

2017 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Their Responses

April 2017

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on March 2, 2017

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on March 2, 2017, with representatives of the Enrolled Actuaries Program Committee. Included also are summaries of the responses to those questions. The summary responses to the questions are intended to reflect as accurately as possible the statements made by the government representatives. However, those responses are merely the current views of the individuals and do not represent the positions of the Pension Benefit Guaranty Corporation or of any other governmental agency and cannot be relied upon by any person for any purpose. Moreover, PBGC has not in any way approved this booklet or reviewed it to determine whether the statements herein are accurate or complete.

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QUESTION #1

Premiums: Flat-Rate Premium Following *De Minimis* Spinoff to New Plan

In the [2017 Premium Instructions](#), there is an example involving a non *de minimis* spinoff (see example 1, page 21). In that example, New Plan B is created as the result of a non *de minimis* spinoff from calendar year Plan A that occurred at the beginning of 2017.

Because of that transaction, Plan A's participant count date for 2017 is the first day of the plan year (January 1, 2017) instead of the last day of the prior year (December 31, 2016) which means the spun off participants are not included in Plan A's participant count for 2017. The net result of the situation described in the example is that Plan B owes 2017 flat-rate premiums on behalf of the spun off participants, but not Plan A.

If the spinoff described in that example had been *de minimis*, Plan A's 2017 participant count date would have remained December 31, 2016. This appears to require that both Plan A and Plan B would owe flat-rate premiums for 2017 on behalf of the participants that were spun off from Plan A to Plan B. Is that correct?

RESPONSE

Yes. The exception to the general participant count rule for certain spinoffs (§4006.5(e)) applies only if:

- The spin off occurs at the beginning of the transferor plan's plan year, and
- The spin off is not *de minimis*.

Although it might not seem intuitive for both the transferor plan and the new plan to pay 2017 flat-rate premiums on behalf of the same participants, PBGC notes that spinoffs to new plans often result in premiums being owed from two plans for the same person. For example, in the scenario described above, if the spin off had been non *de minimis*, but had occurred later in 2017, both plans would have owed flat-rate premiums for 2017 on behalf of the spun off participants. (Note that depending on when the spinoff occurred, Plan B might have owed a pro-rata premium for 2017.)

QUESTION #2

Premiums: Flat-Rate Premium Following *De Minimis* Merger

In the [2017 Premium Instructions](#), there is example involving a non *de minimis* merger (see example 4, page 23). In that example, calendar year Plan A merges into calendar year Plan B at the beginning of 2017.

Because of that transaction, Plan B's participant count date for 2017 is the first day of the plan year (January 1, 2017) instead of the last day of the prior year (December 31, 2016). Thus, although Plan A doesn't owe premiums for 2017 (since the plan ceased to exist at the beginning of 2017), Plan B owes flat-rate premiums for 2017 on behalf of the former Plan A participants.

If the merger described in that example had been *de minimis*, Plan B's 2017 participant count date would have remained December 31, 2016. This appears to result in neither plan owing flat-rate premiums for 2017 on behalf of the Plan A participants. Is that correct?

RESPONSE

Yes. The exception to the general participant count rule for certain mergers (§4006.5(e)) applies only if:

- The merger occurs at the beginning of the surviving plan's plan year, and
- The merger is not *de minimis*.

QUESTION #3

Premiums: Determination of Compliance Record in Spinoff, Merger, or Consolidation Context

The PBGC's regulation on Payment of Premiums provides (at §4007.8(h)) for an 80% reduction of the premium underpayment penalty where the underpayment had not been self-corrected if certain conditions are met. One of those conditions is that, "[f]or each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined—(i) [a]ny required premium filing for the plan has been made; and (ii) PBGC has not required payment of a penalty for the plan under this section."

- a) How does PBGC determine whether this condition is met in the context of plan spinoffs, consolidations, and mergers?

For example, if Plan B was spun off from Plan A (a calendar year plan) effective as of the beginning of the 2017 plan year, does Plan B automatically meet the above condition for any penalty for the 2017 premium payment year because it has no prior plan year for which the foregoing requirements might not have been satisfied?

- b) Similarly, what is the rule if calendar year Plan C and calendar year Plan D merge at the beginning of the 2017 plan year with one or the other of them being treated as the survivor, or instead consolidate at that time to form new Plan E?

RESPONSE

As explained in the PBGC's premium filing instructions, plans created as the result of a spinoff or consolidation are treated as new plans for purposes of premium determinations (e.g., due dates, premium count dates, etc.). That is also the case for applying the 80% penalty waiver. PBGC typically looks to the Employer Identification Number (EIN), Plan number and effective date for this purpose.

- a) In this example, Plan B is a new plan and therefore it has no history. If Plan B is late paying its premium for its first plan year, it will qualify for the 80% waiver if payment is made within 30 days of notice being sent.
- b) In this example:
- If Plan C merges into Plan D (i.e., the surviving plan is Plan D), Plan D's payment history is used to determine eligibility for the 80% penalty waiver.
 - If Plans C and D are consolidated into a new Plan E, Plan E is considered a new plan. If Plan E is late paying its premium for its first plan year, it will qualify for the 80% waiver if payment is made within 30 days of notice being sent.

QUESTION #4

Premiums: Participant Count for Variable Premium Cap

The total variable-rate premium for 2017 is capped at \$517 times the number of participants.

Is the participant count for this purpose the same participant count used to determine the 2017 flat-rate premium?

RESPONSE

Yes.

QUESTION #5

Standard Terminations: Determining When All Assets Have Been Distributed

A plan has a proposed plan termination date of December 31, 2016. Lump sums are offered and paid November 1, 2017. Then, on November 21, 2017, a premium is paid to the insurer selected to provide annuities, with the insurer obligated to start making monthly payments on February 1, 2018. The purchase from the annuity provider gave the participants and beneficiaries an irrevocable right to receive their benefit payments from the insurance company, with the obligation to make monthly payments starting on February 1, 2018, transferring from the plan to the insurer as of the date of the premium payment (November 21, 2017). The current plan administrator will be responsible for the December 1, 2017 and January 1, 2018 annuity payments and will make the actual payments on those dates.

- a) What is the date on which all assets have been distributed in satisfaction of liabilities when an insurer takes over pension payments as of a date set in the future?
- b) How is the flat-rate premium prorated for the final distribution (assuming a calendar year plan)?
- c) If the asset distribution deadline is December 15, 2017 (based upon the later of 180 days after the end of the PBGC 60-day review period or 120 days following the receipt of the IRS determination letter), must an extension to distribute assets be requested from the PBGC due to the fact that the trustee will make the last required annuity payments on January 1, 2018?
- d) Is the answer to (a), (b), or (c) different if the insurer assumes the liability for all future benefits as of November 21, 2017 (e.g., there is no premium adjustment for deaths, benefit elections etc. that occur thereafter) but for administrative reasons the plan administrator makes the payments as of December 1, 2017 and January 1, 2018, using funds transferred from the insurer or withheld for that purpose from the premium transferred to the insurer on November 21, 2017?

RESPONSE

- a) Assets are considered distributed in satisfaction of liabilities when the responsibility for making payments is transferred from the plan to an insurer. Because the plan administrator still has responsibility to make two months of required payments, all assets are not distributed until January 1, 2018 when the final annuity payments are made by the plan administrator.
- b) The flat-rate premium for 2017 is required for the full year (no proration) since participants remain in the plan through December. A flat-rate premium is also due for 2018 for only those participants who remain as of December 31, 2017, and the premium is prorated to reflect only one month of coverage (for one day in January).
- c) Yes, an extension to distribute must be requested from the PBGC.
- d) Yes. In that case the plan has no participants as of December 31, 2017, and retains no benefit liabilities as of January 1, 2018. No 2018 PBGC premiums would be owed, and no extension to distribute would be needed. The 2017 premium would be prorated for eleven months.

QUESTION #6

Standard Terminations: Form 500 Filing

The Form 500 requires a sample Notice of Plan Benefits for actives, terminated vested participants, retirees, and non-vested terminations.

- a) Must sub-groups of these samples be provided for retirees who have been retired less than one year, or for actives or terminated vested participants who have different benefit formulas (e.g., some have a final average pay formula and some have a cash balance formula)?
- b) What actions has the PBGC taken resulting from reviews of the Notice of Plan Benefits and the Notice of Intent to Terminate?

RESPONSE

- a) Plan administrators must attach to the Form 500 a sample notice of plan benefits for each of the four categories of persons named in the instructions: active participants, participants in pay-status (e.g., retirees), separated vested participants and separated non-vested participants. PBGC requests a sample of the notice issued to an affected party in pay status for less than one year as of the proposed termination date only if the required sample notice for retirees does not include the personal data needed to calculate the plan benefit. For different benefit formulas within the same category of participants, additional Notices may be required if the plan termination is selected for audit
- b) If notices issued to affected parties do not comply with PBGC's regulations, PBGC requires issuance of supplemental notices with correct and complete information. PBGC issues a Notice of Noncompliance in cases where corrected notices are not submitted after multiple requests. When determining whether nullification of the plan termination is appropriate, PBGC follows its regulations, which allow consideration of the plan participants' interests, as well as the correction of good faith errors.

QUESTION #7

Standard Terminations: Extension to Distribute

In some situations, plan administrators are having difficulty identifying any insurance company willing to take a plan's deferred liabilities. In some cases, an insurer can eventually be identified but requires additional time to take on payment of the benefits. Because plan administrators can't identify an insurer until after lump sum elections are made, many times the problem in finding an insurer is not identified until near the deadline to distribute assets.

- a) If a plan administrator requests an extension to distribute to find an insurance company and that extension is granted, can the plan administrator request an additional extension if the insurer cannot be found in that timeframe or the company identified cannot take on payments within the necessary timeframe?
- b) How many requests for an extension can a plan administrator make to the PBGC to complete the annuity purchase and what information does PBGC need to grant additional extensions?
- c) What will the PBGC do if an insurance company cannot be found to take remaining plan liabilities?

RESPONSE

- a) Yes.
- b) PBGC will approve more than one request for an extension to distribute benefits if needed to complete an annuity purchase. Although PBGC reserves the right to ask for more information, submitting a request for an extension and stating the reason why it is not administratively feasible to complete distributions is adequate.
- c) PBGC has been contacted by practitioners who have difficulty finding an insurance company to purchase irrevocable commitments from. In such cases, PBGC assists by providing names of insurers listed on recently submitted Post-Distribution Certifications. PBGC appreciates that the cost of purchasing annuities in certain circumstances might be expensive. However, under current law, annuities must be purchased if the participants (and their spouses if they're married) do not consent to a lump sum. PBGC has not encountered a situation where a plan administrator is unable to complete a standard termination for this reason.

QUESTION #8

Standard Terminations: Ordinary Course Exception Allowing Distributions

The PBGC's standard termination regulations (at §4041.22) prohibit the plan administrator of a plan undergoing a standard termination from "[p]urchasing irrevocable commitments to provide *any* plan benefits" (emphasis added) during the period beginning with the issuance of the first notice of intent to terminate through the end of the PBGC's 60-day review period, subject to an exception that allows the plan administrator to "pay benefits *attributable to employer contributions* . . . through the purchase of irrevocable commitments . . . if—(1) [t]he participant has separated from active employment or is otherwise permitted under the Code to receive the distribution; (2) [t]he distribution is consistent with prior plan practice; and (3) [t]he distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits" (emphasis added).

Read literally, this would prohibit a plan administrator from purchasing an irrevocable commitment to provide the full plan benefit of a participant, even where the three above-noted conditions are met, if any portion of the participant's benefit is attributable to employee contributions.

Is that PBGC's interpretation of this regulation and, if so, would PBGC consider allowing such a purchase on a case-by-case basis?

RESPONSE

Yes, that is PBGC's interpretation. PBGC is not inclined to allow such a purchase but is willing to discuss a specific situation if it arises.

QUESTION #9

Reportable Events: “No Missed Contributions Events” Criterion for “Low-Default Risk” Status

Under PBGC’s reportable events regulation, qualifying for the low-default-risk waiver, which applies to five reportable events, requires that each contributing sponsor of the plan for which the reportable event occurred and the highest-level U.S. parent of each such contributing sponsor be “low-default risk” on the date of the event. One of the criteria that may be used to qualify for low-default-risk status is the “no missed contributions event” criterion. A company meets the no missed contributions event criterion if “during the two-year period ending on the qualifying date, there has not been any failure to make when due any contribution described in §4043.25(a)(1) or (2) (dealing with failure to make required minimum funding payments), unless reporting was waived under §4043.25(c)” (§4043.9(e)(2)(vii)).

In the case of such a failure, any associated reportable event must be reported only for the particular pension plan to which the missed contribution was owed and only by the plan administrator and the contributing sponsor of that pension plan. Thus, if Plan A and Plan B are maintained by the same controlled group, a missed contributions event need not be reported for Plan A where there is a failure to make a required contribution to Plan B.

If a company is determining whether it meets the missed contributions event criterion relating to “low-default-risk” status, must the company take into account a missed contribution to a plan for which it is not a contributing sponsor (or plan administrator) if it is a member of the plan’s controlled group, even though no missed contributions event has occurred that would be reportable by that company?

RESPONSE

Yes.

QUESTION #10

Reportable Events: *De Minimis* Segment Waiver for Entity Without Prior Fiscal Year

The PBGC's reportable events regulation provides, for several reportable events, a "*de minimis* 10% segment" or "*de minimis* 5% segment" waiver based on a number of financial tests that are tied to the preceding fiscal year. Can such a waiver apply and, if so, how would it be determined whether it applies, in the case of an entity that, during a portion or during the entirety of the prior fiscal year, did not exist or was not part of the same controlled group?

RESPONSE

No, the waiver is not available if an entity was not in existence or was not part of the same controlled group for the full fiscal year prior to the event year.

QUESTION #11

Reportable Events: Definition of “Participant” for Active Participant Reduction Event

To determine whether and, if so, when an active participant reduction reportable event has occurred, it is necessary to determine the number of “active participants” in a plan as of various dates. PBGC’s reportable events regulation provides a definition of “active participant” that explains when a “participant” is to be treated as “active,” but there is no definition of “participant” in the regulation.

What is the definition of a “participant” for this purpose? In this connection, please note that the definition of “participant” differs depending on the purpose for which it is used (e.g., PBGC flat-rate premiums, Form 5500 reporting, standard or distress termination notices).

RESPONSE

Because PBGC’s 4043 regulation is silent as to how participants are counted for this purpose, practitioners must use a reasonable interpretation of the regulation. PBGC will not challenge any reasonable definition, provided that the same definition is used for all plans in the controlled group and that it’s used consistently from year-to-year. For example, the consistent use of either the premium count or the count reported on Form 5500 would be considered reasonable.

QUESTION #12

Reportable Events: Low-Default Risk Waiver for Controlled Group Change Event

Under §4043.29, “[a] reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons ceasing to be members of the plan’s controlled group (other than by merger involving members of the same controlled group).” A waiver from reporting this reportable event applies “if each *post-event* contributing sponsor of the plan and the highest level U.S. parent of each *post-event* contributing sponsor are low-default-risk *on the date of the event*” (emphasis added).

Assume that a reportable event occurs for Plan A, which is maintained by Company X (which in turn is not a member of any controlled group), based on an asset sale transaction that will result in the sponsorship of Plan A being transferred from Company X to Company Y (which also is not a member of any controlled group). Company X and Company Y sign an agreement on the transaction date with Company Y taking ownership of the assets and assuming the plan upon closing at a later date. Assume that Company X is low-default-risk on all relevant dates, and that Company Y is not low-default risk on any relevant date. Who is the “post-event” contributing sponsor for purposes of determining whether the low-default risk waiver is available for this event?

RESPONSE

Because the reportable event is triggered by the signing of the agreement, Company X is considered to be the “post-event” contributing sponsor in this case even though Company Y will eventually be the contributing sponsor of the plan upon closing. Under the low-default-risk waiver, low-default risk status must be maintained by the contributing sponsor on the date the event occurs (in this case, the date the agreement is executed). Who the post-event contributing sponsor is may depend on the facts and circumstances of the transaction, however. For example, if Company X and Company Y completed the above transaction in a sign-and-close structure where the parties execute an agreement and consummate the transaction simultaneously, Company Y would be the “post-event” contributing sponsor.

QUESTION #13

Reportable Events: Merger vs. Liquidation of Controlled Group Member Within Group

A “liquidation” reportable event occurs “when a member of the plan’s controlled group: (1) [i]s involved in any transaction to implement its complete liquidation (including liquidation into another controlled group member); (2) [i]nstitutes or has instituted against it a proceeding to be dissolved or is dissolved, whichever occurs first; or (3) [i]iquidates in a case under the Bankruptcy Code, or under any similar law” (§4043.30(a)).

As a result of a change that was made by the new reportable events rule, a “change in contributing sponsor or controlled group” reportable event no longer occurs where a controlled group member merges into another controlled group member. However, if a controlled group member is involved in any transaction to implement its complete liquidation “including liquidation into another controlled group member,” a liquidation reportable event does occur.

- a) Is the intent of the change in PBGC’s rules for the merger of one controlled group member into another controlled group member to eliminate reporting under the “change in contributing sponsor or controlled group” reportable event but to continue to require it in all cases under the “liquidation” reportable event?
- b) If the response to (a) is “no”, how is the liquidation of a controlled group member into another controlled group member different from an event in which a controlled group member merges into another controlled group member?

RESPONSE

- a) No.
- b) A liquidation event is different because it is designed to discontinue the business, sell off assets, and extinguish all debts. In PBGC’s experience, the liquidation of a controlled group member into another controlled group member often indicates financial difficulties and a pension plan at risk.

QUESTION #14

Reportable Events: Loan Default Event

A “loan default” reportable event occurs when, for a loan with an outstanding balance of \$10 million or more to a member of the plan’s controlled group, “[t]here is an acceleration of payment or a default under the loan agreement.” (The event also occurs when “[t]he lender waives or agrees to an amendment of any covenant in the loan agreement the effect of which is to cure or avoid a breach that would trigger a default”; see Q&A 20 of the [2016 Blue Book](#) for more information.)

Assume that a loan agreement provides that a “default” occurs when there is a failure to comply with a requirement to provide information to a lender, but that there is a 10-day grace period within which to comply with this requirement. Assume further that the information is timely provided within the ten-day grace period and that, as a result, no “default” occurs.

Has a loan default reportable event occurred?

RESPONSE

No. In the scenario described above, according to the terms of the loan agreement, the default did not occur. Therefore, there is no event to report.

If the loan agreement were drafted differently (i.e., if it did not have a 10-day grace period), but the borrower cured the default within a few days, and the borrower believes there is no reason PBGC should be concerned about the situation based on the facts and circumstances, the plan administrator or contributing sponsor is always welcome to call PBGC and discuss the possibility of a facts and circumstances waiver of reporting requirements.

PBGC encourages plan administrators and employers to call PBGC if they have any questions about reporting requirements, for example, if they feel they are in a gray area.

QUESTION #15

ERISA 4010 Reporting: Definition of “Participant” for 500-Participant Test for Reporting Waiver

In its final rule amending its regulation on annual financial and actuarial information reporting under ERISA §4010 ([81 Fed. Reg. 15432, March 23, 2016](#)), PBGC added a new reporting waiver, where reporting would otherwise be required based solely on the 80% Gateway Test but the aggregate number of “participants” in all plans maintained by the controlled group is fewer than 500. PBGC regulations do not contain any definition of “participant” to be used for this purpose.

- a) Could PBGC provide guidance on how to determine whether a particular individual is to be treated as a “participant” for this purpose?
- b) If an individual is a “participant” (under whatever definition applies) in two or more plans maintained by the controlled group, is the individual to be counted only once, or two or more times, when determining whether the aggregate participant count is fewer than 500?

RESPONSE:

- a) Because PBGC’s 4010 regulation is silent as to how participants are counted for this purpose, practitioners must use a reasonable interpretation of the regulation. PBGC will not challenge any reasonable definition, provided that the same definition is used for all plans in the controlled group and that it’s used consistently from year-to-year. For example, the consistent use of either the premium count or the count reported on Form 5500 would be considered reasonable
- b) Each plan counts all its own participants. Thus, a participant covered by two plans would be counted twice (once by each plan).

QUESTION #16

ERISA 4010 Reporting: Waiver for Terminating Plans

Under §4043.4(d), a waiver from filing a reportable event notice (whether on Form 10 or Form 10-A) or a Form 200 applies where the filing is due on or after the date on which all of the plan's assets (other than any excess assets) are distributed pursuant to a termination under PBGC's regulations governing standard and distress terminations, or on which a trustee is appointed for the plan in a distress or involuntary termination under ERISA §4042.

Is there a similar rule that PBGC would apply in the context of the annual financial and actuarial information reporting requirement under ERISA §4010? If so, what is that rule?

RESPONSE

PBGC's 4010 regulation does not provide an automatic reporting waiver for situations where a 4010 filing is due on or after the date described in the question. Filers in this situation may request a reporting waiver. Such a request must be sent to ERISA.4010@pbgc.gov at least 15 days before the filing is due.

PBGC recommends submitting waiver requests as early as possible because workload issues could result in a longer turnaround time for requests submitted only 15 days before the due date, especially for calendar year filers.

QUESTION #17

ERISA 4010 Reporting: \$15 Million Funding Shortfall and Small Plans Filing Waivers

For purposes of the 4010 80% FTAP gateway test, PBGC's 4010 regulation explicitly states that only plans maintained by the controlled group on the last day of the information year are considered (see §4010.4). That "last day of the information year" language is not included in §4010.11, the part of the regulation that describes automatic reporting waivers (i.e., the \$15 million funding shortfall and the 500 participant count waivers).

Does that mean that plans maintained at any time during the plan year must be included when determining if either reporting waiver applies?

RESPONSE

No. Because the regulation is silent as to which plans are included for purposes of determining if either waiver applies, practitioners must use a reasonable interpretation of the regulation. For this purpose, it is reasonable to include only those plans that are included in the 4010 80% FTAP gateway test.

QUESTION #18

ERISA 4010 Reporting: Determination of Annuities in a Cash Balance Plan

PBGC's §4010 regulations no longer permit the form-of-payment assumptions used in the IRC §430 valuation to be used to determine the value of benefit liabilities for §4010 reporting. Rather, the ERISA §4044 form-of-payment assumptions (e.g., a joint and 50% survivor annuity for married participants) must be used if the participant has not yet made a valid benefit election. Therefore, to determine benefit liabilities for a cash balance plan (for 4010 reporting purposes), account balances as of the valuation date must be converted into annuities commencing at the ERISA 4044 expected retirement age (XRA).

Consider a cash balance plan with interest credits and conversion factors both tied to variable indices that needs to value an annuity form of payment.

- For IRC §430 valuation purposes, IRS regulations §1.430(d)-1(f)(5)(i) and (ii) provide rules on the assumptions cash balance plans must use for projecting future interest credits and for converting projected account balances into annuities, respectively.
- The §4010 regulations provide that, in the absence of an explicit §4010 provision requiring the use of a particular 4044 assumption (e.g., interest, mortality, retirement age), assumptions used to determine benefit liabilities are those used in the IRC §430 valuation.

The interplay of these regulations is somewhat confusing for plans such as the one described above. In particular:

- a) What assumptions are used to convert projected account balances at XRA into annuities? ERISA §4044 interest and mortality or the plan's IRC §430 valuation assumptions?
- b) If the answer to (a) is: the IRC §430 valuation assumptions, what should be done if the plan has no such assumptions (i.e., if the valuation assumes all active participants elect a lump sum)?
- c) Prior to converting projected account balances into annuities, account balances as of the valuation date must be projected to XRA. What assumed interest crediting rate is used for that purpose?

RESPONSE

- a) PBGC's regulation §4010.8(d)(2)(i) provides that ERISA §4044 interest and mortality are used to determine benefit liabilities for purposes of 4010 reporting. However, it is not clear whether that rule applies to all instances where an interest or mortality assumption is needed or if it applies solely for purposes of discounting future benefits to the valuation date. With the former interpretation, the answer would be "use ERISA §4044 assumptions for the conversion". With the latter, it would be "use the IRC §430 valuation assumptions," in which case, the rules of Treasury regulation §1.430(d)-1(f)(5)(ii) would apply. Unless and until PBGC issues clarifying guidance, either interpretation is acceptable.
- b) The plan may use either the ERISA §4044 assumptions or the assumptions that would be permissible under Treasury regulation §1.430(d)-1(f)(5)(ii).

- c) Because what's needed is an assumption for the "interest crediting rate", and not a general "interest rate," §4010.8(d)(2)(ii) applies. That means the projection is done using the interest crediting assumption used in the IRC §430 valuation in accordance with the rules of Treasury regulations §1.430(d)-1(f)(5)(i).

PBGC is cognizant that many plans are filing 4010 information for the first time in 2017 and that some long-time filers had to modify their valuation software because of the change in the form-of-payment assumption finalized in March 2016. To the extent the calculation has already been done and/or reported for a cash balance plan using an alternative interpretation of PBGC's §4010 regulation, PBGC does not intend to require a recalculation. PBGC hopes to issue clarifying guidance in the future about the unique issues for cash balance plans and 4010 calculations. We will be in a better position to prioritize this project later in 2017, after we have a better idea of how many cash balance plans were subject to 4010 reporting for 2016 information years.

QUESTION #19

Other: PBGC Determination of Elapsed Time between Two Dates

In the U.S., there are two different ways to measure the time between two dates. One way is to count actual days on a regular calendar. The other way is 30/360, which treats each year as consisting of 12 months of 30 days each. For which purposes does the PBGC use a regular calendar and for which purposes, if any, does the PBGC use 30/360?

RESPONSE

The time between two dates, for purposes of PBGC's regulations, is measured using actual days. See 29 CFR part 4000, subpart D (§§ 4000.41 - 43). Those provisions contain detailed information about how to count days, special rules for weekends and holiday, etc. Two of the examples from that regulation are copied below for your convenience.

- *Counting backwards.* Suppose you are required to file an advance notice of reportable event for a transaction that is effective December 31. Under our regulations, the notice is due at least 30 days before the effective date of the event. To determine your deadline, count December 30 as day 1, December 29 as day 2, December 28 as day 3, and so on. Therefore, December 1 is day 30. Assuming that day is not a weekend or holiday, your notice is timely if you file it on or before December 1.
- *Weekend or holiday rule.* Suppose you are filing a notice of intent to terminate. The notice must be issued at least 60 days and no more than 90 days before the proposed termination date. Suppose the 60th day before the proposed *termination* date is a Saturday. Your notice is timely if you issue it on the following Monday even though that is only 58 days before the proposed termination date. Similarly, if the 90th day before the proposed termination date is Wednesday, July 4 (a Federal holiday), your notice is timely if you issue it on Tuesday, July 3, even though that is 91 days before the proposed termination date.