AMERICAN RETIREMENT ASSOCIATION

4401 N. Fairfax Dr. | Ste. 600 | Arlington, VA 22203 | P 703.516.9300 | F 703.516.9308
info@usaretirement.org | usaretirement.org

Working for America's Retirement

November 27, 2019

Ms. Hilary Duke
Assistant General Counsel for Regulatory Affairs
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, DC 20005-4026

Subject: Response to PBGC's Request for Comments on Benefit Payments and Allocation of Assets Proposed Regulations, RIN 1212-AB27, *84 Fed. Reg. 51494* (September 30, 2019)

Dear Ms. Duke,

The American Retirement Association ("ARA") is writing in response to the request for comments on proposed changes to PBGC's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans. ARA thanks the PBGC for the opportunity to provide comments on these proposed changes.

The American Retirement Association (ARA) is a national organization of more than 26,000 members who provide a wide variety of services to American employers and sponsors of retirement plans, including investment advice, retirement plan consulting and administrative services. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. The ARA is comprised of five premier retirement industry associations; the American Society of Pension Professionals & Actuaries (ASPPA), the ASPPA College of Pension Actuaries (ACOPA), the National Association of Plan Advisors (NAPA), the National Tax-Deferred Savings Association (NTSA), and the Plan Sponsor Council of America (PSCA).

The proposed regulations are helpful and clear. ARA appreciates the clarifications in the proposed regulations which will be useful to both plan actuaries and plan administrators. ARA has only a few technical comments on some issues involving the actuarial equivalence calculations involving lump sum distributions, as follows:

1. Section 4022.7 Benefits payable in a lump sum. Under the general rule in 4022.7(a), if a benefit that is guaranteed "is payable in a lump sum or substantially so under the terms of the plan, including an option elected under the plan by the participant before plan trusteeship, PBGC will not guarantee the benefit in such form but instead will guarantee *an actuarially equivalent life annuity"* (emphasis added). We are not sure if this is PBGC's intent, but this seems to imply that the benefit that is guaranteed in a situation where the participant has elected a lump sum option before plan trusteeship is

the life annuity that is the actuarial equivalent of the lump sum benefit. Rather, ARA believes that the benefit that should be guaranteed in such a situation is the life annuity determined under the terms of the plan (without reference to the value of the lump sum benefit). ***ARA recommends*** changing the words "guarantee an actuarially equivalent life annuity" in section 4022.7(a) to "guarantee the life annuity actuarial equivalent to the normal form of benefit under the terms of the plan".

2. Section 4022.23(g) Computation of maximum guaranteeable benefits. First, the discussion below is only with respect to where the partial plan distribution occurred before the starting date of the remainder annuity, and the remainder annuity starts *after* the plan's termination date. Second, ARA agrees with the methodology in the proposed regulations where the remainder annuity starts on the same date as the partial plan distribution.

   Under the methodology described by the PBGC to compute a maximum guaranteeable benefit in the case of an earlier partial plan distribution (at section 4022.23(g)(1)(ii)), the PBGC determines a percentage which is equal to the monthly annuity equivalent of the partial plan distribution divided by the monthly guaranteed benefit at the time of the initial partial distribution, using the participant's age at that time. Then, the maximum guaranteed benefit for the remainder annuity commencing at a *later* point in time is determined by reducing the monthly guaranteed benefit at the starting date of the remainder annuity (using the participant's age at that later time) by multiplying the monthly guaranteed amount at that date by a percentage equal to one minus the percentage determined at the time of the partial plan distribution. This percentage methodology is essentially an actuarial adjustment of the earlier partial plan distribution to find its equivalent value as of the starting date of the remainder annuity, and then to subtract that equivalent value from the maximum guaranteed benefit of the participant using his age at the start of the remainder annuity. We did some analysis of this actuarial adjustment.

   Specifically, this percentage methodology does not use the plan's stated factors or assumptions used for determining actuarial equivalence under the plan. The percentage methodology does not specify a specific interest rate and mortality table for purposes of this actuarial equivalence calculation. The percentage methodology would use the same methodology for different plans under the PBGC's administration, regardless of the actual terms of the plans and their definitions of actuarial equivalence. ARA posits that the use of this percentage methodology in the proposed regulations may be to the detriment of some plan participants, or to the benefit of other plan participants in other plans, as illustrated by an analysis of the calculations in the example at section 4022.23(g)(2). ARA is not suggesting that the pre-trusteeship prior plan distribution be disregarded; ARA merely wants to ensure that PBGC has considered the impact of this difference in actuarial equivalence on the maximum guaranteeable benefit of the participant. The following is an analysis of Example 2 in the proposed regulations:

The example at section 4022.23(g)(2) describes a maximum guaranteeable benefit at age 59 (from the PBGC's 2016 table) of **$3,056.93** and a maximum guaranteeable benefit at age 64 of **$4,660.56** (also from the PBGC's 2016 table). Dividing **$4,660.56** by **$3,056.93** results in 1.52459, the implied actuarial equivalence factor for these annuities at the two different ages. To calculate a proxy interest rate and mortality table for this 1.52459 actuarial equivalence factor, ARA calculated a factor using the 1994 Group Annuity Reserving table projected to 2002 using Scale AA mortality table ("GAR94") and backed into the interest rate. If pre-retirement mortality is used, the proxy interest rate for this factor is 5.85%; if no pre-retirement mortality is used, the proxy interest rate is 6.75%. Note that these proxy interest rates are very slightly rounded. By changing the proxy interest rate to 5%, which is only one example of an actuarial equivalence rate that could be used under a plan, the factor changes to (approximately) 1.42785 using GAR94, resulting in a remainder annuity of **$2,041.65** (equal to **$4,660.56** minus the product of **$1,834.16** times 1.42875). This is a monthly guaranteed benefit remainder amount that is **$177.43** higher than the **$1,864.22** remainder annuity in Example 2; use of this 5% rate thus results in a present value net gain for the participant at age 64 of **$25,746** (using the 5% and GAR94 mortality table factors).

Conversely, if a 7% interest rate is chosen and GAR94 is used, the actuarial equivalence factor is 1.53817, resulting is a remainder annuity amount of **$1839.31**, or **$24.91** lower than the **$1864.22** remainder annuity in Example 2 (with a corresponding present value net loss to the participant of **$3,070**).

Section 4022.23(d) of the PBGC regulations (which is not proposed to be changed) states that "when a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under section 4022.22 shall be adjusted by the *appropriate factors on a case-by-case basis* by PBGC" (emphasis added). It appears PBGC has regulatory authority to set appropriate factors. ARA observes that the existing methodology used to determine the PBGC's maximum guaranteed benefit for different ages in the PBGC's table uses factors based on implicit actuarial assumptions as described above. ***ARA recommends*** that the PBGC consider whether such factors are equitable on the whole for plans under the PBGC's trusteeship, including for purposes of calculating the remainder annuity under section 4022.23(g)(1)(ii) as proposed.

If you have any questions regarding the matters discussed herein, please contact Martin Pippins, ACOPA Executive Director and Director of Regulatory Policy at (703) 516-9300 ext. 146, or mpippins@usaretirement.org. Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/
Martin L. Pippins, MSPA
Executive Director, ACOPA