

2005 Enrolled Actuaries Meeting

Questions to the PBGC

and Summary of Their Responses

April 2005

Summary of Discussions between the Enrolled Actuaries Program Committee
and Staff of the Pension Benefit Guaranty Corporation
on February 7th and 24th, 2005

The following pages set forth the questions posed to staff of the Pension Benefit Guaranty Corporation at discussions on February 7th and 24th, 2005, 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, the PBGC 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 took part in the discussions:

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

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INDEX

	<u>Subject Matter</u>	<u>Questions</u>
1.	Premiums	1 - 5
2.	Standard Terminations	6 - 9
3.	Guaranteed Benefits.....	10 - 11
4.	Valuations	12
5.	Participant Notice	13 - 16
6.	Reportable Events.....	17 - 19
7.	Other Reporting	20

QUESTION 1

Premiums – Reasonable Delay in Payment/Retroactive Annuity Starting Date

Participant A terminates employment on December 10, 2004, with a vested benefit that has a present value equal to or less than \$5,000 in Plan X. Plan X provides that mandatory cashouts will occur (*i.e.*, the participant's benefit will be valued) upon termination of employment. Participant A receives payment on February 1, 2005. Is Participant A treated as having an accrued benefit on December 31, 2004, for purposes of the 2005 premium payment year?

Participant B terminates employment in 2000. He files an application for retirement on November 20, 2004, electing to receive his benefit in the form of a lump sum payment with a retroactive annuity starting date as of September 1, 2003, his normal retirement date. Participant B receives his lump sum payment on February 1, 2005. Is Participant B treated as having an accrued benefit on December 31, 2004, for purposes of the 2005 premium payment year?

RESPONSE:

In order for Plan X to exclude Participant A from the participant count for the 2005 premium payment year, two conditions must be met: (i) the cashout date under the terms of Plan X (December 10, 2004) must be a date on or before the premium snapshot date (December 31, 2004), and (ii) there must be no more than a reasonable administrative delay between the cashout date and the date of actual payment (February 1, 2005) to Participant A. A determination of whether an administrative delay in payment is reasonable is based on the facts and circumstances in any particular case. (See 29 CFR § 4006.6(c), Ex. 3.) These facts and circumstances include the reasonableness of the typical time period required by the plan to calculate the benefit amount in mandatory cashout cases, how the time period in the particular case compares to that typical time period, and any other facts and circumstances surrounding the delay in the participant's case.

In the case of a retroactive annuity starting date, the date that a completed benefit election form (with spousal consent, if applicable) is filed with the plan is the relevant date for determining whether the participant has an accrued benefit on the premium snapshot date. Thus, in order for Participant B to be excluded from the participant count for the 2005 premium payment year, two conditions must be met: (i) Participant B, on or before the premium snapshot date, must have filed a completed benefit election form (with spousal consent, if applicable) electing a lump sum payment; and (ii) there must be no more than a reasonable administrative delay between the date the election form is filed and the date of actual payment to Participant B (see standard for reasonableness above). (Note that Plan X must have treated Participant B as having an accrued benefit on December 31, 2003, for purposes of the 2004 premium payment year, regardless of the plan's provisions for a retroactive annuity starting date.)

QUESTION 2

Premiums — Penalties and Interest on Underpayments

Due to a systemic error, Plan Q understated its unfunded vested benefits for plan years ending December 31, 2002, 2003, and 2004. As a result, Plan Q underpaid its PBGC variable rate premium for each of those years. What are the consequences of this error and what should the plan administrator of Plan Q do to correct it?

RESPONSE:

When the plan administrator of Plan Q discovers that there was an error in the calculation of the variable rate premium due, the plan administrator should make amended filings for each of the years, using the form for the specific year that is being corrected. The plan administrator of Plan Q should also pay the premiums due. PBGC will bill the plan administrator for the appropriate late payment charges, including both interest and penalties. Late payment charges are based on the outstanding premium amount that was due on the filing due date.

The late payment penalty charge is lower for premium underpayments that are "self-corrected." The penalty rate is 1% of the late premium payment for each full or partial month overdue if the late payment is made on or before the date when PBGC first issues a written notification indicating that there is or may be a premium delinquency (*e.g.*, a Statement of Account, Past Due Filing Notice, or letter initiating an audit). The penalty rate of 5% per month applies to underpayments not "self-corrected." Underpayments are subject to a minimum penalty of \$25 and a maximum penalty of 100% of the unpaid premium.

Interest charges are also assessed for any premium amount not paid when due. The interest rate charged is established on a quarterly basis and the interest rates are published on or about the 15th of January, April, July, and October in the Federal Register. These interest rates are also posted on PBGC's Web site. Interest is compounded daily.

The PBGC exercises its authority to waive penalties (29 CFR § 4007.8) where there is reasonable cause and in other limited circumstances; it has no authority to waive premiums or interest charges, except in the case of interest charges as provided in section 4002(i) of ERISA (Special Rules Regarding Disasters, etc.).

QUESTION 3

Premiums — ACM — Significant Event Adjustments for Collectively-Bargained Increases

Plan A is a collectively-bargained single-employer plan with 500 or more participants. Its plan year is the calendar year and its valuation date is the first day of the plan year.

An agreement adopted and effective on 1/1/2004 increases Plan A's current flat benefit multiplier of \$35 to \$36 at 7/1/2004, \$38 at 7/1/2005, \$40 at 7/1/2006, and \$42 at 7/1/2007. The multiplier is applied to all service and the increases only apply to active participants.

In accordance with Internal Revenue Code section 412(c)(12), the ERISA minimum contribution calculations under section 412(b) of the Code for the 1/1/2004 valuation take into account all the increases in the amendment through and including the \$42 multiplier. However, the current liability shown on the Schedule B for 2004 is based on the \$35 multiplier.

The plan sponsor decides to use the Alternative Calculation Method (ACM) for Plan A's 2005 variable-rate premium.

What adjustments to the plan's unfunded vested benefits, if any, must the enrolled actuary make to reflect "significant events" during the 2004 plan year?

RESPONSE:

Section 4006.4(d) of PBGC's premium regulations provides that the enrolled actuary must make adjustments to the value of unfunded vested benefits (UVBs) to reflect certain significant events that have occurred between the first day of the plan year preceding the premium payment year and the premium snapshot date (usually the last day of the plan year).

Significant event 1 is triggered by an amendment that increases the plan's "actuarial costs" by 5% or more. Actuarial costs are defined as the § 412(b) costs, *i.e.*, the sum of the plan's normal cost and amortization costs. Because the plan's actuarial costs already reflect the \$42 multiplier, there is no expected increase due to the amendment and therefore this significant event would not apply.

Significant event 7 is "Any other event or trend that results in a material increase in the value of unfunded vested benefits." The plan's vested benefits at the end of the year will reflect the increase in the benefit multiplier from \$35 to \$36. Taking into account the leveraging effect of plan assets, the effect on UVBs could be material. In that case, the enrolled actuary must reflect the effect of the increase.

QUESTION 4

Premiums: Use of Valuation as of First Day of Premium Payment Year

Under the General Rule, if the premium snapshot date is the last date of the prior plan year, calculations may be done as of the first day of the premium payment year provided that the enrolled actuary adjusts the values to reflect any material difference between the values as of that date and the values as of the last day of the plan year preceding the premium payment date. If the General Rule calculations are done as of 1/1/2005 for a calendar year 2005 plan year, which date should appear in line 2 of Schedule A — 1/1/2005 or 12/31/2004?

RESPONSE:

The instructions state the date entered must be the premium snapshot date, which is 12/31/2004 in this example. The use of the January 1 option for the General Rule calculations does not shift the snapshot date to January 1.

QUESTION 5

Premiums: Asset Valuation Under New Method

Assume that Plan A is a calendar year plan and the premium snapshot date is the last day of the plan year preceding the premium payment year. Let MV_{yyyy} be the market value of assets at the beginning of the year $yyyy$ and G_{yyyy} be the asset gain or loss (i.e., the difference between actual and expected return on market value) for the year $yyyy$.

For the 2003 valuation, the actuarial value of assets was equal to the following:
 $MV_{2003} - G_{2002} * 4/5 - G_{2001} * 3/5 - G_{2000} * 2/5 - G_{1999} / 5$. In other words, the method phases in each year's asset gain or loss evenly over five years.

For the 2004 valuation, the asset method is changed to the method described in approval 16 of Rev Proc 2000-40, using a three-year averaging period and phasing in from market. Under the new method the asset value is as follows:

2004 MV_{2004}
 2005 $MV_{2005} - G_{2004} * 2/3$
 2006 $MV_{2006} - G_{2005} * 2/3 - G_{2004} / 3$

Under this method, each year's asset gain or loss is phased in evenly over three years, after a fresh start in which actuarial value is set equal to market value.

The general method is used for determining PBGC variable premiums. There are no mergers, spinoffs, or similar transactions during any relevant time period under consideration.

Which of the following calculations (or other calculations) may or must be used to determine the actuarial value of assets under the general rule for each of the premium payment years 2004 through 2006?

Premium Payment Year	Calculation 1	Calculation 2
2004	$MV_{2004} - G_{2003} * 4/5 - G_{2002} * 3/5 - G_{2001} * 2/5 - G_{2000} / 5$	MV_{2004}
2005	MV_{2005}	$MV_{2005} - G_{2004} * 2/3$
2006	$MV_{2006} - G_{2005} * 2/3$	$MV_{2006} - G_{2005} * 2/3 - G_{2004} / 3$

RESPONSE:

Under the general rule, plan assets and liabilities used to determine “unfunded vested benefits” (“UVBs”) to calculate the VRP for a premium payment year are determined as of the premium snapshot date, which, in this case, is the last day of the plan year preceding the premium payment year. Plan A’s UVBs must be determined using actuarial assumptions and methods for the plan year preceding the premium payment year, except to the extent that other assumptions or methods are prescribed or are necessary to reflect a significant event.

In the absence of a merger, spinoff, or other plan amendment affecting plan assets, the actuarial value of assets under a particular asset valuation method is the same whether valued at the “stroke of midnight” at the end of 12/31 or at the beginning of 1/1.

Thus, the 2004 VRP calculation is done as of 12/31/03 using the 2003 asset valuation method. Under a special “proviso” in the premium payment regulations, the plan could compute UVBs as of 1/01/04 using the 2004 method and assumptions. However, the result may only be used if it produces UVBs not materially lower than those determined as of 12/31/03 using the 2003 methods and assumptions. (See Q&A 5 of the 1998 Blue Book.)

For the 2005 VRP calculation, the actuarial value of assets is determined as of 12/31/04 using the asset valuation method in effect for the year ending on 12/31/04 (*i.e.*, the new asset valuation method as it would be applied one year into the phase-in period). Similarly, the assets for later VRP calculations are based on the new asset valuation method with assets determined as of the 12/31 preceding the premium payment year.

Therefore,

- use Calculation 1 for 2004 (Calculation 2 could be used if UVBs produced are not materially less than those as of 12/31/03 under Calculation 1)
- use Calculation 2 for 2005, and
- use Calculation 2 for 2006.

QUESTION 6

Standard Terminations — Alternative Treatment of Majority Owner's Benefits

A plan is terminating in a standard termination. A majority owner elected alternative treatment of his plan benefits in order to make the plan sufficient to satisfy plan benefits. There are plan assets remaining after the plan benefits of all other participants are satisfied. May those remaining plan assets be distributed to those other participants or revert to the employer, under the terms of the plan?

RESPONSE:

Under 29 CFR § 4041.21(b)(2), a majority owner may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits (through priority category 6 under section 4044 of ERISA) in a standard termination. Any plan assets remaining after all such other plan benefits are satisfied must be distributed to the majority owner to satisfy his plan benefits (through priority category 6). Any plan assets remaining after these majority owner's plan benefits are satisfied must be distributed to the other participants or revert to the employer, under the terms of the plan and applicable law. See preamble to final rule, 57 FR 59206 at 59212 (Dec. 14, 1992).

QUESTION 7

Standard Terminations — Application of Constructive Ownership Rules in Determining Majority Owner Status

A plan is terminating in a standard termination. A husband and wife are both participants in the plan and the husband is the 100% owner of the stock of the corporation that is the contributing sponsor of the plan. Is the wife a majority owner and therefore able to elect an alternative treatment of her benefit in accordance with 29 CFR § 4041.21(b)(2)?

RESPONSE:

It depends. For voluntary termination purposes, the definition of “majority owner” in 29 CFR § 4041.2 takes into account the constructive ownership rules of Code section 414(b), which refers to Code Section 1563(a), which in turn brings in Code section 1563(e)(5). Under Code section 1563(e)(5), an individual’s ownership interest in the stock of a corporation is attributed to his spouse, except in the case of a corporation with respect to which each of the following conditions is satisfied for a taxable year:

- The spouse does not, at any time during the taxable year, own directly any stock in such corporation;
- The spouse is not a director or employee and does not participate in the management of such corporation at any time during the taxable year;
- Not more than 50 percent of the corporation's gross income for the taxable year was derived from royalties, rents, dividends, interest, and annuities; and
- The stock in the corporation is not, at any time during the taxable year, subject to conditions that substantially restrict or limit the individual’s right to dispose of the stock and that run in favor of his spouse or his children under age 21.

Thus, for example, the wife would be a majority owner for a taxable year in which she does not own directly any stock in the corporation but in which she is an employee of the corporation. Therefore she would be permitted to elect an alternative treatment of her benefit during that taxable year.

QUESTION 8

Standard Terminations — Inability to Complete the Termination

A plan is terminating in a standard termination. Having determined that plan assets will be sufficient to satisfy plan benefits, the plan administrator begins the process of distributing plan assets. Sometime during the process of distributing plan assets, the plan administrator determines that plan assets in fact will not be sufficient to satisfy plan benefits. What must the plan administrator do?

RESPONSE:

Under 29 CFR § 4041.28(b), the plan administrator may not make any further distribution of assets to effect the plan's termination and must promptly notify the PBGC. The plan administrator should also notify all other affected parties; the Notice of Intent to Terminate was required to include a statement that the plan administrator will notify the affected party if the termination does not occur. The plan is an ongoing plan for all purposes. The plan administrator may wish to seek guidance from the Department of Labor on any fiduciary issues arising with respect to plan assets already distributed or from the Internal Revenue Service on any tax issues arising with respect to those plan assets.

QUESTION 9

Standard Terminations – Missing Participant Cashing Plan Check

Under the PBGC's regulations governing the Missing Participants program, "if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator must make distribution to the individual in such manner as the PBGC will direct" (29 CFR § 4050.12(a)). Assume that the plan administrator determines that an individual is a missing participant after having sent a check to the individual and after having conducted a diligent search. Assume further that the check is not returned to the plan administrator but, rather, cashed by the individual *after* the plan administrator has paid the designated benefit to the PBGC. Under what circumstances, if any, will the PBGC refund the designated benefit to the plan?

RESPONSE:

Provided that it has not already paid the individual the designated benefit, the PBGC generally will be able to refund the designated benefit to the plan. However, plan administrators can avoid this problem by stopping payment on the benefit check once the designated benefit is paid to the PBGC.

QUESTION 10

Guaranteed Benefits — Partial Lump Sum Payments

How does the PBGC take into account a partial lump-sum payment previously received by a participant from the same plan (as part of the accrued benefit) for purposes of determining guaranteed benefits under ERISA section 4022?

RESPONSE:

For purposes of determining guaranteed benefits under ERISA section 4022, when a participant has received part of his or her benefit in the form of a lump-sum payment, the PBGC will offset the participant's maximum guaranteeable benefit by the annuity equivalent of the lump-sum payment received by the participant.

Examples.

(1) Normal Retirement. Assume that a participant had earned a monthly \$6,000 annuity payable at age 65 (the participant's normal retirement age under the plan) and (as permitted by the plan document) elected to take half of his benefit in the form of a lump sum at age 63 and the other half as a \$3,000 annuity payable at age 65. Assume that the only potential limitation on benefits is the maximum guarantee and that this plan's termination date is in 2004, one week before the participant turns age 65. The limitation on the maximum guaranteeable benefit for this participant is \$3,698.86 per month. However, since the participant has already received part of his benefit in a lump sum, the \$3,698.86 per month must be offset. The amount of the offset is equal to the early retirement annuity equivalent of the lump sum, using the plan's factors. In this case, assume an early retirement factor of .9 at age 63. Thus, the early retirement annuity equivalent is \$2,700 (.9 x \$3,000). Therefore, the participant's remaining guaranteed monthly annuity from the PBGC would be \$998.86 (\$3,698.86 - \$2,700).

(2) Early Retirement. Assume the same facts as in the previous example, except that the participant elected to take his benefit in two parts as follows: (1) at age 57, he received a lump sum payment representing the value of a \$3,000 monthly annuity payable at age 65; and (2) at age 60, he will start to receive a straight life annuity of \$3,000 per month, reduced for early commencement. Assume the plan reduces benefits by an amount equal to 5% times the number of years prior to age 65 the benefit commences. Assume the plan's termination date is one week before the participant turns age 60. The limitation on the maximum guaranteeable benefit for this participant is \$2,404.26 per month (\$3,698.86 reduced using the PBGC early retirement factor of .65). However, this monthly amount is offset by \$1,800. This amount represents the portion of the participant's monthly annuity benefit that has been paid as a lump sum, adjusted to age 57 using the plan's early retirement factor (.6). Thus, the participant's remaining guaranteed monthly annuity from the PBGC would be \$604.26 (\$2,404.26 - \$1,800).

QUESTION 11

Guaranteed Benefits – Newly-Covered Substantial Owner Plan; Effective Date

Assume that Plan A, a calendar year plan, has been exempt from coverage under ERISA section 4021(b)(9) as a substantial owner plan since it was established. On December 15, 2004, Individual X, who is not a substantial owner, starts to earn participation service under Plan A, and becomes a Plan A participant on July 1, 2005. Individual X earns a year of service for benefit accrual purposes during the service computation period that ends on December 31, 2005.

- (a) What is the date as of which the plan becomes covered under ERISA section 4021?
- (b) What is the date as of which the phase-in period begins for the plan under ERISA section 4022(b)(7)?

RESPONSE:

- (a) July 1, 2005.
- (b) July 1, 2005.

QUESTION 12

Valuations: Asset Allocation Category for Temporary Supplements

Plan N is being terminated. The plan was not amended during the five years prior to plan termination. The plan provides for a temporary early retirement supplement (not a QSUPP) of \$300 monthly payable from early retirement to age 62. This provision is not being amended out of the plan as part of the plan termination.

One day before the beginning of the 3-year period ending on the plan termination date, Participant A retired at age 55, the plan's earliest retirement age. At retirement, the participant's accrued deferred retirement benefit commencing at normal retirement age (65) was \$1000 monthly. The individual's reduced early retirement benefit was \$800 monthly, and the participant was eligible for the temporary supplement of \$300 monthly payable until age 62. Thus, as of the plan termination three years later, the participant is age 58 and receiving \$1100 monthly.

Participant B is also 58 years old and could have retired at the same time as Participant A and with the same benefits. However, Participant B is still actively employed by the plan sponsor. Participant C is 55 years old and just retired with the same benefits as Participant A. Participant D is 55 years old and could retire with the same benefits as Participant A, but is still actively employed.

Into which priority categories do the benefits for each of these participants fall?

RESPONSE:

For all four participants, the temporary supplement is a nonforfeitable benefit as defined for purposes of plan termination under 29 CFR § 4001.2 by reference to ERISA section 4001(a)(8). The first \$200 of the monthly temporary supplement is a basic-type benefit, as defined in § 4001.2. Because of the operation of § 4022.21(a)(1), the remaining \$100 of the monthly temporary supplement is a nonbasic-type benefit and not guaranteed.

For Participants A and B, both the \$800 early retirement benefit and the entire \$300 temporary supplement fall into priority category (PC) 3. Thus, even though \$100 of the temporary monthly supplement is a nonbasic-type benefit and not guaranteed, plan assets may be allocated to this benefit in PC3, subject to the allocation rules detailed in § 4044.10(e) and (f).

For Participants C and D, the \$800 early retirement benefit and \$200 of the monthly temporary supplement fall into PC4 as basic-type, guaranteed benefits. The remaining \$100 of monthly temporary supplement falls into PC5 as a nonforfeitable benefit that has not been assigned to an earlier priority category.

QUESTION 13

Participant Notice — Variable Rate Premium

A plan administrator did not provide a Participant Notice for the 2003 plan year. No variable rate premium for the plan was payable for the 2003 plan year, but a variable rate premium would have been payable if vested benefits were valued using 85% of 30-year Treasuries rather than 100% of 30-year Treasuries. The plan was less than 80% funded for the 2003 and 2002 plan years. Is there a Participant Notice failure for the 2003 plan year?

RESPONSE:

No. The Job Creation and Workers Adjustment Act of 2002 increased the interest rate used to value vested benefits for purposes of PBGC's variable-rate premium for the 2002 and 2003 plan years from 85% to 100% of 30-year Treasuries. However, it did not permit use of the 100% rate when determining PBGC disclosure (or reporting) obligations. Section 403(d) of the Working Families Tax Relief Act of 2004 retroactively allows use of the 100% rate for both PBGC disclosure and reporting purposes. For PBGC disclosure purposes, the effect of the provision is to retroactively cure any Participant Notice failures for 2002 or 2003 that were based on use of the 100% rate rather than the 85% rate.

QUESTION 14

Participant Notice — Voluntary Correction Program

What is the Participant Notice Voluntary Correction Program? Is it still in effect?

RESPONSE:

The Participant Notice Voluntary Correction Program (“VCP”) is a program announced in the Federal Register on May 7, 2004. The VCP generally covers Participant Notices for the 2002 or 2003 plan year that were not issued timely and in accordance with all other requirements. The PBGC will not assess a penalty for a 2002 or 2003 Participant Notice failure if the failure is corrected in accordance with the VCP guidelines. The PBGC also will not pursue any failure to provide a pre-2002 Participant Notice unless there is a 2002 or 2003 Participant Notice failure that is covered by the VCP but that does not meet the requirements for penalty relief under the VCP.

The PBGC anticipated that many plan administrators would want to participate in the VCP as a precaution, even in the absence of a known Participant Notice failure. Participation in the VCP will not affect the likelihood that a plan will be selected for audit of compliance with the Participant Notice requirement for a post-VCP plan year, the PBGC premium requirement for any plan year, or any other PBGC requirement.

Some plan administrators may still be able to participate in the VCP. However, it is too late for most calendar year plans. The deadline for issuing a VCP corrective notice is the due date for the plan’s 2004 Participant Notice — two months after the plan’s due date, with extensions, if any, for filing the Form 5500 for the 2003 plan year — or, if the plan administrator is not required to issue a 2004 Participant Notice, the due date that would apply if the plan administrator were required to issue it.

If there is a 2002 or 2003 Participant Notice failure and it is too late to participate in the VCP, the plan administrator should correct the failure as soon as possible to cut off penalties under ERISA section 4071. The plan administrator may wish to contact the PBGC to discuss how best to correct the failure. The plan administrator may e-mail the PBGC at pnotice@pbgc.gov or call the toll-free telephone number at the PBGC's Practitioner Customer Service Center (1-800-736-2444).

QUESTION 15

Participant Notice — Participant Count

Why might the number of persons entitled to receive a plan's Participant Notice for a plan year differ from the plan's Form 1 participant count for that plan year?

RESPONSE:

The number of persons entitled to receive a plan's Participant Notice for a plan year might differ from the plan's Form 1 participant count for that plan year because of different snapshot dates, different definitions of "participant," and different treatment of beneficiaries and alternate payees.

A plan's Form 1 participant count for a plan year is the number of participants in the plan, generally determined as of the last day of the prior plan year. For premium purposes, a "participant" is defined in 29 CFR § 4006.6. Under § 4006.6, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date. A deceased individual with respect to whom the plan has benefit liabilities and any beneficiaries of that individual would be counted as one participant. Similarly, an individual with respect to whom the plan has benefit liabilities and any alternate payees with respect to that individual would be counted as one participant.

Under 29 CFR § 4011.7, the persons entitled to receive the plan's Participant Notice for a plan year are participants, beneficiaries of deceased participants, alternate payees, and unions, determined on any date selected by the plan administrator during the period beginning with the last day of the prior plan year and ending with the date on which the Participant Notice is due, provided that a change in the date from one plan year to the immediately succeeding plan year does not exclude a substantial number of participants and beneficiaries. For Participant Notice purposes, a "participant" is defined in 29 CFR § 4041.2. Under § 4041.2, in general, a participant is an individual who is earning or retaining credited service under the plan or who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future. Any beneficiaries of a deceased participant would be entitled to receive separate Participant Notices. Similarly, a participant and any alternate payees with respect to that participant would be entitled to receive separate Participant Notices.

QUESTION 16

Participant Notice – Volatility Relief in Spinoff Cases

Calendar-year Plan A spins off calendar-year Plan B on December 31, 2004. A variable-rate premium is payable for both Plan A and Plan B for the 2005 plan year. For purposes of the DRC Exception Test that is used to determine whether a Participant Notice is required for the 2005 plan year, the funded current liability percentages of Plans A and B are as follows for the listed plan years:

	2005	2004	2003	2002	2001
Plan A	83%	79%	91%	91%	85%
Plan B	83%				

May the plan administrators of Plan A and Plan B each use the historical funded current liability percentages of Plan A, and thereby meet the DRC Exception Test described in 29 CFR § 4011.3(b) for the 2005 plan year (based on the volatility test described in ERISA section 302(d)(9)(B)), notwithstanding the intervening spinoff of the assets and liabilities associated with Plan B?

PROPOSED RESPONSE:

Yes. Both Plan A and Plan B should be regarded as continuations of Plan A for this purpose. Therefore Plan A's historical funded current liability percentages can be used when determining whether the DRC Exception Test is met. (See question 11 from the 2004 (IRS) "Gray Book.")

QUESTION 17

Reportable Events — “Retroactively Missed” Contributions

In question 13 of the 2004 Blue Book, the PBGC described certain situations in which there may have been missed quarterly contributions but, as a matter of enforcement discretion the PBGC would neither assess a penalty based on failure to file a timely reportable events notice or Form 200 nor perfect or enforce a lien, provided that a reportable events notice or Form 200 (as applicable) is filed with the PBGC within 30 days (in the case of a reportable events notice) or within 10 days (in the case of a Form 200) after the relevant Schedule B is filed.

- (a) Was that response (as applied to situations where there may have been missed quarterlies due to “recharacterized” contributions) intended to apply to a situation in which an amended Schedule B is filed after the original due date (including extensions) of the Form 5500?
- (b) If a Form 200 is required, must the filer include financial statements or can the filer wait until the PBGC asks for them?

RESPONSE:

- (a) No. The response in question 13 of the 2004 Blue Book (as applied to situations where there may have been missed quarterlies due to “recharacterized” contributions) applies only when the “recharacterization” is reflected on the original Schedule B as filed in a timely manner.
- (b) Financial statements are required as part of the Form 200 filing. The contributing sponsor, its parent, or its authorized representative may apply for a waiver of this requirement. For information on applying for such a waiver, contact PBGC’s Division of Insurance Supervision & Compliance at (202) 326-4070.

QUESTION 18

Reportable Events – Missed Liquidity Contributions

IRC § 412(m)(5)(C) states that a liquidity shortfall contribution that is missed is treated as unpaid until the close of the quarter in which the due date for such installment occurs. Because the missed contribution is no longer considered unpaid for purposes of the interest charge in IRC § 412(m)(1) after the end of the quarter, must a Form 10 or Form 200 be filed reporting the missed contribution?

RESPONSE:

Yes. Once the liquidity shortfall contribution is missed, a reportable event occurs. Even though the contribution may no longer be considered unpaid for certain IRC purposes, unless a reporting waiver applies, reporting is still required.

QUESTION 19

Reportable Events — Multiple Employer Plan Split

A multiple employer plan (Plan XY) covers employees of two unrelated companies X and Y. The plan is split into two plans – Plan X covers employees of Company X, and Plan Y covers employees of Company Y. Assume that the plan split is legally binding on December 15, 2004, and is effective on December 31, 2004. Also, assume that neither Company X nor Company Y is subject to advance reporting under §4043.61(b). What are the reporting requirements, if any?

RESPONSE:

Unless reporting is waived, the plan administrators and the plan sponsors are responsible for reporting a change in controlled group (See 29 CFR § 4043.29). In this example, one or more persons ceased to be a member of the plan's controlled group. (Note that for this reporting, the controlled group is determined with respect to the plan. The controlled group of plan XY before the plan split would consist of Company X and Company Y and all members of Company X's controlled group and all members of Company Y's controlled group.) After the split, Company Y is not a member of the controlled group of Plan XY. From the perspective of the Company X portion of Plan XY, Company Y was split off from the plan. Similarly, after the split, Company X is not a member of the controlled group of Plan XY. Therefore, from the perspective of the plan, both companies X and Y have left the controlled group. (See 29 CFR § 4043.29(e)(2).)

Company X, Company Y, and the plan administrators of Plan X and Plan Y are responsible for any required reporting. Section 4043.20 provides that “if there is a change in plan administrator or contributing sponsor, the reporting obligation applies to the person who is the plan administrator or contributing sponsor of the plan on the 30th day after the reportable event occurs.” (This reportable event occurred on December 15, 2004 -- the date the plan split became legally binding). However, a filing by any person will be deemed to be a filing by all persons required to notify the PBGC. (See 29 CFR § 4043.3(a)(3).)

Similarly, the transfer of liabilities that occurs when Plan XY is split into Plan X and Plan Y would constitute a transfer of benefit liabilities to plans maintained by persons that are not members of the controlled group of Plan XY. This would be a reportable event occurring as of the date of transfer, which is based on the facts and circumstances. (See 29 CFR § 4043.32). Any required notice may be combined with the notice for the change in controlled group. (See 29 CFR § 4043.3(a)(3).)

There has been an active participant reduction for Plan XY. This would be a reportable event occurring on December 31, 2004. (See 29 CFR § 4043.23). Any required notice may be combined with the other notice. (See 29 CFR § 4043.3(a)(3).)

Finally, there may have been a withdrawal of a substantial employer. (See section 4063(a) of ERISA). If so, the plan administrator of Plan XY must notify the PBGC within 60 days of the withdrawal.

QUESTION 20

Other Reporting — Notice under Section 307(e) of ERISA

What must a plan sponsor do to comply with the notice requirements under section 307(e) of ERISA? That section requires notice when the plan sponsor is required to provide security under section 307(a) of ERISA due to the adoption of a plan amendment resulting in significant underfunding.

RESPONSE:

If a plan adopts an amendment for which section 307(a) of ERISA requires the plan sponsor to provide security to the plan, the plan sponsor must notify the PBGC within 30 days after the amendment takes effect. The notice should be sent to the PBGC's Division of Insurance Supervision & Compliance. Failure to provide this notice in a timely manner is subject to penalties under ERISA section 4071.