

1998 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of their Responses

March 1998

Summary of Discussion Between the Enrolled Actuaries Program Committee  
and Staff of the Pension Benefit Guaranty Corporation  
on March 17, 1998

The following pages set forth the questions and responses discussed by the staff of the Pension Benefit Guaranty Corporation with representatives of the Enrolled Actuaries Program Committee. 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 position of the Pension Benefit Guaranty Corporation or any other governmental agency, and cannot be relied upon by any person for any purpose. Moreover, the Pension Benefit Guaranty Corporation has not in any way approved this booklet or reviewed it to determine whether the statements herein are accurate or complete.

The following representatives of the Enrolled Actuaries Program Committee participated in the discussion:

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The Program Committee would like to thank the many practitioners who submitted questions for this booklet.

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## QUESTION 1

### Premiums — COLA Recipients as "Participants"

- (a) Are retirees with irrevocable commitments (annuity contracts) who are being paid an ad hoc COLA from plan assets included in the participant count for premium purposes?
- (b) Can the annuitized retirees be kept out of the participant count if irrevocable commitments are purchased to cover the ad hoc COLA?

#### RESPONSE:

- (a) Retirees with COLA entitlements that are to be paid from plan assets are included in the participant count for premium purposes.
- (b) The retirees would not be included in the participant count if the plan has purchased an irrevocable commitment to cover the COLA before the premium “snapshot” date, which is generally the last day of the preceding plan year.

## QUESTION 2

### Premiums — COLAs as UVBs

Are automatic COLAs included in unfunded vested benefits (“UVBs”) for premium purposes?

#### RESPONSE:

Yes. An automatic COLA is part of a plan’s current liability, and thus, to the extent vested, is included in UVB’s for premium purposes. An automatic COLA is vested to the same extent that the underlying accrued benefit is, so for retirees it would be fully vested. For other participants, it would be vested in the same percentage as their other benefits. The value of vested benefits is determined by valuing a stream of future payments that includes projected COLAs.

### QUESTION 3

#### Premiums — Effect of IPG Contracts

Are premiums payable with respect to participants covered by an IPG annuity contract?

**RESPONSE:**

Whether premiums are payable in this situation depends on whether the participant has received an irrevocable commitment under the terms of the contract, regardless of whether it's an IPG annuity contract or any other contract with an insurer. If the insurer is irrevocably committed to provide all benefits to the participant regardless of investment experience or any action or inaction of the plan, and the insurer's obligation is legally enforceable by the participant, there is an irrevocable commitment. Under § 4001.2 of the PBGC's regulations, "irrevocable commitment" means —

an obligation by an insurer to pay benefits to a named participant or surviving beneficiary, if the obligation cannot be cancelled under the terms of the insurance contract (except for fraud or mistake) without the consent of the participant or beneficiary and is legally enforceable by the participant or beneficiary.

### QUESTION 4

#### Premiums — Required Mortality Assumptions

What mortality assumptions must be used for premium purposes?

**RESPONSE:**

The mortality assumption used for premium purposes is the IRS version of the GAM-83 tables (sex distinct) prescribed in Rev. Rul. 95-28 at 1995-1 C.B. 74 (4/3/95). This is the mortality standard required under Title I of ERISA and the Internal Revenue Code for determining unfunded current liability, which in turn is the statutory basis for determining the unfunded vested benefits on which the variable rate premium is based.

## QUESTION 5

### Premiums — Change to Market Valuation

May a change to market valuation of assets for the current year be applied to determining UVBs as of the end of the prior year under the general rule?

#### RESPONSE:

If the plan simply computes UVBs as of the end of the prior year, the regulations require that this be done using the assumptions and methods for the prior year (except as otherwise specifically provided — for example, using a different interest rate). This would include the asset valuation method.

The plan may compute UVBs as of the first day of the current year under the special “proviso” in the general rule. However, the result may only be used if it is not materially lower than the result that would have been determined as of the last day of the prior year, using the prior year’s assumptions and methods. In other words, the results of a valuation as of the first day of the premium payment year must be adjusted to “back out” the effect of changes in actuarial assumptions and methods if the net effect of such changes would be to materially decrease UVBs.

If the special merger and spinoff rule in 29 CFR § 4006.5(e) applies, UVBs are determined as of the first day of the current year, rather than the last day of the prior year. This requires use of the assumptions, methods, and data as of the first day of the current year, including the current year’s asset valuation method. Therefore, there is no need to make an adjustment to “back out” any changes between the last day of the prior year and the first day of the current year. This rule applies where a non-*de minimis* merger or spinoff is effective as of the first day of the current plan year, and it applies only to the transferee plan in a merger or the transferor plan in a spinoff.

## QUESTION 6

### Premiums — Alternate Payees as "Participants"

Is an alternate payee considered to be a participant for premium purposes?

#### RESPONSE:

Alternate payees under QDROs are treated basically the same as other beneficiaries for purposes of the participant count. If the participant is alive, the participant is counted as one participant without regard to the existence of one or more alternate payees. If the participant is deceased, the existence of one or more alternate payees or other beneficiaries will result in the inclusion of one deceased participant in the participant count. Like other beneficiaries, however, alternate payees

are not themselves included in the participant count. The same rules on irrevocable commitments (annuity contracts) apply for alternate payees as for other beneficiaries.

## QUESTION 7

### Premiums — Using ACM Before Filing Schedule B

May the Alternative Calculation Method be used if the premium filing is before the Form 5500/Schedule B filing on which the ACM is based?

#### RESPONSE:

Yes. The ACM is based on data that are required to be reported on Schedule B to Form 5500, but the Schedule B need not have been filed before the premium forms are filed. The premium filing may be based on the data the enrolled actuary expects to include on the Schedule B that is later filed. Should that Schedule B contain different data, an amended premium filing would be required.

## QUESTION 8

### Premiums — Participant Count in Mergers and Spinoffs

If two plans with different plan years merge, can the disappearing plan get a premium refund for the portion of its plan year following the merger? Similarly, if a plan spins off a new plan (other than at the beginning or end of its plan year), can the transferor plan get a premium refund for the portion of its plan year following the merger with respect to the participants transferred to the new plan?

#### RESPONSE:

These kinds of transactions can result in periods during which premiums are paid for certain participants by both plans or periods during which neither plan pays premiums for certain participants. For example:

- Plan A, whose plan year begins April 1, merges into Plan B, which has a calendar plan year, on March 1, 1998. Plan A has paid premiums for its participants through March 31, 1998 (the end of its last plan year). Plan B isn't required to pay premiums for those participants until 1999 (because they weren't in Plan B on December 31, 1997, the snapshot date for Plan B's 1998 premium). So in effect, neither plan pays premiums for those participants for the period from April 1 to December 31, 1998.



- Plan C, which has a calendar plan year, spins off Plan D on May 1, 1998, and Plan D adopts a plan year beginning May 1. Plan C must pay premiums for 1998 for the participants transferred to Plan D (because they were in Plan C on December 31, 1997, the premium snapshot date for Plan C's 1998 premium). But Plan D must also pay premiums for those participants for its first plan year (because they are in Plan D on May 1, 1998, the snapshot date for Plan D's 1998 premium). So in effect, both plans pay premiums for those participants for the period from May 1 to December 31, 1998.

For non-*de minimis* mergers and spinoffs that are effective at the beginning of a plan year (the most common situation), the premium rates regulation shifts the premium snapshot date to avoid these results. (29 CFR § 4006.5(e).) For a spinoff, the transferor plan's snapshot date is shifted to the first day of the plan year, so that the transferred participants are excluded from the transferor's participant count, and only the transferee plan pays premiums for them for that year. For a merger, the transferee plan's snapshot date is shifted; thus, although the disappearing transferor plan doesn't pay premiums for the participants, the transferee plan does.

## QUESTION 9

### Premiums — Counting Terminated Non-Vested Participants

When do terminated non-vested participants drop out of the participant count?

#### RESPONSE:

Terminated non-vested participants continue to be counted as participants for PBGC premium purposes until either (1) they incur a break in service the greater of one year from the date of termination or the break in service period specified in the plan or (2) their benefits are deemed to be cashed out under the plan.

If the plan has a separate cashout provision for zero benefits, terminated non-vested participants are deemed to be cashed out as of the date specified in the deemed cashout provision or, if no date is specified, as of the employment termination date. If the plan provides that zero benefit amounts will be deemed to be paid as soon as possible, terminated non-vested participants also will be deemed to be cashed out as of the employment termination date.

If the plan does not have a separate cashout provision for zero benefits but does have a mandatory cashout of small benefit amounts (*e.g.*, benefits less than \$5,000), terminated non-vested participants are deemed to be cashed out in the same manner as terminated vested participants. If the plan is silent as to the timing of actual cashouts of terminated vested participants, deem the plan to read “as soon as practicable” and deem the terminated non-vested participants to be cashed out immediately upon termination of employment. If the plan specifies a date as of which actual cashouts of terminated vested participants take place (*e.g.*, on the first day of the next

month), that rule also would apply to deemed cashouts of terminated non-vested participants. These rules do not apply if, despite plan language, the plan has an obvious pattern or practice of delaying distributions for long periods of time.

## **QUESTION 10**

### **Standard Terminations — Annuity Information for Cashout Recipients**

Do plan administrators have to provide the notice of annuity information to those participants who are expected to elect lump sums?

#### **RESPONSE:**

Yes. One purpose of the notice is to help participants and beneficiaries make informed elections between lump sums and annuity benefits, and even a participant or beneficiary who has already elected a lump sum can still change that election. The notice must be given to all participants and beneficiaries except those who will receive mandatory cashouts.

## **QUESTION 11**

### **Standard Terminations — Insurer Notice Where Insurer Unknown**

How can the notice that identifies the insurer be provided 45 days before distribution when most insurers keep bids open only for a very short time?

#### **RESPONSE:**

If the plan administrator knows who the insurer will be when this 45-day notice is issued, the notice must identify that insurer. However, if the plan administrator does not yet know for sure, the regulations provide that the notice may contain a list of those insurers the plan administrator is considering. Any list of insurers should be reasonable in number and include only those insurers from whom the plan administrator has solicited, or reasonably intends to solicit, actual bids.

## QUESTION 12

### Standard Terminations — What Defects May Be Overlooked

In what circumstances is the PBGC using its RPA authority to permit “defective” terminations to proceed based on the “interests of participants”?

#### RESPONSE:

One of the factors the PBGC will consider is whether benefits were properly frozen as of a date no later than the proposed termination date. If the PBGC concludes that there will be no additional accruals even if it declares the plan ongoing, the PBGC is less likely to nullify the termination. Of course, freezing accruals does not by itself assure that the PBGC will not nullify the termination, particularly in cases where the violations are egregious or willful.

The PBGC has had some cases involving top-heavy plans, where the accruals cannot be frozen for the non-key employees. In a number of defective top-heavy plan terminations, the PBGC has required the plan to provide additional accruals to the non-key employees as a condition of its agreeing to allow the termination to proceed.

Since the new standard termination regulation relaxes many termination rules, the PBGC expects fewer situations to arise where it would be necessary to consider using its authority to permit “defective” terminations to proceed.

## QUESTION 13

### Standard Terminations — Tax Reporting and Withholding for Missing Participants

When I pay the PBGC a designated benefit for a missing participant, do I withhold for taxes? Do I issue a 1099-R?

#### RESPONSE:

The Service has confirmed to the PBGC that there is no need to withhold for taxes in this situation. (See the IRS letter on the PBGC's web site at [http://www.pbgc.gov/irs\\_ltr.htm](http://www.pbgc.gov/irs_ltr.htm).) There is also no need to issue a 1099-R. The PBGC will issue the 1099-R in January of the year following the year in which it pays the missing participant's benefit.

## QUESTION 14

### Standard Terminations — Effect of Excess Assets on PDC

Should I wait to file the Post-Distribution Certification until all assets, including excess assets, have been distributed?

#### RESPONSE:

Although the PDC is statutorily due 30 days after the plan administrator completes distribution in satisfaction of all benefit liabilities, plan administrators in effect have greater latitude in submitting the PDC because the PBGC assesses late submission penalties only to the extent that the PDC is submitted more than 90 days after the end of the permissible distribution period. The plan administrator should not wait until excess assets are distributed, whether through a reversion to the employer, an additional distribution to participants, or both. The certification language on the PDC states that all benefit liabilities under the plan “have been satisfied,” and that plan assets in excess of those needed to satisfy all benefit liabilities “have been or will be” distributed in accordance with applicable provisions of ERISA and implementing regulations.

## QUESTION 15

### Participant Notice — Small Plan Rules for Controlled Group

To use the “small plan” calculations for the Participant Notice, must you aggregate all defined benefit plans in the controlled group?

#### RESPONSE:

Yes. In determining whether the plan is a “small plan” for the plan year being tested — and is therefore eligible to use the special “small plan” calculation rules of § 4011.4(b) — the plan administrator should apply the aggregation rules of ERISA section 302(d)(6)(C) that are used for purposes of determining whether the plan is exempt from the deficit reduction contribution requirements because it has 100 or fewer participants.

## QUESTION 16

### **Participant Notice — Change in Plan Administrator**

If plan administrators change between the Participant Notice deadline and the Form 1 Certification, who makes the certification?

#### **RESPONSE:**

The plan administrator who is responsible for filing the Form 1 — the current plan administrator — is responsible for making the certification. The current plan administrator may check the box that says “An explanation is attached.” The explanation should reflect reasonable efforts to determine whether the Participant Notice requirements were met. For example, the current plan administrator may have a representation from the former plan administrator that the Participant Notice was issued as required, and may also have conducted a spot check of participants to ensure that the representation is true.

## QUESTION 17

### **Participant Notice — Requirement for Terminating Plans**

Is a Participant Notice required for a terminating plan?

#### **RESPONSE:**

Although there is no specific exception for terminating plans in ERISA section 4011 or the implementing regulations, the last Participant Notice ordinarily will be for the plan year that contains the proposed termination date in a standard termination (which is by far the most common type of termination), because that is ordinarily the last plan year for which the plan will be subject to a variable rate premium. There is a special rule in § 4006.5(a)(4) of the PBGC’s regulations that exempts plans undergoing a standard termination from the variable rate premium for any plan years after the plan year that contains the proposed termination date.

This exemption is conditioned on the plan’s successfully completing the standard termination. If the standard termination fails, the exemption is retroactively revoked, and one or more Participant Notices may be past due. If that happens, the plan administrator should issue any such notices as soon as possible. Assuming the plan administrator does that, and assuming further that the standard termination was initiated and continued in good faith, it is unlikely that the PBGC would be assessing penalties in this situation.

In addition, a Participant Notice is not required to be issued if the due date for the notice comes after premiums have ceased to accrue under ERISA section 4007(a). This occurs when the plan

has wound up its affairs. In the case of a standard termination, the plan winds up its affairs by completing the distribution of plan assets in satisfaction of all benefit liabilities. In a distress or involuntary termination, the analogous date is normally the date on which the plan is trusteeed, although it would be the distribution date in the case of a plan that receives a PBGC distribution notice and is able to satisfy at least all guaranteed benefits in a private-sector closeout.

## QUESTION 18

### **Participant Notice — Sending Missed Notice with Current Notice**

If a 1997 Participant Notice was required but not issued, may it be included as part of the 1998 notice or must it be sent separately?

#### **RESPONSE:**

The plan administrator must issue notices for 1997 and 1998. The plan administrator is subject to § 4071 penalties to the extent the 1997 notice is late. The regulation requires that any “additional information” be in a separate document, and the PBGC would consider the 1997 Participant Notice to be “additional information” insofar as the 1998 Participant Notice is concerned, and vice versa. Thus, the two notices may not be combined into one notice or issued on the front and back of the same piece of paper. However, the two notices may be mailed in the same envelope, and the plan administrator may include a cover letter — as a separate document — explaining why two notices are enclosed.

## QUESTION 19

### **Participant Notice — Satisfying DOL Requirements**

Does reporting missed plan contributions in the Participant Notice satisfy ERISA § 101(d)?

#### **RESPONSE:**

Yes. The PBGC noted in the preamble to its final Participant Notice regulation that DOL advised the PBGC that, in the absence of final regulations implementing ERISA § 101(d), it will treat a plan administrator that provides a Participant Notice as having satisfied § 101(d) with respect to any missed contributions disclosed in the Participant Notice. If the plan is subject to the Participant Notice requirement for a plan year, and that is the first Participant Notice in which the missed contribution would be subject to reporting, the plan administrator will be in compliance with § 101(d) with respect to any missed contributions properly disclosed in the Participant Notice. However, a plan may not be subject to the PBGC’s Participant Notice requirement until quite some time — perhaps several years or more — after the missed contribution. A plan

administrator who is in this situation should check with DOL about when and how to give a § 101(d) notice.

## QUESTION 20

### Reportable Events — Meaning of "Extraordinary Dividend"

What does "extraordinary dividend" mean in the context of the reportable events regulation?

#### RESPONSE:

"Extraordinary dividend" doesn't mean the same thing under § 4043.31 of the PBGC's reportable events regulation as under the Internal Revenue Code. As part of the negotiated rulemaking process through which the new regulation was developed, the PBGC waived the statutory reporting requirement for extraordinary dividends based on the definition in the IRC and adopted a requirement based on a different definition. The regulation requires reporting, in the case of cash distributions, only if the dividend exceeds the company's adjusted net income on both a one year and a four year basis. In the case of non-cash distributions, the trigger is a distribution of more than 10% of the total net assets of the company making the distribution. The same thresholds apply for stock redemptions.

## QUESTION 21

### Reportable Events — Intra-group Transfer as Extraordinary Dividend

Could a transfer within the controlled group constitute an extraordinary dividend?

#### RESPONSE:

Yes. The regulatory event captures significant transfers of value to shareholders, and a transfer to anyone in the controlled group — up, down, or sideways — is treated as a transfer to a shareholder. That is because the PBGC's employer liability claim in the event of plan termination is against each member of the plan's controlled group, on a joint and several basis, and the PBGC's recovery prospects therefore can be significantly harmed if one member of the controlled group transfers value to another member, depending on their relative financial positions.

## QUESTION 22

### Reportable Events — Asset Sales

Is an asset sale a reportable event?

#### RESPONSE:

A sale of assets, in and of itself, is ordinarily not a reportable event. However, it would be a reportable event if the sale is made to any other member of the seller's controlled group or to an outside shareholder and results in a transfer of value to the buyer — net of any proceeds — that triggers one of the thresholds for an extraordinary dividend. Even if the sale is for fair market value, there could be an extraordinary dividend if the proceeds are paid (or transferred) to a member of the seller's controlled group or an outside shareholder and the applicable threshold is crossed.

## QUESTION 23

### Reportable Events — Plan Transferred to Another Controlled Group

Does a reportable event occur when a plan is transferred from one controlled group to another?

#### RESPONSE:

Yes. From the perspective of the plan, each member of the old controlled group will cease to be a member of the plan's controlled group. Therefore, these plan transfers must be reported, even if both controlled groups remain intact.

## QUESTION 24

### Reportable Events — Report Timing for Controlled Group Breakup

When does the 30-day period begin for reporting a transaction that results in a controlled group break-up?

#### RESPONSE:

For post-event reporting, as under the pre-RPA regulation, the event is not the actual breakup of the controlled group or the actual transfer of plan sponsorship. It is the transaction as a result of which the controlled group will break up or the plan will be transferred. In other words, reporting is due 30 days after there is a binding contract, even if there is a later closing or effective date. If



there is no legally binding agreement, post-event reporting is due 30 days after the actual transfer or change in ownership.

Example: On March 1, a company signs a binding agreement to sell a subsidiary to a person outside the controlled group. The sale is effective on June 1. Reporting is due on March 31.

Advance reporting is due 30 days before the transaction becomes effective. Thus, if there is a long time period between the date of the legally binding agreement and the effective date, post-event reporting could be due before advance reporting is due. If that is the case, so long as a complete post-event notice is filed, there is no need to give the PBGC a separate advance reporting notice.

## QUESTION 25

### Reportable Events — Loan Defaults

When is a loan default reportable?

#### **RESPONSE:**

The default is reportable if it is on a loan with an outstanding balance of \$10 million or more, and then only under certain circumstances. It is reportable if the default results from failure to make a payment unless it is paid within 30 days. It is also reportable if the lender accelerates the loan for any reason, or issues a written notice of default based on one of several specified reasons.

The event occurs when the default occurs — not when the 30 day period for making the late payment ends, not when the lender issues a notice of default or accelerates the loan, and not when the cure period ends. Reporting is due 30 days after the date of the default. However, there are extensions available that are keyed to the cure period under the loan agreement or the date of a notice of default or of a loan acceleration.

## QUESTION 26

### Reportable Events — Reporting Waiver Rules Based on Plan Funding

How do reporting waivers based on plan funding differ?

#### **RESPONSE:**

For many events, a post-event reporting waiver is available if the plan meets any of the following four premium-based funding tests: (1) no variable rate premium, (2) less than \$1 million in

unfunded vested benefits, (3) no unfunded vested benefits, and (4) 80% funded. The following chart, provided by the PBGC, summarizes each of these tests.

**WAIVER TESTS FOR POST-EVENT REPORTING**

	No VRP (includes VRP exemptions)	UVB less than \$1 million		No UVB (4010 optional assumptions)	80% Funded
		Alternative I	Alternative II		
Interest Rate	Same as premiums	Same as premiums	Same as premiums	100% of 30-year Treasury Bonds	Same as premiums
Mortality Table	Same as premiums (now GAM 83)	Same as premiums (now GAM 83)	Same as premiums (now GAM 83)	GAM 83 until new PBGC tables	Same as premiums (now GAM 83)
Asset Valuation	Actuarial value (FMV when IRS tables issued)	Actuarial value (FMV when IRS tables issued)	FMV	FMV	FMV
ACM available	Yes	Yes	No	No	No

Most plans will qualify for a waiver based on the first test, since most plans do not owe the variable rate portion of the premium. When determining whether this test is met, the general rule or the alternative calculation method (ACM) may be used to determine the plan’s UVBs. This test may be met based on the full funding limit exemption or any of the other exemptions from the variable rate premium. Under this test, the methods and assumptions used are the same as those that apply for purposes of determining the PBGC premium.

For the “UVBs of less than a million” test, there are two choices. Under “Alternative I,” the same methods and assumptions that apply for purposes of determining the PBGC premium are used. Thus, UVBs are determined in the same way as under the “no VRP” test. Under “Alternative II,” there are two differences from Alternative I. First, fair market value of assets must be used. Second, the general rule, not the ACM, must be used.

For the “no UVBs” test, the optional assumptions and methodology in the PBGC’s employer reporting regulation (29 CFR Part 4010) are used — 100% of the 30-year Treasury rates, GAM 83 (for now), the fair market value of the plan’s assets, and the general rule (not the ACM). If the

PBGC adopts new mortality tables in its valuation regulation, those new tables must be used in lieu of GAM 83.

The “80% funded” test uses the same methods and assumptions as “Alternative II” of the “UVBs less than a million” test.

## QUESTION 27

### Reportable Events — Contribution Timing for Post-Event Waiver

When does a contribution have to be made to count for the post-event waiver tests?

#### RESPONSE:

Contributions made by the last day of the prior plan year (including the first three quarterlies) are counted. Contributions made during the current plan year are also counted if certain requirements are met. The contributions must be attributable to the prior plan year for funding purposes. Contributions used to satisfy quarterly contribution requirements for the current plan year may not be included. In the case of the “no VRP” test, the “UVBs less than a million” test under Alternative I, and the “no UVBs” test, the contributions have to be in the plan by the notice date (including any extensions). For the other two tests — the “UVBs less than a million” test under Alternative II and the “80% funded” test, the contributions must be made by the earlier of the due date or filing date for the current plan year’s variable rate premium.

Example: On July 1, 1997, the parties enter into a legally binding agreement that will result in a person ceasing to member of the controlled group of Company X. Post-event reporting is due on July 31, 1997. Assume Company X maintains a calendar plan year. If contributions attributable to the 1996 plan year are made to the plan by July 31, 1997, and not used to satisfy 1997 quarterlies, they may be included when determining UVBs as of December 31, 1996, under all of the post-event waiver tests.

For advance reporting, when determining the \$50 million and 90% funded thresholds, the same rules apply, with the contributions required to be in the plan by the notice date (including any extensions). The PBGC would be willing to entertain a waiver request if reporting would not be required based on contributions made between the notice date and the effective date of the event.

## QUESTION 28

### Reportable Events — Contribution Discount Rules

How are contributions discounted?

#### RESPONSE:

Contributions made after the end of the prior plan year must be discounted to the date as of which you are calculating assets as part of the determination of UVBs. Under the general rule, the contributions are discounted using the plan's asset valuation rate (*i.e.*, the IRC § 412(b)(5)(A) interest rate assumption), generally to the last day of the prior plan year. Under the Alternative Calculation Method, the contributions are discounted using the premium interest rate, generally to the first day of the prior plan year. The ACM then automatically brings all figures forward to the end of the prior plan year.

## QUESTION 29

### Reportable Events — Premium-related Waivers Before Premium Due

How will I know a plan qualifies for a premium-related waiver if the notice is due before the premium filing is due?

#### RESPONSE:

The regulations provide an extension until 30 days after the variable rate premium due date if one of the funding-related waiver tests was met for the plan year before the plan year in which the event occurs.

Example: A transaction resulting in a person ceasing to be a member of the controlled group of Company X occurs on June 30, 1997. Company X maintains only one plan, which is a calendar year plan, and which as of December 31, 1995, met the "UVBs of less than \$1 million" test. Company X is entitled to an extension. By September 15, Company X will know if a waiver based on the funding status of the plan is available. If no waiver is available, Company X must report by October 15, 1997.

## QUESTION 30

### Reportable Events — Counting Foreign Controlled Group Members

Are foreign members of controlled groups counted in determining whether a segment is *de minimis*?

#### RESPONSE:

Yes. Foreign entities are counted both in determining which members have left the controlled group and in determining the size of the entire controlled group — that is, they are counted in both numerator and denominator in the definition of *de minimis* 10 percent segment.

## QUESTION 31

### Reporting for Foreign Controlled Group Members

What are the reporting rules for events involving foreign controlled group members?

#### RESPONSE:

Post event reporting for certain events is waived if the event involves only foreign non-parent entities. These events are (1) change in controlled group, (2) liquidation, (3) extraordinary dividend, and (4) loan default. In addition, reporting of an extraordinary dividend made by a foreign parent is waived if the distribution is made within the controlled group.

For these same events, extensions are available for foreign parents and “foreign-linked entities” under certain circumstances.

- A foreign-linked entity is a non-foreign entity that is not a contributing sponsor of the plan and that is related to the entity involved in the transaction only because of ownership interests in or by foreign entities. For example, assume Companies X and Y are wholly owned U.S. subsidiaries of a foreign entity and that Company X (but not Company Y) is a contributing sponsor of the plan. Y is a foreign-linked entity for purposes of a transaction involving Company X.
- In general, if a transaction involves only foreign parent or foreign-linked entities, the reporting deadline is extended until 30 days after the plan’s first 5500 due date after the person required to notify the PBGC has knowledge of the transaction and the controlled group relationship.

## QUESTION 32

### Reportable Events — Calculating Advance Reporting Thresholds

As of what date are advance reporting thresholds calculated?

#### RESPONSE:

The testing date is the last day of the plan year preceding the date the event becomes effective. If there is more than one plan, the nominal dollar amount of each plan's underfunding is determined separately and then aggregated, without any adjustment for the fact the amounts may have been determined as of different dates.

Example: A transaction resulting in a person ceasing to be a member of the controlled group of Company X occurs on June 30, 1997. Assume a calendar plan year. The testing date is December 31, 1996.

Example: Assume Company X also sponsors a plan with a plan year ending September 30. The testing date for that plan is September 30, 1996.

## QUESTION 33

### Reportable Events — Actuarial Assumptions for Advance Reporting

What assumptions are used in calculating the advance reporting threshold?

#### RESPONSE:

There are three funding determinations that need to be made for advance reporting. The first determination is whether to include particular plans in determining whether the threshold tests are met; all plans with no UVBs are disregarded. The second determination is whether the plans have more than \$50 million in aggregate UVBs. The third determination is whether the plans are 90% funded in the aggregate.

In general, the thresholds for advance reporting are based upon underfunding determined using the PBGC's premium methodology. However, the exemptions from the VRP may not be relied on. In addition, the alternative calculation method may be used only for determining which plans are excluded because they have no UVBs. The following chart, provided by the PBGC, shows the assumptions that must be used for each determination.

## TESTS FOR ADVANCE REPORTING

	Disregard Plans with no UVBs	\$50 Million Threshold	Funded Vested Percentage under 90%
Interest Rate	Same as premiums	Same	Same
Mortality Table	GAM 83 until new IRS tables	Same	Same
Asset Valuation	Actuarial value (FMV when IRS tables issued)	Same	Same
ACM available	Yes	No	No

### QUESTION 34

#### Reportable Events — Calculating \$50 Million Thresholds

Are the \$50 million thresholds for advance reporting (section 4043) and annual reporting (section 4010) calculated in the same way?

**RESPONSE:**

No. There are differences between how the \$50 million threshold is calculated for reportable events under section 4043 and for employer reporting under section 4010.

1. The optional assumptions in the employer reporting regulation are not available for determining the \$50 million threshold for reportable events.
2. Under the reportable events regulation, the alternative calculation method may be used for advance reporting only in determining which plans have no UVBs and may therefore be disregarded in determining whether the advance reporting threshold is met. Under the employer reporting regulation, the alternative calculation method may be used in determining whether the reporting threshold is met, provided that the optional assumptions are not being used.