this scenario, that date is November 20, 2018. The fact that lump sums were paid on an earlier date is irrelevant. Because flat-rate premiums are owed for all full and partial months in the plan’s final year, the plan owes 11/12 of the otherwise calculated 2018 flat-rate premium. The plan is exempt from the variable-rate premiums for 2018 because its final distribution occurred during the 2018 plan year.
- b) No. Even though some checks have not been cashed as of that date, the check has been distributed and was awaiting payment. Amounts paid to the PBGC with the Form MP-100 are ignored for this determination. The plan is treated as having distributed all benefit liabilities by November 20, 2018. The proration described for flat rate premiums still applies, and the plan remains exempt from the variable rate premium for 2018. If the plan sponsor paid a full year’s premium with its 2018 premium filing, the PBGC will automatically refund the excess 2018 premium paid.

- c) No. All benefit liabilities were satisfied on November 20, 2018. Adjustments to the annuity premium made by the annuity provider due to data corrections do not change the date that benefit liabilities are treated as having been distributed.

QUESTION #2

Premiums: Filing for a New Plan

A new plan is established on 1/1/2018 providing only future service accruals. On 1/1/2018, no participant has an accrued benefit (e.g., there is no wrap-around of another formula, and no death or disability benefits other than those based directly on the accrued benefit).

- a) Are premiums owed for 2018?
- b) If (a) is no, must a premium filing be made?

RESPONSE

- a) No. The definition of “participant” for premium purposes is an individual (whether active, inactive, retired, or deceased) with respect to whom the plan has Benefit Liabilities as of the Participant Count Date. This plan has no participants for the 2018 plan year for premium purposes.
- b) Yes. The plan sponsor would indicate a zero participant count on what will be the plan’s first year filing (i.e., 2018 plan year).

QUESTION #3

Standard Terminations: Missing Participants

A plan terminates on March 31, 2018 and pays lump sums in connection with the plan termination on October 1, 2018. A group annuity contract is purchased on October 20, 2018 for those participants not paid a lump sum and all participants who could not be located using a commercial locator service, with the benefit obligation passing from the plan to the insurer on that date. Uncashed lump sum checks are canceled on December 14, 2018 (after the "cash-by date" under the regulations).

On January 15, 2019, Form MP-100 is filed with the PBGC, treating the participants who did not cash their checks as missing participants.

What is the Benefit Determination date for the participants who did not cash their lump sum checks?

RESPONSE

The Benefit Determination Date must be during the period the plan makes distributions pursuant to the close-out of the plan to distributees who are not missing (i.e., on or after the first day such a distribution is made, but no later than the last day such a distribution is made). In this case, that means any date from October 1, 2018 to October 20, 2018.

QUESTION #4

Standard Terminations: Missing Participants Filing

If a plan has a normal form of benefit equal to a single life annuity with a 5-year certain and life payment and does not provide for a single life annuity without a certain period, what is the benefit reported to the PBGC under the missing participant program?

RESPONSE

With respect to missing participants with non-de minimis accrued benefits (as defined in 29 CFR §4050.102), if the plan is transferring the payment obligation to PBGC (as opposed to purchasing an annuity from an insurance company), the monthly benefit payable as a single life annuity (SLA) commencing at specified ages must be reported as part of the Missing Participants Filing. See instructions for Form MP-100 (Schedule B, Part III, line 8).

If a plan that's required to submit this information doesn't provide an SLA option, contact PBGC's Standard Termination Compliance Division by calling (800) 736-2444 or (202) 326-4242 and selecting option 3.

QUESTION #5

Standard Terminations: Missing Participants Program

A calendar-year defined benefit plan covered by the PBGC terminates on December 31, 2017 and pays lump sums on July 1, 2018. As of September 15, 2018, there are uncashed checks as well as participants who did not make an election regarding the method of distribution whose benefit is under the plan's automatic cash-out threshold of \$5,000.

Can these participants be transferred to the PBGC under the Missing Participant Program?

RESPONSE

These participants must be determined to be missing following the PBGC's rules on missing participants that existed prior to the final rules published on December 22, 2017. Thus:

- Uncashed checks and amounts under the plan's automatic cash-out threshold cannot be turned over to the PBGC unless the plan sponsor has performed a search for the participant and the participant cannot be located.
- The plan must use the Schedule MP attachment to the Form 501 from the prior program and calculate benefits following the prior rules.
- If the participants do not qualify as missing participants under the pre-2018 regulations, the plan administrator must distribute the benefits in another permissible way to complete the standard termination.

QUESTION #6

Standard Terminations: Missing Participants and Final Filings

A DB plan terminates in 2018 and pays lump sums. A participant's lump sum is paid in cash, net of 20% automatic federal withholding and net of automatic state withholding. The participant does not cash the check by the date in the plan's stated stale-dated check policy included in notices and on the check. The plan sponsor cancels the check and transfers the amount to the PBGC in accordance with the Missing Participant Program.

What amount must be transferred to the PBGC?

- a) The net amount of the check, or
- b) The gross amount of the payment before withholding?

RESPONSE

The correct answer is (b). This is also the case with respect to DC plans transferring account balances under the expanded missing participants program.

In situations where tax amounts have already been withheld, a payor or plan administrator may file with the IRS to request a refund for the trust of tax amounts withheld (See IRS Internal Revenue Manual 21.7.2.4.6. Adjusted Employer's Federal Tax Return or Claim for Refund).

Although the regulation provides that gross amounts must be transferred to PBGC, PBGC believes that there is room for flexibility in how the benefit is paid to PBGC in circumstances where it may not be practical to reflect the total value of the benefit in the amount transferred. For example, it would be permissible for the qualified termination administrator (QTA) of an abandoned DC plan (as defined under Department of Labor regulations at 29 CFR 2578.1) to transfer to PBGC the net amount of the uncashed check. PBGC believes that the final rule's provision allowing discretion to promote the purposes of the missing participants program provides PBGC with the necessary flexibility to accommodate such situations. If such discretion is needed, please contact PBGC.

QUESTION #7

Standard Terminations: Form 501 Filing and Proof of Payment

PBGC requires copies of the cancelled checks or a bank statement to be provided along with the Post-Distribution Certification (i.e., Form 501). A complete record of every check paid may be a very large file and contain personal information that must be protected.

- a) Are there any other forms of proof the PBGC will accept to show a participant has been paid a lump sum? Please provide examples.
- b) May the plan sponsor provide this information after the Form 501 is filed to prevent a late filing of the Form 501?

RESPONSE

- a) PBGC is amenable to accepting other types of documentation which help trace the distribution of benefits from the plan to the participants, e.g., trust statements that show the monies being distributed from the plan, with a cross-reference to a separate listing of participants and individual distribution amounts that tie to the trust statement amounts. A listing of names and distribution amounts or copies of Form 1099Rs are not considered adequate proof of distribution. Plan administrators who want to provide an alternative proof of distribution should contact PBGC in advance to ensure that such documentation is acceptable.

All documents provided as proof of distributions may be uploaded to PBGC's secure link at: <http://pbgc.leapfile.com>.

- b) The proof of distributions should be submitted along with the Post-Distribution Certification (Form 501). Although Form 501 is due within 30 days after the last distribution date for any affected party, PBGC will not assess a penalty for late filing if the certification is filed within 90 days after the "distribution deadline" (including extensions). See § 4041.28(a) and § 4041.29(b) of PBGC's regulation on terminating single-employer plans for the definition of distribution deadline and the provision about not assessing penalties for filings within that 90-day timeframe, respectively. If collecting/submitting the information within that 90-day timeframe proves to be impractical, contact PBGC's Standard Termination Compliance Division by calling (800) 736-2444 or (202) 326-4242 and selecting option 3.

QUESTION #8

Reportable Events: Active Participant Reduction

Technical Update 17-1 provides relief for duplicate reporting for situations where participants who were previously reported as part of a reduction due to a single-cause can be added to the year-end participant count to avoid double reporting for the same event. For example, if a single-cause event was reported and included 230 participants who were no longer actively employed due to the single-cause event, those 230 participants could be added to the active participants as of the end of the plan year. Thus, an attrition event would only be triggered if it alone resulted in a reduction of active participants that exceeded the one- or two-year threshold.

However, the guidance only provides for this adjustment in counts if the single-cause event was reported. It does not provide for this adjustment if a single-cause event occurred but reporting was waived. In some cases, a waiver may exist for a single-cause event that does not exist for an attrition event. In that case, the participant counts used for the attrition event cannot be adjusted by those participants who were part of the waived single-cause event.

Can participants who were part of a single-cause event where reporting was waived be added to the year-end participant count when determining whether an attrition event must be reported?

RESPONSE

No. To determine whether reporting is required for an attrition event for a plan year, a potential filer may disregard any cessations of active participant status for single-cause events during the plan year or preceding plan year only if they were reported to PBGC as single-cause events.

QUESTION #9

Reportable Events: Transfer of Benefit Liabilities

Company A has various subsidiaries including Subsidiary A. Subsidiary A is acquired by Company B. Plan A, sponsored by Company A, covers only participants of Subsidiary A and will be transferred along with Subsidiary A to Company B. The transaction is a change in controlled group/contributing sponsor reportable event.

- a) Is this also a transfer of benefit liabilities event?
- b) If Plan A was merged into a plan already sponsored by Company B, would that be a transfer of benefit liabilities event?

RESPONSE

- a) No. The definition of the transfer of benefit liabilities event is stated as:

“The plan makes a transfer of benefit liabilities to a person, or to a plan or plans maintained by a person or persons, that are not members of the transferor plan’s controlled group; and ...”

In this situation, the plan does not make a transfer of any benefit liabilities. The plan remains intact. Thus, the transfer of benefit liabilities reportable event does not apply.

- b) Yes. Because the plan is transferring the benefit liabilities of Plan A to another plan already sponsored by Company B, the transfer of benefit liabilities would be required to be reported unless one of the waivers provided in the regulation applies.

QUESTION #10

Reportable Events: Active Participant Reduction

A company sponsors Plan A and Plan B, both with plan years beginning January 1. On December 31, 2017, Plan B is merged into Plan A. In April 2017 and August 2017, each plan had reductions in active participants due to layoffs but did not meet the 20% threshold for reporting due to a single-cause.

Plan A's active count is 190 on 12/31/2016; 120 on 12/31/2017 prior to merger, and 280 after Plan B is merged in.

Plan B's active count is 220 on 12/31/2016, and 160 on 12/31/2017 prior to merging into plan A on 12/31/17.

- a) Does Plan A have a reportable event due to attrition?
- b) Does Plan B have a reportable event due to attrition?

RESPONSE

- a) No. The year-over-year change in active participants in Plan A is determined using the final participant count in Plan A as of last day of the plan year, December 31, 2017 of 280 compared to the active participant count in Plan A at the end of the prior year of 190. Because there is no reduction in the number of active participants, a reportable event has not occurred for Plan A.
- b) Yes. The reduction in active participants in Plan B is determined using the final participant count in Plan B (the last day of its plan year) prior to the merger on December 31, 2017 of 160 compared to the active participant count in Plan B at the end of the prior year of 220. A reportable event occurred because the number of active participants decreased by more than 20 percent.

The reportable event filing due date is 30 days after the end of the plan year, but that due date is automatically extended to the due date for the 2018 premium filing (i.e., October 15, 2018). The extension applies even though Plan B has no premium filing obligation for 2018. Assuming no reporting waivers apply, the plan sponsor should report the event to the PBGC by October 15, 2018 and indicate that the plan no longer exists because it merged into Plan A on December 31, 2017.

QUESTION #11

Reportable Events: Bond Default as Loan Default

Under 29 CFR § 4043.34(a), a “loan default” reportable event occurs when, for a “loan” with an outstanding balance of \$10 million or more to a member of the plan’s controlled group: (1) there is an acceleration of payment or a default under the “loan agreement”; or (2) the “lender” waives or agrees to an amendment of any covenant in the “loan agreement”, the effect of which is to cure or avoid a breach that would trigger a default.

If the only “default” or possible “default” that is at issue is a default under a widely-held bond, is the bond treated as a “loan”, the bond indenture treated as a “loan agreement”, and the bondholders treated as “lenders” for purposes of the foregoing provisions?

RESPONSE

Yes. A loan is an arrangement in which one or more lenders gives money or property to a borrower, and the borrower agrees to return the property or repay the money, usually along with interest, at some future point(s) in time. A widely-held bond would be an example of a loan.

QUESTION #12

ERISA §4010: Multiple-Employer Plans

- a) Does a multiple-employer plan have a single funding target attainment percentage ("FTAP") or multiple FTAPs for purposes of determining whether an ERISA §4010 filing is required?
- b) Does the answer vary depending on whether, under IRC §413(c), the multiple-employer plan is treated as a single plan (pre-1989) or separate plans for purposes of IRC §430?

RESPONSE

- a) A multiple employer plan has a single FTAP for purposes of determining whether an ERISA §4010 filing is required, because a multiple-employer plan is a single plan (i.e., all assets are available to pay all benefits).
- b) No.

QUESTION #13

ERISA §4044 Calculations: Determination of Annuities in a Cash Balance Plan

2017 Blue Book Q&A 18 provides that, for ERISA §4010 purposes, annuities can be determined from projected cash balance accounts either using (i) ERISA §4044 assumptions for the conversion or (ii) the IRC §430 valuation assumptions, including the use of IRC §430 interest rates for conversions in lieu of IRC §417(e) rates under Treasury regulation §1.430(d)-1(f)(5)(ii).

- a) For ERISA §4044 purposes (e.g., in calculating the allocation of assets for a spin-off), how are annuities determined for cash balance benefits?
- b) How would the priority category 3 (PC3) benefit be calculated for a participant eligible to retire 3 years prior?

RESPONSE

- a) When a plan terminates, the plan's interest crediting rate and variable annuity conversion interest rates are replaced with five-year averages. Because ERISA §4044 determines how assets would be allocated upon a plan termination, those five-year averages should be used.
- b) The PC3 benefit is generally calculated based on the account balance 3 years before the plan termination date reflecting the actual conversion factors and interest crediting rate that the plan would have used had the plan terminated on that date (i.e., the 5-year averages as of that date). However, if, as of the termination date, the plan sponsor was the subject of a bankruptcy or similar insolvency proceeding, the 3-year look back is based on the bankruptcy petition date, rather than the plan termination date. See ERISA section 4044(e).

The benefit in PC3 excludes any benefit increases under plan provisions in effect for less than the *entire* 5-year period ending on the termination date (or bankruptcy petition date). And the participant's PC3 benefit is capped at the amount of the plan benefit as of the termination date, based on the 5-year average as of the termination date.

QUESTION #14

ERISA §4044 Calculations: Assumed Form of Payment

ERISA §4044 uses the form of benefit for the following two purposes:

- To determine the accrued benefit used to look up whether the participant is in the Low, Medium or High category for purposes of determining the XRA
- To determine the benefit payable at XRA.

The regulations use the terms “normal form payable under the terms of the plan” (§4044.55(b)(1)) with respect to the benefit used to determine the XRA, and “normal annuity form payable under the plan” (§4044.72(a)(2) Non-Trusteed Plans) with respect to the benefit to be valued at the XRA.

2007 Blue Book Q&A 10 asked about the definition of “Normal Form” for XRA purposes (29 CFR §4044.55(b)(1)), and PBGC responded that it considered the “normal form” to be the form in which the plan’s formula expresses the benefit (typically a single life annuity, or perhaps a years’ certain and life annuity), and not the automatic form of benefit that is payable in the absence of an election by the participant to the contrary.

However, 29 CFR §4044.51(a)(3) (Trusteed Plans) indicates that, with respect to the “form of benefit” assumption, if a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value “the form of benefit that, under the terms of the plan, is payable in the absence of a valid election.”

Please confirm that different assumed forms of benefit apply for these two purposes. When using the ERISA §4044 rules, to calculate benefits for a participant not in receipt who has not made a valid election:

- a) What form of benefit is assumed in determining whether the participant is in the High, Medium or Low rate category?
- b) What form of benefit is valued at XRA?

RESPONSE

- a) The normal form of benefit – that is, the form in which the plan expresses the benefit formula.
- b) The automatic form of benefit – that is, the plan’s QJSA (which is often a single life annuity or a years’ certain and life for single participants).

QUESTION #15

Other: Defined Contribution Plan Termination Missing Participant Program

A defined contribution (“DC”) plan terminated on December 31, 2016 and paid benefits to all the participants they could locate in 2017. Some participants could not be located. The plan sponsor continued to search for those participants. As of March 1, 2018, the participants could not be found.

Can those unlocatable participants be transferred to the PBGC under the Missing Participant Program?

RESPONSE

No. The PBGC’s new missing participant program for DC plans is available only to DC plans that terminate on or after January 1, 2018.

QUESTION #16

Other: Title IV Coverage - Professional Service Employers

DB plans established and maintained by a professional service employer that does not at any time after the date of enactment of ERISA have more than 25 active participants in the plan are excluded from PBGC coverage per §4021(b). Under ERISA §4021(c)(2), “professional service employer” is defined as “an ... organization owned or controlled by professional individuals”. “Professional individuals” is further defined with a non-exhaustive list of professionals.

In 1976, PBGC issued Opinion 76-106 (<https://www.pbgc.gov/documents/76-106pdf>) indicating that they did not consider insurance agents to be professional individuals for purposes of determining insurance coverage under Title IV.

In 2017, PBGC indicated that they considered an investment advisory firm owned and operated by a Certified Financial Planner (CFP) to be a professional service organization, thus excluding it from PBGC coverage (<https://www.pbgc.gov/sites/default/files/legacy/docs/coverage-exception-for-professional-service-employer-2017-03-23.pdf>).

Is the possession of the CFP designation by the owner/operator of a firm that otherwise meets the size requirements for exclusion alone sufficient to cause the firm to be excluded from PBGC coverage?

RESPONSE

For purposes of the professional service employer exemption under ERISA § 4021(b)(13), PBGC, generally, would consider a person with a valid and current CFP certification to be a professional individual. Additional factors would still need to be met for the exemption to apply, such as whether the individual owns or controls the employer and the employer’s principal business is the performance of professional services.