

4980H(b) for each month of 2020 because Employee M's required HRA contribution (\$100) is less than the amount equal to the required contribution percentage for 2020 multiplied by the monthly amount determined under the rate of pay safe harbor for Employee M (9.78 percent of \$2,000 = \$196). Employer Y will not be liable for an assessable payment under section 4980H(b) with respect to Employee M for any calendar month in 2020. (Also, Employer Y will not be liable for an assessable payment under section 4980H(a) for any calendar month in 2020 because it offered an individual coverage HRA, an eligible employer-sponsored plan that is minimum essential coverage, to all full-time employees and their dependents for each calendar month in 2020.)

(ii) *Example 2 (Location safe harbor and look-back month safe harbor applied to non-calendar year individual coverage HRA)*—(A) *Facts.* Employer Z offers all full-time employees and their dependents an individual coverage HRA with a non-calendar year plan year of July 1, 2020 through June 30, 2021, and makes \$6,000 available in the HRA for the plan year to each full-time employee without regard to family size, which means the monthly HRA amount for each full-time employee is \$500. All of Employer Z's employees have a primary site of employment in City B. Employer Z chooses to use the location safe harbor and the look-back month safe harbor. Employer Z also chooses to use the rate of pay safe harbor for its full-time employees. Employee N is 40 years old on July 1, 2020, the first day of the plan year. The monthly premium for the applicable lowest cost silver plan for a 40 year old offered through the Exchange in City B for January 2020 is \$600. Employee N's required HRA contribution for each month of the plan year beginning July 1, 2020, is \$100 (cost of the applicable lowest cost silver plan determined under the location safe harbor and the look-back month safe harbor (\$600) minus the monthly HRA amount (\$500)). The monthly amount determined under the rate of pay safe harbor for Employee N is \$2,000 for each month of the plan year beginning July 1, 2020.

(B) *Conclusion.* Employer Z has made an offer of affordable, minimum value coverage to Employee N for purposes of section 4980H(b) for each month of the plan year beginning July 1, 2020, because Employee N's required HRA contribution (\$100) is less than the amount equal to the required contribution percentage for plan years beginning in 2020 multiplied by the monthly amount determined under the rate of pay safe harbor for Employee N (9.78 percent of \$2,000 = \$196). Employer Z will not be liable for an assessable payment under section 4980H(b) with respect to Employee N for any calendar month in the plan year beginning July 1, 2020. (Also, Employer Z will not be liable for an assessable payment under section 4980H(a) for any calendar month in the plan year beginning July 1, 2020, because it offered an individual coverage HRA, an eligible employer-sponsored plan that is minimum essential coverage, to all full-time employees and their dependents for each calendar month in that plan year.)

\* \* \* \* \*

(h) *Applicability date.* Paragraphs (a) through (e) and (g) of this section are applicable for periods after December 31, 2014. Paragraph (f) of this section is applicable for periods after December 31, 2019.

**Kirsten Wielobob,**

*Deputy Commissioner for Services and Enforcement.*

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**BILLING CODE 4830-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **29 CFR Part 4022**

**RIN 1212-AB41**

### **Lump Sum Payment Assumptions**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would modify the assumptions the Pension Benefit Guaranty Corporation (PBGC) uses to determine de minimis lump sum benefits in PBGC-trusted terminated single-employer defined benefit pension plans and would discontinue monthly publication of PBGC's lump sum interest rate assumption.

**DATES:** Comments must be submitted on or before November 29, 2019 to be assured of consideration.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for sending comments.
- *Email:* [reg.comments@pbgc.gov](mailto:reg.comments@pbgc.gov). Refer to RIN 1212-AB41 in the subject line.

- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation or PBGC) and the Regulation Identifier Number for this rulemaking (RIN 1212-AB41). Comments received will be posted without change to PBGC's website, <https://www.pbgc.gov>, including any personal information provided. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026, or calling 202-326-4040 during normal business hours. TTY users may call the Federal relay service toll-free at 1-800-

877-8339 and ask to be connected to 202-326-4040.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Katz ([katz.gregory@pbgc.gov](mailto:katz.gregory@pbgc.gov)), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026; 202-326-4400, extension 3829. TTY users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400 extension 3829.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary—Purpose and Authority**

This rulemaking arises from PBGC's ongoing review of its regulations to ensure they are up-to-date, efficient, and satisfy existing needs with a minimum of burden. It is intended to modernize the methodology used to determine de minimis lump sums in terminated underfunded single-employer plans. Specifically, under this proposed rule, PBGC would adopt the interest and mortality assumptions from section 417(e)(3) of the Internal Revenue Code (Code)<sup>1</sup> for this purpose.

It would also discontinue PBGC's monthly calculation and publication of the interest rates used for this purpose. Because some private-sector plans use PBGC's lump sum interest rates, the proposal would provide a final interest rate set for private-sector plans to use for valuation dates on or after the effective date of the final rule.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA and section 4022 of ERISA (Single-Employer Plan Benefits Guaranteed).

**Background**

*Use of Lump Sum Assumptions by PBGC*

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. This proposed rule applies only to the single-employer program.

Covered single-employer plans that are underfunded may terminate in

<sup>1</sup> Section 417(e)(3) of the Code and section 205(g)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) are parallel provisions in ERISA and the Code.

either a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan and becomes responsible for paying guaranteed benefits in accordance with section 4022 of ERISA and PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022).<sup>2</sup>

PBGC calculates the present value of each participant's benefit to determine whether it is de minimis (present value of \$5,000 or less) and therefore may be paid as a lump sum.<sup>3</sup> Assumptions used to value benefits for this purpose are set forth in PBGC's benefit payments regulation. The interest assumption, published each month, employs a four-tiered structure to discount future benefit payments for determining their lump sum equivalent. This structure consists of an "immediate" rate for discounting benefits for the period between the annuity starting date and each future payment date, and up to three "deferred" rates for discounting benefits during specified parts of the period leading up to the annuity starting date (e.g., first 7 years, next 8 years, and years beyond). The mortality assumption is the 1984 Unisex Pensioners Mortality Table.

#### *Use of PBGC's Lump Sum Interest Rates by Private Sector*

PBGC is aware that a relatively small number of plans use PBGC's interest rates as computed using its historical methodology (legacy interest rates) to determine the lump sum equivalents of annuity benefits.<sup>4</sup> It is PBGC's understanding that these plans do so because, before 1994, under section 417(e)(3) of the Code, plans were required to use PBGC's legacy interest rates to determine the minimum permissible lump sum equivalent of an annuity benefit.<sup>5</sup>

The Retirement Protection Act of 1994, Public Law 103-465 (RPA '94) changed the interest rate specified in section 417(e)(3) of the Code. As a result, private-sector plans were no

longer required to use PBGC's lump sum interest rates to determine the minimum lump sum equivalents of annuity benefits. Anecdotal evidence suggests many, if not most, plans were amended to discontinue use of PBGC's legacy interest rates for calculating lump sum equivalents of annuity benefits by adopting the new interest assumption under section 417(e)(3) of the Code.

To preserve the possibility of a change in the way PBGC-paid lump sums are determined without affecting private-sector plans that use PBGC's legacy interest rates to determine lump sums, PBGC publishes two separate tables of lump sum interest rates. Appendix B provides the interest rates for PBGC-paid lump sums, and appendix C provides the legacy interest rates for use by the private sector. To date, the tables have always been identical.

PBGC first started publishing two sets of interest rates in 2000. At that time, PBGC recommended that plan sponsors amend (or draft) plans to explicitly reference "PBGC's lump sum interest rates for private-sector payments" (i.e., appendix C) if they wanted to ensure plans would not be affected by a future change to the way in which PBGC-paid lump sums are determined.<sup>6</sup>

#### **Proposed Regulatory Changes**

##### *Adopt Lump Sum Assumptions From Section 417(e)(3) of the Code*

Actuarial practice, with the help of technology, has moved toward a yield-curve approach where future benefits are discounted to the measurement date based on yields on bonds of similar duration. By associating an interest rate with a specific time horizon, a yield curve better approximates the present value of future benefits. As a result, the immediate and deferred structure of PBGC's legacy interest rates has become increasingly obsolete.

Additionally, the methodology PBGC uses to compute each month's immediate and deferred interest rates, which was established at a time when computing resources were limited, is simplistic and typically results in interest rates significantly lower than the rates most private-sector plans use to determine lump sums.

Taking into consideration modern structures and methods, PBGC proposes to adopt the lump sum interest rate assumption from section 417(e)(3) of the Code. Specifically, PBGC proposes to amend its benefit payments regulation to provide that PBGC will use the "applicable interest rate"<sup>7</sup> specified in

section 417(e)(3)(C) of the Code and section 205(g)(3)(B)(ii) of ERISA to calculate the present value of annuity benefits (for the purposes of determining if the benefit is de minimis and if so, the amount payable as a lump sum).

PBGC also considered whether the lump sum mortality assumption, i.e. the 1984 Unisex Pensioners Mortality Table, should be replaced in this proposed rule. Although that table does not reflect recent mortality improvements, the combination of using it with PBGC's legacy interest rates results in lump sum amounts that are similar to amounts determined using the interest and mortality assumptions under section 417(e)(3) of the Code. This would no longer hold true if PBGC were to adopt the interest rates under section 417(e)(3) of the Code without also revising its lump sum mortality assumption. Accordingly, to ensure the amount of PBGC-paid lump sums remains relatively unaffected by this change, PBGC proposes to amend its benefit payments regulation to provide that PBGC will use the "applicable mortality table" specified in section 417(e)(3)(B) of the Code and section 205(g)(3)(B)(i) of ERISA.

PBGC expects that the proposed changes to adopt the interest and mortality assumptions specified in section 417(e)(3) of the Code would have a minimal effect on participants and beneficiaries of plans it trustees because, as noted above, PBGC uses these assumptions only for purposes of determining de minimis lump sum amounts. Also, because the interest and mortality changes would generally have offsetting effects, the net impact would be small. For example, using a participant aged 40 and the January 2019 interest rates to illustrate the impact, the lump sum amount determined under the proposal would be within 1 percent of the amount determined using current methods and assumptions.<sup>8</sup> In general, the proposed assumptions would result in slightly larger lump sums for older participants and slightly smaller lump sums for younger participants. The impact on any particular benefit would depend on individual demographic factors and

Pension Protection Act of 2006, Public Law 109-280. The applicable interest rate is defined as the spot segment rates published by the Internal Revenue Service each month.

<sup>8</sup> Age 40 was used for this illustration because an analysis of plans trustee by PBGC in the past 10 years indicated that the median age at plan termination of participants with de minimis benefits was age 40.

<sup>2</sup> PBGC also pays non-guaranteed benefits when there are sufficient plan assets or recoveries.

<sup>3</sup> See 29 CFR 4022.7(b)(1)(i).

<sup>4</sup> Some insurers may also use PBGC's legacy interest rates to determine lump sums payable under a group annuity contract for a pension plan that used such rates after it closed out in a standard termination.

<sup>5</sup> To determine the minimum lump sum equivalent of an annuity benefit, plans used PBGC's lump sum interest rates for benefits under \$25,000 and used 120 percent of PBGC's lump sum interest rates for benefits \$25,000 and over. Section 417(e) of the Code (1988) (amended 1994).

<sup>6</sup> See 65 FR 14753, 14755 (March 17, 2000).

<sup>7</sup> The interest assumption in section 417(e)(3) of the Code was updated by section 302(b) of the

assumptions in effect on the benefit's valuation date.

#### *Discontinue Publication of Legacy Interest Rates*

As noted in the background section, PBGC is aware that a relatively small number of plans still use its legacy interest rates to determine lump sums. In developing this proposal, PBGC considered whether to continue calculating and publishing legacy interest rates in appendix C for use by private-sector plans.<sup>9</sup> Given that the legacy interest rates' structure and methodology have become increasingly obsolete, PBGC concluded that continued publication of the legacy interest rates for any use would be inappropriate. Instead, PBGC proposes to publish a final set of interest rates in appendix C for private-sector plans to use for valuation dates on or after the effective date of the final rule equal to the average immediate and deferred rates for the 120-month period ending in July 2019, rounded to the nearest quarter percent. Thus, for valuation dates on or after the effective date of the final rule, appendix C would provide for an immediate rate of 1.5 percent for discounting benefits for the period between the annuity starting date and each future payment date and a deferred rate of 4 percent for discounting benefits during the period leading up to the annuity starting date.

With respect to plans that use the legacy interest rates, PBGC does not have information as to whether plan documents explicitly refer to the interest rates for use by private-sector plans per appendix C or whether they include more general references to PBGC's lump sum interest rates or the rates PBGC "uses." For a plan in the latter category, once the appendix C rates are no longer identical to the rates used by PBGC, the plan terms may have an ambiguity that should be resolved. Resolving this ambiguity would not necessarily mean that such a plan would have to start using the "applicable interest rate" for that purpose (which could result in smaller lump sums). Rather, unclear provisions in such a plan could be amended to specify the use of the interest rates in appendix C, provided that the resulting lump sum is no less than the minimum amount determined in accordance with section 417(e)(3) of the Code and that

<sup>9</sup> PBGC previously considered revising its methodology for determining lump sum interest rates and discontinuing publication of its legacy interest rates in 1998. See 63 FR 57228 (October 26, 1998); 65 FR 14753 (March 17, 2000).

any other applicable requirements are satisfied.<sup>10</sup>

Because PBGC has incomplete information on private-sector plan use of its legacy interest rates, PBGC is soliciting comments on which private-sector plans use these rates and for what purpose, and whether setting the legacy interest rates at a 120-month average would cause any undue burden. PBGC also seeks comment on whether other entities (e.g., insurance companies) use its legacy interest rates and for what purpose.

#### **Applicability**

The amendments affecting PBGC's calculation and payment of lump sum benefits would apply to trustee plans with termination dates on or after the effective date of the final rule.

#### **Executive Orders 12866, 13563, and 13771**

OMB has determined that this rulemaking is not a "significant regulatory action" under Executive Order 12866. Accordingly, this proposed rule is exempt from the requirements of Executive Order 13771 and OMB has not reviewed the rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this proposed rule and has concluded that the proposed changes would have minimal impact on PBGC's payment of lump sum benefits. As discussed above, applying the assumptions under section 417(e)(3) of the Code to a benefit could slightly raise or lower a lump sum benefit paid by PBGC. Additionally, with respect to plans terminating on or after the effective date, some benefits that would have been considered de minimis using

<sup>10</sup> IRS has previously informed PBGC "that a plan that refers to PBGC lump sum interest rates for purposes of calculating the amount of the distribution subject to Code section 417(e)(3) and that is amended before the PBGC amends its regulations to provide lump sum interest rates for PBGC payments that are no longer identical to the lump sum interest rates for private-sector payments will not fail to satisfy the 'anti-cutback' rules of Code section 411(d)(6) merely because it is amended to clarify that the plan's reference to PBGC lump sum interest rates means the lump sum interest rates for private-sector payments." 65 FR 14753, 14755 (March 17, 2000).

the prior assumptions would not be de minimis using the revised assumptions (and vice versa).

For the relatively small number of private-sector plans that use PBGC's legacy interest rates to determine lump sums, PBGC expects that most refer to appendix C. Because the final interest rate set is an average of recent rates, the proposed change would have little to no impact on these plans. Of plans referring generally to PBGC's lump sum interest rates, PBGC expects that some of the affected plans would be amended to refer to appendix C. However, some plans could pay smaller lump sums and consequently, some participants could receive smaller lump sums.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that "may be outmoded, ineffective, insufficient, or excessively burdensome." These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the assumptions used for lump sums in its benefit payments regulation as outmoded and the proposed amendment to remove these assumptions as consistent with the principles for review under E.O. 13563.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed regulation, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations<sup>11</sup> and is consistent with certain requirements in

<sup>11</sup> See, e.g., special rules for small plans under part 4007 (Payment of Premiums).

title I of ERISA<sup>12</sup> and the Code,<sup>13</sup> as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.<sup>14</sup>

Further, while some large employers operate small plans along with larger ones, in general, most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of the amendments to the benefit payments regulation to implement this proposed rule.

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. The vast majority of the effect of this proposed rule would be on PBGC or persons with very small benefits who will be receiving their benefits from PBGC. Though an unknown number of plans use PBGC's lump sum interest rates to calculate lump sums, it is unlikely that a substantial number of small plans still use these rates as they have not been required to do so since

RPA '94 took effect over 20 years ago. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

**List of Subjects in 29 CFR Part 4022**

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR part 4022 as follows:

**PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS**

- 1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

- 2. Amend § 4022.7 by revising paragraphs (d)(2) and (e) to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

(2) *Actuarial assumptions.* PBGC will calculate the lump sum value of a benefit by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used will be those described in § 4044.52 of this chapter, except as follows:

(i) *Loading for expenses.* There will be no adjustment to reflect the loading for expenses.

(ii) *Mortality assumption.* The “applicable mortality table” specified in section 205(g)(3)(B)(i) of ERISA and section 417(e)(3)(B) of the Code for the year containing the termination date will apply.

(iii) *Interest rate assumption.* The “applicable interest rate” specified in section 205(g)(3)(B)(ii) of ERISA and section 417(e)(3)(C) of the Code for the month containing the termination date will apply.

(iv) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

(e) *Private-sector lump sum rates.* PBGC provides lump sum interest rates for private-sector payments in appendix C to this part.

**Appendix A to Part 4022—[Removed and Reserved]**

- 3. Remove and reserve appendix A.

**Appendix B to Part 4022—[Removed and Reserved]**

- 4. Remove and reserve appendix B.

- 5. In appendix C to part 4022, a final rate set is added at the end of the table to read as follows:

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* Final	* [EFFECTIVE DATE OF FINAL RULE]	.....	* 1.50	* 4.00	* 4.00	* 4.00	* 7	* 8

Issued in Washington, DC.

**Gordon Hartogensis,**  
Director, Pension Benefit Guaranty Corporation.

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<sup>12</sup> See, e.g., section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

<sup>13</sup> See, e.g., section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

<sup>14</sup> See, e.g., DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).