PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

RIN 1212–AA92

Lump Sum Payment Assumptions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to propose rulemaking.

SUMMARY: The PBGC is considering: Discontinuing use of its existing lump sum assumptions for payment purposes and replacing them with a modified version of its existing annuity assumptions, effective sometime after December 2000, and discontinuing calculation and publication of its existing lump sum interest rates at, or sometime after, the time the PBGC discontinues their use. Because this may raise issues for plans and participants, the PBGC is specifically soliciting public comment on: the assumptions the PBGC should use to value its lump sums after 2000, how long the PBGC should continue to calculate and publish its existing lump sum interest rates, if it were to discontinue their use, and any potential actions that the PBGC could take to lessen the potential consequences that would arise if the PBGC were to discontinue use—or calculation and publication as well as use—of its existing lump sum interest rates. The Internal Revenue Service has requested that the PBGC solicit public comments on its behalf concerning the qualification issues that may arise in the context of possible changes to the PBGC interest rates.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments to the PBGC may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments to the PBGC also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments to the PBGC will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240. Comments to the Internal Revenue Service may be sent by mail to: Internal Revenue Service, PO Box 7604, Ben Franklin Station, Attn: CC:EBEO:BR1(REG–209759–95), Room 5226, Washington, DC 20044; or may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–209759–95), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Alternatively, comments to the Internal Revenue Service may be submitted via the Internet at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. Comments to the Internal Revenue Service will be available for public inspection at the Freedom of Information Reading Room, Room 1621, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

When a plan terminates in a distress or involuntary termination, the PBGC values the plan's benefits in order to allocate assets to benefits in accordance with the priority categories established under section 4044 of ERISA. This allocation affects the amount of the PBGC's employer liability claim (representing the entire plan underfunding) and participant benefit entitlements beyond guaranteed benefits (*i.e.*, nonguaranteed benefits that are funded either by plan assets or, pursuant to ERISA section 4022(c), by PBGC recoveries on its employer liability claims). The PBGC also values each benefit to determine whether it is *de minimis* and therefore payable as a lump sum (and, if so, in what amount) under ERISA section 4022 and 29 CFR part 4022. The assumptions used to value benefits for purposes of sections 4022 and 4044 are in part 4044 of the PBGC's regulations.

The PBGC has historically derived its interest rate assumptions by surveying private sector annuity prices and selecting a valuation interest rate (or rates) that, when combined with the PBGC's mortality assumptions, accurately replicates the price structure reflected in the survey. When the PBGC updated its assumptions in 1993 (58 FR 50812 (September 28, 1993)), it noted that its historical interest rates—derived based on UP–84 mortality assumptions—were lower than they would have been under the more current GAM–83 mortality assumptions then in use by many private sector insurers. The PBGC stated, ''Even though the combination of mortality and interest assumptions accurately replicates private sector group annuity prices, the disparity between the PBGC's low interest rates and familiar private sector rates has resulted in public confusion over the PBGC's interest rate assumptions.'' 58 FR 5128, 5129 (January 19, 1993).

The PBGC updated its assumptions in 1993 to reflect, among other things, the more current GAM–83 mortality assumptions (thereby increasing the PBGC's derived interest rates), but only for benefits that must be paid as annuities. The PBGC did not extend the updated assumptions to benefits payable as lump sums because Congress had set the PBGC lump sum interest rates as the interest rate ceiling (and thus the value floor) for private-sector lump sums. The use of the more current GAM–83 mortality assumptions would have increased the lump sum interest rates and thereby decreased private sector lump sum values.

The PBGC stated that it would defer updating its lump sum assumptions pending legislative action. *See* 58 FR 5130–31 (January 19, 1993); 58 FR 50812, 50814 (September 28, 1993). The Retirement Protection Act of 1994 (''RPA'') eliminated the connection between the PBGC's lump sum interest assumptions and the interest rates that private plans are required to use to value lump sum benefits.

In a separate notice published elsewhere in today's **Federal Register**, the Pension Benefit Guaranty Corporation is proposing to use a single set of valuation assumptions—those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to all benefits under section 4044 of ERISA. The PBGC will continue to use its existing lump sum interest rates for lump sum payment purposes under ERISA section 4022 for plans with termination dates through at least December 2000. This is because, under RPA, plans may continue to use PBGC interest rates as the ''applicable interest rate'' under Code section 417(e)(3) for distributions in plan years beginning as late as December 1999.

New PBGC Lump Sum Assumptions

The PBGC is considering replacing its existing lump sum assumptions for payment purposes under Part 4022 with a modified version of its annuity assumptions under Part 4044. The interest and other assumptions (*e.g.*, expected retirement age) under part 4022 would generally be the same as those used under part 4044 for annuity valuations. However, the PBGC will use a unisex mortality table for lump sum payment purposes. The PBGC is currently reviewing its part 4044 mortality assumptions (currently GAM–83) as part of a separate rulemaking. *See* March 19, 1997, Notice of Intent to Propose Rulemaking (62 FR 12982). The specific unisex mortality table will depend upon the mortality table adopted in that rulemaking.

In addition, the PBGC is considering whether the amount of lump sum benefits should include an expense load to reflect that the PBGC charges an expense load to the employer. In the past, the PBGC lump sum payment included a load because its lump sum interest rates implicitly included that load. The annuity assumptions from which the new lump sum assumptions would be derived provide for an explicit loading charge that can easily be excluded from lump sum payments. Although the PBGC charges the employer for a load, it generally incurs at least most of the expenses reflected in this charge even when it pays a benefit in lump sum form. *See* 58 FR 5128, 5131 (January 19, 1993).

Effect on Ongoing and Other Nontrusteed Plans

Only those plans trusteed by the PBGC would be affected directly if the PBGC were to discontinue use of its existing lump sum interest rates sometime after 2000. However, plans not trusteed by the PBGC could be affected indirectly. While the PBGC's lump sum rates will no longer be the ''applicable interest rate'' for purposes of Code section 417(e)(3) and ERISA section 205(g)(3) after 2000, some plans may nonetheless continue to provide for the use of the PBGC's lump sum interest rates (if these rates produce a larger distribution for the participant than required under Code section 417(e)(3) and ERISA section 205(g)(3)), on a permanent basis or for a transitional period that extends beyond 2000. These plans may face interpretive issues or unintended consequences. For example, if the PBGC continues to calculate and to publish its historical lump sum interest rates, and a plan refers to the interest rates used by the PBGC to determine lump sum values, there is a question whether this should be interpreted as a reference to the PBGC's new assumptions for determining lump sum values or the rates the PBGC continues to publish based on its former methodology. Similar issues may arise in the case of an annuity contract that provides for use of the PBGC's lump sum interest rates.

In addition to discontinuing use of its existing lump sum assumptions, the PBGC is considering discontinuing calculation and publication of its existing lump sum interest rates sometime after 2000 because these rates are derived under the assumption that present values are calculated using the UP–84 mortality table, which will become increasingly outdated. The interest rate assumptions that are derived in connection with the use of the UP–84 mortality table are lower than those that are derived in connection with the use of a more current mortality table. The PBGC recognizes that discontinuing calculation and publication of these rates would raise additional issues for plans that provide for payment of a lump sum equal to the value produced by these rates, and may raise issues in the case of collective bargaining agreements and annuity contracts that reference these rates.

The Internal Revenue Service has informed the PBGC that, in the context of possible changes to the PBGC interest rates, employers' responses (such as plan amendments or plan interpretations that have the effect of reducing participants' benefits) might cause plans to fail to satisfy the plan qualification requirements of the Internal Revenue Code. The Internal Revenue Service notes that, depending on plan language, issues may arise regarding whether a plan provides definitely determinable benefits, is operated in accordance with its terms, or complies with the requirements of section 411(d)(6). For example, a violation of section 411(d)(6) may occur if a plan is amended to eliminate use of the PBGC's existing lump sum interest rates (or to substitute an alternative interest rate for the PBGC's existing lump sum rates) with respect to benefits that have accrued before the later of the adoption date or the effective date of the amendment, unless the amendment is within the confines of the explicit relief provided in connection with plan amendments that substitute the 30-year Treasury rate for the PBGC interest rate under section 767(d)(2) of RPA and 26 CFR 1.417(e)–1(d)(10)(iii) through (v).

The PBGC is soliciting comments on (1) the assumptions the PBGC should use to value its lump sums after 2000, (2) how long the PBGC should continue to calculate and publish its existing lump sum interest rates, if it were to discontinue their use, and (3) any potential actions that the PBGC could take to lessen the potential consequences that would arise if the PBGC were to discontinue use—or calculation and publication as well as use—of its existing lump sum interest rates. The PBGC will not implement these changes without providing adequate lead time.

The Internal Revenue Service has requested that the PBGC solicit public comments on its behalf concerning the qualification issues that may arise in the context of possible changes to the PBGC interest rates, including the relief under Code section 411(d)(6)(B) that may be appropriate to permit employers to make plan amendments to accommodate the PBGC's change in lump sum interest rate assumptions. For example, it may be appropriate for the Internal Revenue Service to permit an employer to substitute an interest rate that is roughly comparable to the PBGC's existing lump sum rates. Comments on this topic may be sent to the Internal Revenue Service (see **ADDRESSES**).

Issued in Washington, DC, this 21st day of October 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022, 4044, 4050

RIN 1212–AA91

Valuation of Benefits; Use of Single Set of Assumptions for All Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation solicits public comment on its proposal to amend its regulations to provide for the use of a single set of valuation assumptions—those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to benefits under section 4044 of ERISA.

While the PBGC is proposing to discontinue using its lump sum valuation assumptions for purposes of allocating assets to benefits, it intends to continue using its existing lump sum assumptions for lump sum payment purposes at least through 2000. The PBGC is considering replacing its lump sum payment assumptions, sometime after 2000, with a modified version of its annuity assumptions. In a separate notice published elsewhere in today's **Federal Register**, the PBGC is soliciting public comment on this possible change.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel,