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Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4022, 4043, and 4044

RIN 1212–AB24

Owner-Participant Changes to Guaranteed Benefits and Asset Allocation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is amending its regulations on guaranteed benefits and asset allocation. These amendments incorporate statutory changes to the rules for participants with certain ownership interests in a plan sponsor.

DATES: *Effective Date:* This rule is effective November 2, 2018.

Applicability: Like the provisions of the Pension Protection Act of 2006 (PPA 2006) that this rule incorporates, the amendments in this final rule are applicable to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of ERISA after December 31, 2005, and

(B) under section 4042 of ERISA with respect to which notices of determination are provided under that section after December 31, 2005.

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SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This final rule is necessary to conform the regulations of PBGC to current law and practice. PBGC is incorporating statutory changes affecting guaranteed benefits and asset allocation when a plan has one or more participants with certain ownership interests in the plan sponsor. PBGC's legal authority for this action comes from sections 4002(b)(3), 4022, and 4044 of ERISA. Section 4002(b)(3) authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. Sections 4022 and 4044 authorize PBGC to prescribe regulations regarding the determination of guaranteed benefits and the allocation of assets within priority categories, respectively.

Major Provisions

This final rule amends PBGC's benefit payment regulation by replacing the guarantee limitations applicable to substantial owners with a new limitation applicable to majority owners.[1] Additionally, this final rule amends PBGC's asset allocation regulation by prioritizing funding of all other benefits in priority category 4 ahead of those benefits that would be guaranteed but for the new limitation. The rulemaking also clarifies that plan administrators may continue to use the simplified calculation in the existing rule to estimate benefits funded by plan assets. Finally, it provides new examples to aid in implementation.

Background

PBGC administers the pension insurance program under title IV of ERISA. ERISA sections 4022 and 4044 cover PBGC's guarantee of plan benefits and allocation of plan assets, respectively, under terminated single-employer plans. Special provisions within these sections apply to ''owner-participants,'' who have certain ownership interests in their plan sponsors. PPA 2006 made changes to these provisions. PBGC has been operating in accordance with the amended provisions since they became effective, but had not yet updated its regulations nor issued guidance on implementation. With this rulemaking, PBGC is increasing transparency into its operations and is clarifying for plan administrators the impact of the statutory changes.

Before PPA 2006, the owner-participant provisions applied to any participant who was a ''substantial owner'' at any time within the 60 months preceding the date on which the determination was made. Section 4021(d) of ERISA defines a substantial owner as an individual who owns the entire interest in an unincorporated trade or business, or a partner or shareholder who owns more than 10 percent of the partnership or corporation. PPA 2006 revised the owner-participant provisions, in large part, by making them applicable to ''majority owners'' instead of substantial owners. Section 4022(b)(5)(A) of ERISA defines a majority owner as an individual who owns the entire interest in an unincorporated trade or business, or a partner or shareholder who owns 50 percent or more of the entity.

On March 7, 2018 (at 83 FR 9716), PBGC published a proposed rule to amend parts 4001, 4022, 4041, 4043, and 4044 to incorporate statutory changes to the rules for participants with certain ownership interests in a plan sponsor. PBGC received no comments on the proposed rule.

The final regulation is the same as the proposed regulation with two exceptions discussed below: PBGC is adding clarifying language to § 4022.26 of the benefit payment regulation, concerning PPA 2006 bankruptcy terminations; and PBGC is not making the proposed amendment to its regulation on Termination of Single-Employer Plans (29 CFR part 4041).

Guaranteed Benefits Before and After PPA 2006

ERISA section 4022 imposes several limitations on PBGC's guarantee of plan benefits, including the ''phase-in limitation.'' As the name of this limitation suggests, PBGC's guarantee of a plan's benefits is phased in over a specified time period. Before PPA 2006, this time period was drastically different for owner-participants and for all other participants; the benefits of owner-participants were phased in over 30 years, whereas the benefits of non-owner-participants were phased in over five years. In addition, the extent to which an owner-participant's benefit was phased in was unique to each owner-participant and based on the number of years he or she was an active participant in the plan; whereas the extent to which all other participants' benefits were phased in was based on the number of years a plan provision—specifically, one that increased benefits—was in effect before the plan terminated.

PPA 2006 greatly simplified the method for determining PBGC's guarantee of owner-participants'

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[1] In this preamble, substantial owners and majority owners are referred to interchangeably as ''owner-participants.''

benefits by eliminating the 30-year phase-in and making the five-year phase-in of benefit increases applicable to owner-participants and non-owner-participants alike. PPA 2006 then applies a separate, additional limitation—the ''owner-participant limitation''—to an owner-participant's otherwise guaranteed benefit. This owner-participant limitation is similar to the five-year phase-in limitation on benefit increases, as it is calculated based on a plan's age; however, it is based on the length of time the original plan was in existence, regardless of whether the plan increased benefits, and the phase-in period is 10 years. The owner-participant limitation bears little resemblance to the 30-year phase-in limitation, and the calculations are much simpler. This final rule incorporates these changes to PBGC's benefit payment regulation.

Phase-in Limitation

Before this rulemaking, §§ 4022.25 and 4022.26 of PBGC's benefit payment regulation provided the procedures for calculating the five-year phase-in of benefit increases for non-owner-participants and the 30-year phase-in of all benefits for owner-participants, respectively. Section 4022.25 provided, generally, that benefit increases (as defined in § 4022.2) of non-owner-participants were phased in by the greater of $20 or 20 percent of the increase for each full year the increase was effective. Section 4022.26 provided the much more complicated procedures for calculating the guaranteed benefits of owner-participants—based on a 30-year phase-in—before PPA 2006; different procedures applied depending on whether or not there had been any benefit increases. As explained above, PPA 2006 eliminated the 30-year phase-in limitation and made the five-year phase-in of benefit increases applicable to all participants, including owner-participants. Accordingly, PBGC is amending the benefit payment regulation by removing the distinction between owner-participants and all other participants under § 4022.25, and PBGC is amending § 4022.26 by replacing the 30-year phase-in limitation with a new ''owner-participant limitation,'' as discussed next.

Owner-Participant Limitation

PPA 2006 provided a new formula for determining PBGC's guarantee of an owner-participant's benefit. Under this owner-participant limitation, an owner-participant's guaranteed benefit is limited to the product of the owner-participant's otherwise-guaranteed benefit and a fraction, not to exceed one. The numerator of this fraction equals the number of years that the plan was in existence (from the later of its effective date or adoption date), and the denominator equals 10.

Compared to the 30-year phase-in under the old statute, which had been implemented at § 4022.26 of the benefit payment regulation, the owner-participant limitation is much simpler to calculate and generally provides a much more generous guarantee. Before PPA 2006, PBGC needed to make individualized determinations about the length of time each substantial owner was an active participant in a plan over a 30-year period. Additionally, a substantial owner needed to have been an active participant for at least 30 years in order for his or her benefit to be fully guaranteed (to the extent that other limitations on PBGC's guarantee did not apply). Under PPA 2006, PBGC needs only to calculate a single fraction, based on the age of the plan, and then to multiply the benefit of each majority owner under the plan by that same fraction. In addition, all majority owners' benefits are now fully guaranteed (to the extent that other limitations on PBGC's guarantee do not apply) once a plan has been in existence for 10 years.

Consistent with these statutory changes, PBGC is amending the benefit payment regulation by replacing references to ''substantial owner'' with ''majority owner'' and by revising § 4022.26 to provide the formula for calculating the owner-participant limitation, in the place of the 30-year phase-in limitation. In addition to the revisions described in the proposed rule, PBGC is adding language to § 4022.26 to clarify that in a PPA 2006 bankruptcy termination, the length of time that the plan was in existence is measured from the later of the effective date or the adoption date of the plan to the bankruptcy filing date.[2]

Asset Allocation in Priority Category 4 Before and After PPA 2006

ERISA section 4044 prescribes the method for allocating a terminated single-employer plan's assets to its benefit liabilities. Under section 4044, plan assets must be allocated to six priority categories (PC1 through PC6, with PC1 being the highest) into which all plan benefits are sorted. Benefits affected by the owner-participant limitation are assigned to priority category 4 (PC4). PPA 2006 changed the method for allocating assets within PC4 when there are benefits affected by the owner-participant limitation.

PC4 includes three kinds of benefits: (1) Guaranteed benefits, other than employee contributions and benefits that could have been in pay status three or more years before a plan's termination (or before the plan sponsor's bankruptcy filing date, for plans subject to ERISA section 4022(g)); (2) benefits that would be guaranteed but for the aggregate limit of ERISA section 4022B; and (3) benefits that would be guaranteed but for the owner-participant limitation (based on substantial ownership before PPA 2006 and majority ownership after PPA 2006).[3] If a plan's assets are sufficient to cover all PC4 benefits or are insufficient to cover any PC4 benefits, the PPA 2006 changes for owner-participants have no bearing on the allocation; however, if assets are sufficient to cover some, but not all, PC4 benefits (*i.e.,* if assets are ''exhausted in PC4''), the allocation rules differ before and after PPA 2006.

Before PPA 2006, if assets were exhausted in PC4, then assets were to be allocated pro rata among all three kinds of PC4 benefits. Under PPA 2006, if assets are exhausted in PC4, then assets must first be allocated to the first two PC4 groups; only if assets cover all benefits in these two groups will any assets be allocated to benefits that would be guaranteed but for the majority-owner limitation. In accordance with these statutory changes, PBGC is amending the asset allocation regulation by prioritizing other PC4 benefits to those affected by the majority-owner limitation.

Calculation of Estimated Benefits

In a distress termination, § 4022.61 of the benefit payment regulation—implementing section 4041(c)(3)(D) of ERISA—requires plan administrators to limit benefit payments to estimates of the amounts that PBGC is expected to pay, in order to minimize potential overpayments and exhaustion of plan assets before PBGC becomes trustee and is able to assume benefit payments. As trustee, PBGC pays each participant the

[2] *See* ''Related Regulatory Amendments'' section below.

[3] Strictly speaking, this description applies to benefits in ''net PC4,'' given that ''PC4'' (or, more accurately, ''gross PC4'') technically includes the three kinds of benefits listed, as well as all benefits in higher priority categories. Without using the terms ''gross'' or ''net,'' PBGC's asset allocation regulation makes this distinction at paragraph (c) of § 4044.10 (''[t]he value of each participant's basic-type benefit or benefits in a priority category shall be reduced by the value of the participant's benefit of the same type that is assigned to a higher priority category''). Nevertheless, PBGC recognizes that colloquial descriptions of benefits in a given priority category usually refer to the net benefits in that category, and this preamble follows that common usage, unless otherwise indicated.

greater of his or her guaranteed benefit or asset-funded benefit.[4] Accordingly, § 4022.61 requires plan administrators to limit benefits in pay status to the greater of each participant's estimated guaranteed benefit or estimated asset-funded benefit, beginning on the proposed termination date.[5]

Estimated Guaranteed Benefits

A participant's estimated guaranteed benefit is determined as of the proposed termination date and is the portion of the participant's plan benefit (viz., the benefit to which the participant would be entitled under the terms of the plan if the plan did not terminate) that does not exceed the estimated legal limits of PBGC's guarantee. Section 4022.62 of the benefit payment regulation prescribes the method for estimating PBGC's guarantee limitations and for calculating a participant's estimated guaranteed benefit.

As discussed above, the changes under PPA 2006 greatly affected the calculation of guaranteed benefits of owner-participants. Therefore, in order to ensure that administrators of plans with owner-participants understand how to accurately estimate these benefits in distress terminations, PBGC must update the calculation procedures.

Section 4022.62 provides two methods for calculating estimated guaranteed benefits. One method—given at paragraph (c)—applies to non-owner-participants, while the other—given at paragraph (d)—applies to owner-participants. Both methods' calculations use the amount calculated under paragraph (b) as a starting point. Paragraph (b) estimates a participant's benefit that would be guaranteed before application of any phase-in limitation. Paragraph (c) estimates the effect of the five-year phase-in limitation on the paragraph (b) amount. Paragraph (d) estimates the effect of the 30-year phase-in limitation applicable to owner-participants before PPA 2006 on the paragraph (b) amount.

In order to reflect the changes to PBGC's guarantee limitations for owner-participants under PPA 2006, PBGC is revising paragraph (d) in its entirety. As revised, paragraph (d) no longer estimates the effect of the 30-year phase-in limitation on the paragraph (b) amount; rather, paragraph (d) estimates the effect of the owner-participant limitation (using the $^{n}/_{10}$ ratio that PPA 2006 introduced) on the paragraph (c) amount. The revised paragraph (d) uses the paragraph (c) amount instead of the paragraph (b) amount because the five-year phase-in limitation is now applicable to all participants (including majority owners).

Estimated Asset-Funded Benefits

A participant's estimated asset-funded benefit is the portion of the participant's plan benefit that plan assets are expected to be sufficient to fund through PC4, based on estimated plan assets and benefits in each priority category. Section 4022.63 of the benefit payment regulation prescribes two methods for calculating estimated asset-funded benefits; one applies to non-owner-participants and the other applies to owner-participants. Essentially, § 4022.63 provides that a non-owner-participant's estimated asset-funded benefit equals his or her estimated PC3 benefit and that an owner-participant's estimated asset-funded benefit equals the greater of his or her estimated PC3 benefit or estimated PC4 benefit. The PPA 2006 changes for owner-participants have no bearing on estimated PC3 benefits; however, the PPA 2006 change to asset allocation had the potential to affect the calculation of estimated PC4 benefits, which are payable only to owner-participants.

An owner-participant's estimated PC4 benefit equals the product of what would be his or her estimated guaranteed benefit if the participant were not an owner-participant and the ''PC4 funding ratio.'' The PC4 funding ratio is calculated one of two ways, depending on whether a plan has any benefits in PC3 (viz., whether a plan has benefits that were or could have been in pay status three years before the proposed termination date). If a plan has no PC3 benefits, the PC4 funding ratio essentially equals the estimated amount of plan assets divided by the estimated amount of vested benefits under the plan.[6] If a plan has PC3 benefits, the PC4 funding ratio essentially equals the estimated amount of plan assets minus the present value of all benefits in pay status, all divided by the estimated amount of vested benefits not in pay status.[7]

By calculating and then using a plan's PC4 funding ratio, an administrator is able to estimate the amount of assets available to fund all benefits in PC4. This ratio does not distinguish between owner-participants' benefits and all other benefits in PC4, as this distinction was not necessary before PPA 2006, when assets were to be allocated equally among the three kinds of PC4 benefits. As a result, while the PC4 funding ratio is a useful tool for estimating assets available to fund all benefits in PC4 (including those of substantial owners before PPA 2006), it does not account for the requirement under PPA 2006 to fund the benefits of majority owners only if assets remain after funding all other benefits in PC4.

Under PPA 2006, continued use of the PC4 funding ratio is more likely to result in an inflated estimate of assets available to fund a majority owner's benefit. While this potential overestimation increases the likelihood that a majority owner's estimated benefit will exceed his or her actual benefit entitlement, it has no bearing on—in particular, it does not reduce—the estimated benefits of other participants. This is because the PC4 ratio is used only when calculating the estimated asset-funded benefit of an owner-participant. As stated above, the estimated asset-funded benefits of non-owner-participants equal the participants' estimated PC3 benefits. Because PC3 benefits receive higher allocation priority than PC4 benefits, the estimated asset-funded benefit of any non-owner-participant will not be affected by the allocation of assets in PC4.

Even without any potential harm to other participants, the concern remains for potentially overpaying majority owners who receive estimated benefits. Weighed against this concern is consideration of the potential burden on plan administrators that more robust estimation procedures would impose. Modifying the PC4 funding ratio to account for the funding prioritization of other PC4 benefits ahead of those of majority owners would require additional calculations that would undermine the requirement of administrators to ''estimate'' asset-funded benefits, as opposed to performing more precise calculations outright. Moreover, far fewer participants are likely to be majority owners, compared to the number likely to have been substantial owners before PPA 2006. This is because majority

[4] A participant's asset-funded benefit is essentially the portion of the participant's plan benefit that plan assets are sufficient to fund when assets are allocated according to the distribution rules of ERISA section 4044.

[5] PBGC's benefit payment regulation does not currently include the term ''estimated asset-funded benefit''; the term ''estimated title IV benefit'' is used instead. As discussed later in this preamble, PBGC is replacing the term ''estimated title IV benefit'' with ''estimated asset-funded benefit.'' Consistent with the terminology change, this preamble refers to estimated asset-funded benefits and not to estimated title IV benefits, except where otherwise indicated.

[6] The PC4 funding ratio excludes assets and benefits that are attributable to employee contributions. *See* 29 CFR 4022.63(d)(2).

[7] *See* note 5.

owners must have an ownership interest of at least 50 percent and because the majority-owner limitation does not apply to any plan that existed for at least 10 years before terminating.

Having weighed the concerns and chiefly recognizing the limited number of cases where a plan will have one or more majority owners as well as assets sufficient to fund some, but not all, benefits in PC4, PBGC is leaving its estimated asset-funded benefit provisions at § 4022.63 substantively unchanged, with the sole exception of revising Example 2 under paragraph (e). Example 2 illustrates how to calculate the estimated asset-funded benefit of an owner-participant and describes the related calculation of the owner-participant's estimated guaranteed benefit under § 4022.62. The revisions to Example 2 reflect the changes to § 4022.62 discussed above.

Related Regulatory Amendments

PBGC is making conforming amendments to its regulations on Terminology and Reportable Events and Certain Other Notification Requirements.

The final rule retains the long-standing definition of ''majority owner'' in § 4041.2 of PBGC's regulation on Termination of Single-Employer Plans for the limited purposes of that part. The changes in PPA 2006, including adding a definition of ''majority owner'' to section 4022(b)(5)(A) of ERISA, were aimed at other purposes. PBGC is retaining its definition of majority owner in § 4041.2 so that the individuals who are permitted to elect an alternative treatment of their benefits are not changed.[8]

PBGC is correcting paragraph (e) of § 4022.62, which currently provides that in a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' in paragraph (c) of § 4022.62, by making the substitution applicable to both paragraph (c) (applicable to non-owner-participants) and paragraph (d) (applicable to owner-participants) of § 4022.62. It is clear from the preamble to the final rule that added paragraph (e) that PBGC intended, consistent with PPA 2006, to have the applicable ''bankruptcy filing date'' substituted when calculating the estimated benefits of all participants, regardless of ownership status.[9]

In addition, PBGC is adding language to the revised § 4022.26 to clarify that in a PPA 2006 bankruptcy termination, the length of time that the plan was in existence is measured from the later of the effective date or the adoption date of the plan to the bankruptcy filing date. This new language mirrors the application of ERISA section 4022(g) elsewhere in the benefit payment regulation. Section 4022(g) provides that in a PPA 2006 bankruptcy termination, PBGC is to treat the bankruptcy filing date as the plan's termination date when applying ERISA section 4022.

ERISA section 4022(b)(5)(B) specifies that the numerator of the $^{n}/_{10}$ fraction used in calculating an owner-participant's guaranteed benefit is the number of years from the later of the effective or adoption date of the plan to the plan's termination date. Therefore, as Section 4022(g) requires, this final rule provides that ''bankruptcy filing date'' is substituted for ''termination date'' in the formula for calculating a majority owner's guaranteed benefit in a PPA 2006 bankruptcy termination.

By contrast, ERISA section 4022(b)(5)(A) provides that the 60-month time period for determining majority-owner status ends on ''the date the determination is being made.'' The statute is unclear as to whether the Section 4022(g) substitution rule should apply if PBGC generally treats the date of determination as the plan's termination date. This rulemaking clarifies that the time period for determining whether a participant is a majority owner—viz., the time period prescribed in ERISA section 4022(b)(5)(A) as ''the 60-month period ending on the date the determination is being made''—ends on the plan's termination date, even in a PPA 2006 bankruptcy termination. This is consistent with PBGC's valuation of a plan's assets and liabilities as of the plan's termination date, and PBGC's determination of the liable controlled group as of that date. It is also consistent with PBGC's interpretation of Section 4022(g) in its final rule on PPA 2006 bankruptcy terminations.[10] Section 4022(g) serves to limit PBGC's guarantee of benefits to a participant's accrued plan benefit at the bankruptcy filing date. Substituting the bankruptcy filing date for the termination date in applying the owner-participant guarantee limitation furthers this purpose; substituting the bankruptcy filing date for the termination date in determining majority-owner status does not.

Amendments Unrelated to PPA 2006

PBGC is making minor, non-substantive changes to the examples not involving owner-participants at §§ 4022.62 and 4022.63 of the benefit payment regulation, in order to improve readability. Additionally, PBGC is correcting two clerical errors that were made when PBGC previously amended the regulation; the first duplicated paragraph (f) of § 4022.62, and the second duplicated the designation of paragraph (c)(1) of § 4022.63. Lastly, PBGC is replacing the term ''estimated title IV benefit'' with ''estimated asset-funded benefit'' at § 4022.63.

The use of the term ''estimated title IV benefit'' at § 4022.63 of the benefit payment regulation is confusing, in light of the definition of ''title IV benefit'' at § 4001.2 of the terminology regulation. Section 4001.2 provides, generally, that a participant's title IV benefit equals the greater of his or her guaranteed benefit or asset-funded benefit. Given this definition, one might assume that the estimated title IV benefit equals the greater of the estimate of a participant's guaranteed benefit or the estimate of a participant's asset-funded benefit; however, § 4022.63 provides that the estimated title IV benefit is essentially an estimate of a participant's asset-funded benefit (through PC4) only. Accordingly, PBGC is renaming the ''estimated title IV benefit'' referred to in § 4022.63 as the ''estimated asset-funded benefit.'' This term only appears in § 4022.63; the change does not require any conforming amendments elsewhere in PBGC's regulations.

Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

PBGC has determined that this rulemaking is not a ''significant regulatory action'' under Executive Order 12866 and, accordingly, that the provisions of Executive Order 13771 do not apply. Because this rulemaking is not a significant regulatory action, OMB has not reviewed this final rule. 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

[8] Section 4041.21(b)(2) of PBGC's regulation on Termination of Single-Employer Plans provides that a majority owner may forgo a portion of his or her benefit to the extent needed to allow an underfunded plan to terminate in a standard termination.

[9] *See* 76 FR 34590, 34596 (June 14, 2011) (''[t]he final regulation provides that for any PPA 2006 bankruptcy termination, those estimated benefits [calculated under 29 CFR 4022.62–4022.63] are based on the rules described above relating to the bankruptcy filing date'').

[10] *See* 76 FR 34590, 34595–96 (June 14, 2011) (noting that an overly broad interpretation of section 4022(g) or the similar section 4044(e) of ERISA would present some anomalies).

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. If a regulatory action is significant under Executive Order 12866, Executive Order 13771 imposes additional requirements on the agency.

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic implications of this final rule. PBGC has concluded that because the key aspects of this final rule merely incorporate statutory changes that have been effective since 2006, neither the public nor PBGC will assume any additional costs due to this regulatory action. Moreover, because PBGC has been following the statute as amended in 2006, and not the inconsistent provisions in its regulations, this rule improves the transparency of PBGC operations to the public and provides helpful guidance to plan administrators. By leaving unchanged the estimated asset-funded benefit calculation procedures under § 4022.63, PBGC enables plan administrators to continue to rely confidently on these relatively simple procedures, rather than creating more complex procedures that could have been contemplated in light of the statutory changes. Finally, the revisions to the examples at §§ 4022.62 and 4022.63 will assist plan administrators in complying with the law. Accordingly, this final rule will result in a net benefit to the public.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), federal agencies must comply with additional requirements when engaging in certain rulemaking activities that are subject to notice and public comment. An agency must satisfy these requirements if a final rule is likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final 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 final rule. The agency's analysis must describe the impact of the rule on small entities, and the agency must seek public comment on the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act, with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This criterion is consistent with certain requirements in title I of ERISA [11] and the Internal Revenue Code,[12] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[13] While some large employers maintain both small and large plans, most small plans are maintained by small employers. In light of this, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. Notably, the definition of small entity considered appropriate for this purpose differs from the definition of small business—based on size standards—at 13 CFR 121.201, which the Small Business Administration promulgated pursuant to the Small Business Act. Therefore, PBGC requested public comment on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. PBGC did not receive any such comments.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this final rule is not likely to have a significant economic impact on any entity, regardless of size. This is because nearly all aspects of this final rule will merely incorporate statutory changes that have been effective for more than a decade, while, as discussed in the context of Executive Order 12866 above, the remaining few will provide clarity on the accurate estimation of benefits required by law, at no additional cost to the public.

List of Subjects

29 CFR Part 4001

Business and industry, Employee benefit plans, Pension insurance.

29 CFR Parts 4022 and 4043

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

29 CFR Part 4044

Employee benefit plans, Pension insurance.

In consideration of the foregoing, PBGC is amending 29 CFR parts 4001, 4022, 4043, and 4044 as follows:

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. In § 4001.2:
■ a. Add in alphabetical order a definition for ''Majority owner''; and
■ b. Remove the definition of ''Substantial owner''.
The addition reads as follows:

§ 4001.2 Definitions.

* * * * *

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly (taking into account the constructive ownership rules of section 414(b) and (c) of the Code)—

(1) The entire interest in an unincorporated trade or business;

(2) 50 percent or more of the capital interest or the profits interest in a partnership; or

(3) 50 percent or more of either the voting stock of a corporation or the value of all of the stock of a corporation.

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 3. 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.

§ 4022.2 [Amended]

■ 4. In § 4022.2 introductory text:
■ a. Remove the words ''guaranteed benefit'' and add in their place the words ''guaranteed benefit, majority owner''; and
■ b. Remove the words ''substantial owner,''.

■ 5. Amend § 4022.24 by revising paragraphs (a) and (b) to read as follows:

§ 4022.24 Benefit increases.

(a) *Scope.* This section applies to all benefit increases, as defined in § 4022.2, that have been in effect for less than five years preceding the termination date.

[11] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[12] See, *e.g.,* Code section 430(g)(2)(B), which permits single-employer plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[13] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

(b) *General rule.* Benefit increases described in paragraph (a) of this section are guaranteeable only to the extent provided in § 4022.25.

* * * * *

§ 4022.25 [Amended]

■ 6. In § 4022.25:

■ a. Amend the section heading by removing the words ''for participants other than substantial owners''; and

■ b. Amend paragraph (a) by removing the words ''with respect to participants other than substantial owners''.

■ 7. Revise § 4022.26 to read as follows:

§ 4022.26 Benefit guarantee for participants who are majority owners.

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

(b) *Formula.* Benefits provided by a plan are guaranteed to the extent provided in the following formula: The amount of the participant's benefit that PBGC would otherwise guarantee under section 4022 of ERISA and this part if the participant were not a majority owner, multiplied by a fraction not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10.

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' in paragraph (b) of this section.

■ 8. In § 4022.62:

■ a. Amend paragraphs (a) and (c) introductory text by removing the four instances of the word ''substantial'' and adding in their place the word ''majority'';

■ b. Revise paragraph (d);

■ c. Amend paragraph (e) by removing the words ''paragraph (c)'' and adding in their place the words ''paragraphs (c) and (d)'';

■ d. Remove the first paragraph (f); and

■ e. Revise remaining paragraph (f).

The revisions read as follows:

§ 4022.62 Estimated guaranteed benefit.

* * * * *

(d) *Estimated guaranteed benefit payable with respect to a majority owner.* For benefits payable with respect to each participant who is a majority owner, the estimated guaranteed benefit is the benefit to which he or she would be entitled under paragraph (c) of this section but for his or her status as a majority owner, multiplied by a fraction, not to exceed one, the numerator of which is the number of full years from the later of the effective date or the adoption date of the plan to the proposed termination date and the denominator of which is 10.

* * * * *

(f) *Examples.* This section is illustrated by the following examples. (For an example addressing issues specific to a PPA 2006 bankruptcy termination, see § 4022.25(f).)

(1) *Example 1*—(i) *Facts.* A participant who is not a majority owner retired on December 31, 2011, at age 60 and began receiving a benefit of $600 per month. On January 1, 2009, the plan had been amended to allow participants to retire with unreduced benefits at age 60. Previously, a participant who retired before age 65 was subject to a reduction of $1/15$ for each year by which his or her actual retirement age preceded age 65. On January 1, 2012, the plan's benefit formula was amended to increase benefits for participants who retired before January 1, 2012. As a result, the participant's benefit was increased to $750 per month. There have been no other pertinent amendments. The proposed termination date is December 15, 2012.

(ii) *Estimated guaranteed benefit.* (A) No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either the participant's accrued benefit at normal retirement age or the maximum guaranteeable benefit. (Post-retirement benefit increases are not considered as increasing accrued benefits payable at normal retirement age.)

(B) The amendment as of January 1, 2009, resulted in a ''new benefit'' because the reduction in the age at which the participant could receive unreduced benefits increased the participant's benefit entitlement at actual retirement age by $5/15$, which is more than the 20-percent increase threshold under paragraph (c)(2)(i) of this section. The amendment of January 1, 2012, which increased the participant's benefit to $750 per month, is a ''benefit improvement'' because it is an increase in the amount of benefit for persons in pay status. (No percentage test applies in determining whether an increase in a pay status benefit is a benefit improvement.)

(C) The multiplier for computing the amount of the estimated guaranteed benefit is taken from the third row of Table I of this section (because the last new benefit had been in effect for three full years as of the proposed termination date) and column (c) (because there was a benefit improvement within the one-year period preceding the proposed termination date). This multiplier is 0.55. Therefore, the amount of the participant's estimated guaranteed benefit is $412.50 ($0.55 \times \$750$) per month.

(2) *Example 2*—(i) *Facts.* A participant who is not a majority owner terminated employment on December 31, 2010. On January 1, 2012, she reached age 65 and began receiving a benefit of $250 per month. She had completed three years of service at her termination of employment and was fully vested in her accrued benefit. The plan's vesting schedule had been amended on July 1, 2008. Under the schedule in effect before the amendment, a participant with five years of service was 100 percent vested. There have been no other pertinent amendments. The proposed termination date is December 31, 2012.

(ii) *Estimated guaranteed benefit.* No reduction is required under § 4022.61(b) or (c) because the participant's benefit does not exceed either her accrued benefit at normal retirement age or the maximum guaranteeable benefit. The plan's change of vesting schedule created a new benefit for the participant. Because the amendment was in effect for four full years before the proposed termination date, the second row of Table I of this section is used to determine the applicable multiplier for estimating the amount of the participant's guaranteed benefit. Because the participant did not receive any benefit improvement during the 12-month period ending on the proposed termination date, column (b) of the table is used. Therefore, the multiplier is 0.80, and the amount of the participant's estimated guaranteed benefit is $200 ($0.80 \times \$250$) per month.

(3) *Example 3*—(i) *Facts.* A participant who is a majority owner retired before the proposed termination date of April 30, 2012. The plan was in effect for seven full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Consequently, the amount of this participant's estimated guaranteed benefit is $1,400 ($\$2,000 \times 7/10$) per month.

(4) *Example 4*—(i) *Facts.* A participant who is a majority owner retired before the proposed termination

date of April 30, 2012. The plan was in effect for 12 full years as of the proposed termination date. On the proposed termination date he was entitled to receive a benefit of $2,000 per month. No reduction of this benefit is required under § 4022.61(b) or (c).

(ii) *Estimated guaranteed benefit.* Paragraph (d) of this section is used to compute the amount of the estimated guaranteed benefit of majority owners. Since the plan was in effect for more than 10 years as of the proposed termination date, the amount of this participant's estimated guaranteed benefit is $2,000 per month.

■ 9. In § 4022.63:

■ a. Revise the section heading;

■ b. Amend paragraph (a) by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the three instances of the words ''estimated title IV benefit'' and adding in their place the words ''estimated asset-funded benefit'';

■ c. Amend paragraph (b) introductory text by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the words ''estimated title IV benefits'' and adding in their place the words ''estimated asset-funded benefits'';

■ d. Amend paragraph (c)(1) by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the two instances of the words ''estimated title IV benefit'' and adding in the place of each the words ''estimated asset-funded benefit'';

■ e. Amend paragraph (d) introductory text by removing the two instances of the word ''substantial'' and adding in their place the word ''majority'' and by removing the two instances of the words ''estimated title IV benefit'' and adding in the place of each the words ''estimated asset-funded benefit'';

■ f. Amend paragraph (d)(1) and by removing the two instances of the word ''substantial'' and adding in their place the word ''majority''; and

■ g. Revise paragraph (e).

The revisions read as follows:

§ 4022.63 Estimated asset-funded benefit.

* * * * *

(e) *Examples.* This section is illustrated by the following examples:

(1) *Example 1*—(i) *Facts.* (A) A participant who is not a majority owner was eligible to retire 3.5 years before the proposed termination date. The participant retired two years before the proposed termination date with 20 years of service. Her final five years' average salary was $45,000, and she was entitled to an unreduced early retirement benefit of $1,500 per month payable as a single life annuity. This retirement benefit does not exceed the limitation in § 4022.61(b) or (c).

(B) On the participant's benefit commencement date, the plan provided for a normal retirement benefit of 2 percent of the final five years' salary times the number of years of service. Five years before the proposed termination date, the percentage was 1.5 percent. The amendments improving benefits were put into effect 3.5 years before the proposed termination date. There were no other amendments during the five-year period.

(C) The participant's estimated guaranteed benefit computed under § 4022.62(c) is $1,500 per month times 0.90 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $1,350 per month. It is assumed that the plan meets the conditions set forth in paragraph (b) of this section, and the plan administrator is therefore required to estimate the asset-funded benefit.

(ii) *Estimated asset-funded benefit.* (A) For a participant who is not a majority owner, the amount of the estimated asset-funded benefit is the estimated priority category 3 benefit computed under paragraph (c) of this section. This amount is computed by multiplying the participant's benefit under the plan as of the later of the proposed termination date or the benefit commencement date by the ratio of the normal retirement benefit under the provisions of the plan in effect five years before the proposed termination date and the normal retirement benefit under the plan provisions in effect on the proposed termination date.

(B) Thus, the numerator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan five years before the proposed termination date, based on her age, service, and compensation on her benefit commencement date. The denominator of the ratio is the benefit that would be payable to the participant under the normal retirement provisions of the plan in effect on the proposed termination date, based on her age, service, and compensation as of the earlier of her benefit commencement date or the proposed termination date. Since the only different factor in the numerator and denominator is the salary percentage, the amount of the estimated asset-funded benefit is $1,125 ($0.015/0.020 \times \$1,500$) per month. This amount is less than the estimated guaranteed benefit of $1,350 per month. Therefore, in accordance with § 4022.61(d), the benefit payable to the participant is $1,350 per month.

(iii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, the methodology would be the same, but ''bankruptcy filing date'' would be substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in the example, and the numbers would change accordingly.

(2) *Example 2*—(i) *Facts.* (A) A participant who is a majority owner retired on the proposed termination date of October 31, 2012. The original plan had been in effect for seven full years as of the proposed termination date. Under the provisions of the plan in effect five years before the proposed termination date, the participant is entitled to a single life annuity of $500 per month. The plan was amended to increase benefits three full years before the proposed termination date. Under these plan amendments, the participant is entitled to a single life annuity of $1,000 per month.

(B) The participant's estimated guaranteed benefit computed under § 4022.62(d) is $455 per month ($\$1,000 \times 0.65 \times 7/10$).

(C) It is assumed that all of the conditions in paragraph (b) of this section have been met. Plan assets equal $2 million. The present value of all benefits in pay status is $1.5 million based on applicable PBGC interest rates. There are no employee contributions and the present value of all vested benefits that are not in pay status is $0.75 million based on applicable PBGC interest rates.

(ii) *Estimated asset-funded benefit.* (A) Paragraph (d) of this section provides that the amount of the estimated asset-funded benefit payable with respect to a participant who is a majority owner is the higher of the estimated priority category 3 benefit computed under paragraph (c) of this section or the estimated priority category 4 benefit computed under paragraph (d) of this section.

(B) Under paragraph (c) of this section, the participant's estimated priority category 3 benefit is $500 ($\$1,000 \times \$500/\$1,000$) per month.

(C) Under paragraph (d) of this section, the participant's estimated priority category 4 benefit is the estimated guaranteed benefit computed under § 4022.62(c) (*i.e.,* as if the participant were not a majority owner) multiplied by the priority category 4 funding ratio. Since the plan has priority category 3 benefits, the ratio is determined under paragraph (d)(2)(i) of this section. The numerator of the ratio is plan assets minus the present value of benefits in pay status. The denominator of the ratio is the present value of all vested benefits that are not in pay status. The participant's estimated guaranteed benefit under § 4022.62(c) is $1,000 per month times 0.65 (the factor from column (b) of Table I in § 4022.62(c)(2)), or $650 per month. Multiplying $650 by the category 4 funding ratio of ⅔ (($2 million − $1.5 million)/$0.75 million) produces an estimated category 4 benefit of $433.33 per month.

(D) Because the estimated category 4 benefit so computed is less than the estimated category 3 benefit so computed, the estimated category 3 benefit is the estimated asset-funded benefit. Because the estimated category 3 benefit so computed is greater than the estimated guaranteed benefit of $455 per month, in accordance with § 4022.61(d), the benefit payable to the participant is the estimated priority category 3 benefit of $500 per month.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

■ 10. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

■ 11. In § 4043.2:

■ a. Amend the introductory text by removing the words ''single-employer plan, and substantial owner'' and by adding in their place the words ''and single-employer plan''.

■ b. Add in alphabetical order a definition for ''Substantial owner''.

The addition reads as follows:

§ 4043.2 Definitions.

* * * * *

Substantial owner means a substantial owner as defined in section 4021(d) of ERISA.

* * * * *

PART 4044—ALLOCATION OF ASSETS IN SINGLE–EMPLOYER PLANS

■ 12. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.2 [Amended]

■ 13. In § 4044.2(a):

■ a. Remove the words ''irrevocable commitment'' and add in their place the words ''irrevocable commitment, majority owner''; and

■ b. Remove the words ''substantial owner,''.

■ 14. Amend § 4044.10 by revising paragraph (e) to read as follows:

§ 4044.10 Manner of allocation.

* * * * *

(e) *Allocating assets within priority categories.* Except for priority categories 4 and 5, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 4 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of all participants' nonforfeitable benefits that would be assigned to priority category 4 other than those impacted by the majority-owner limitation under § 4022.26 of this chapter. If assets available for allocation to priority category 4 are sufficient to fully satisfy the value of those other benefits, the remaining assets shall then be allocated to the value of the benefits that would be guaranteed but for the majority-owner limitation. These remaining assets shall be distributed among the majority owners according to the ratio that the value of each majority owner's benefit that would be guaranteed but for the majority-owner limitation bears to the total value of all benefits that would be guaranteed but for the majority-owner limitation. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets shall be allocated, first, to the value of each participant's nonforfeitable benefits that would be assigned to priority category 5 under § 4044.15 after reduction for the value of benefits assigned to higher priority categories, based only on the provisions of the plan in effect at the beginning of the five-year period immediately preceding the termination date. If assets available for allocation to priority category 5 are sufficient to fully satisfy the value of those benefits, assets shall then be allocated to the value of the benefit increase under the oldest amendment during the five-year period immediately preceding the termination date, reduced by the value of benefits assigned to higher priority categories (including higher subcategories in priority category 5). This allocation procedure shall be repeated for each succeeding plan amendment within the five-year period until all plan assets available for allocation have been exhausted. If an amendment decreased benefits, amounts previously allocated with respect to each participant in excess of the value of the reduced benefit shall be reduced accordingly. In the subcategory in which assets are exhausted, the assets shall be distributed among the participants according to the ratio that the value of each participant's benefit or benefits in that subcategory bears to the total value of all benefits in that subcategory.

* * * * *

§ 4044.14 [Amended]

■ 15. In § 4044.14, remove the word ''phase-in'' and add the word ''guarantee'' in its place and remove the word ''substantial'' and add the word ''majority'' in its place.

Issued in Washington, DC.

William Reeder,

Director, Pension Benefit Guaranty Corporation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2018–0627; FRL–9983–82]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 26 chemical substances which were the subject of premanufacture notices (PMNs). The chemical substances are subject to Orders issued by EPA pursuant to sections 5(e) and 5(f) of TSCA. This action requires persons who intend to manufacture (defined by statute to include import) or process any of these 26 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the intended use within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

DATES: This rule is effective on December 3, 2018. For purposes of