(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1)(i) through (iii) of this section, the lump sum value of a benefit shall be calculated by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used shall be those described in § 4044.52, except that—

(1) *Loading for expenses.* There shall be no adjustment to reflect the loading for expenses;

(2) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part shall apply; and

(3) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

Appendix to Part 4022 [Redesignated as Appendix C to Part 4022]

3. The Appendix to Part 4022 is redesignated as Appendix C to part 4022, and the heading is revised to read as follows:

Appendix C to Part 4022—Maximum Guaranteeable Monthly Benefit

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. Section 4044.52 is revised to read as follows:

§ 4044.52 Valuation of benefits.

The plan administrator shall value all benefits as of the valuation date by—

(a) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed in appendix B to this part;

(b) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(c) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(d) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with respect to the participant (or other principal annuitant); and

(e) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

6. In § 4044.53, the section heading and paragraph (a) are revised to read as follows:

§ 4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52.

* * * * *

§ 4044.54 [Removed and Reserved]

7. Section 4044.54 is removed and reserved.

Appendix A to Part 4044—[Amended]

8. In appendix A to part 4044, Table 3—Lump Sum Mortality Table is redesignated as appendix A to part 4022 and the heading is revised to read as follows:

Appendix A to Part 4022—Lump Sum Mortality Rates

Appendix B to Part 4044—[Amended]

9. In appendix B to part 4044:

a. The appendix heading is revised;

b. The heading ''Table I—[Annuity Valuations]'' is removed.

The revision reads as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

10. In appendix B to part 4044, Table II—[Lump Sum Valuations] is redesignated as appendix B to part 4022 and the heading is revised to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates

Appendix C to Part 4044—[Amended]

11. In appendix C to part 4044, the table is amended in the third column by removing the reference ''Table I of appendix B for the valuation of annuities'' and adding the reference ''appendix B of this part for the valuation of benefits'' in its place.

PART 4050—MISSING PARTICIPANTS

12. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

13. In § 4050.2, the definitions of *Missing participant annuity assumptions* and *Missing participant lump sum assumptions* are revised to read as follows:

§ 4050.2 Definitions

* * * * *

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods for valuing benefits under § 4044.52 of this chapter, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using the mortality rates prescribed in Revenue Ruling 95–6, 1995–1 C.B. 80 (for availability, see 26 CFR 601.601(d));

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(e) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $5,000.

* * * * *

Missing participant lump sum assumptions means the interest rate and mortality assumptions and actuarial methods for determining the lump sum value of a benefit under § 4022.7(d) of this chapter applied—

(1) As if the deemed distribution date were the termination date; and

(2) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

* * * * *

Issued in Washington, DC, this 9th day of March, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6646 Filed 3–16–00; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR PART 4022

RIN 1212–AA92

Lump Sum Payment Assumptions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The PBGC intends to continue to calculate and publish lump sum interest rates determined using the PBGC's current methods (or a surrogate for those rates) indefinitely. For the time being, the PBGC will continue to use

these historic rates for determining and paying de minimis lump sums. However, because many private-sector plans calculate lump-sum benefits using PBGC rates, and the PBGC wants to preserve the option of changing the way it sets the rates it uses for its own payments without affecting those private-sector calculations, the PBGC will publish two separate sets of lump sum rates—one for PBGC payments and one for private-sector payments. Initially, the two sets of rates will be identical; therefore, the change is nonsubstantive.

Sometime in the future, the PBGC, through a separate rulemaking, might change the way it sets the lump sum interest rates it uses for its own payments. If that occurs, the PBGC would continue to publish the historic rates (or a surrogate) to be used by the private sector. The PBGC cautions pension practitioners to exercise care when drafting or amending documents that refer to the lump sum interest rates used by the PBGC.

The Internal Revenue Service has informed the PBGC that a plan that refers to PBGC lump sum interest rates for purposes of calculating the amount of a distribution subject to Internal Revenue Code section 417(e)(3) and that is amended before the PBGC amends its regulations to provide lump sum interest rates for PBGC payments that are no longer identical to the lump sum interest rates for private-sector payments will not fail to satisfy the ''anti-cutback'' rules of Internal Revenue Code section 411(d)(6) merely because it is amended to clarify that the plan's reference to PBGC lump sum interest rates means the lump sum interest rates for private-sector payments.

EFFECTIVE DATE: May 1, 2000.

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

SUPPLEMENTARY INFORMATION:

Background

Each month, the PBGC publishes the interest rates it uses to determine whether the PBGC will pay a pension benefit in the form of a lump sum and, if so, the amount the PBGC will pay. Private-sector plans and annuity providers historically have relied upon the PBGC lump sum interest rates, along with appropriate mortality assumptions, to determine the minimum amount of a participant's lump sum benefit for purposes of Internal Revenue Code (Code) section 417(e)(3) and ERISA section 205(g)(3). While the law no longer requires private plans to use the PBGC lump sum interest rates, some plans continue to use them for the transition period permitted under the Code and ERISA, and some plans will choose to continue to use them indefinitely where they produce a larger distribution than the minimum benefit amount required by Code section 417(e)(3) and ERISA section 205(g)(3). In addition, many existing annuity contracts provide benefits calculated using the PBGC lump sum interest rates.

October 1998 Notice of Intent To Propose Rulemaking

In a notice of intent to propose rulemaking (63 FR 57228 (October 26, 1998)), the PBGC announced that it was considering (1) discontinuing use of its existing lump sum assumptions for payment purposes and replacing them with a modified version of its existing annuity assumptions, effective sometime after December 2000, and (2) discontinuing calculation and publication of its existing lump sum interest rates at, or sometime after, the time the PBGC discontinues their use.

None of the commenters objected to the PBGC's changing the way it sets the interest rates it uses to pay lump sums for its own purposes. However, all of the commenters asked the PBGC either to continue to calculate and publish its lump sum interest rates determined using the PBGC's current methods or to provide a surrogate rate. Many plan sponsors and plan participants stated that their plans would continue to refer to PBGC rates, noting that the plan's participants have come to rely upon those rates and the larger lump sum amounts they produce. Commenters also noted that the private sector uses the PBGC rates in other contexts, including insurance contracts purchased to satisfy plan liabilities. Some commenters felt that the PBGC should update the mortality assumptions it uses to derive its lump sum interest rates.

Separation of PBGC Rates and Private-sector Rates

For the time being, the PBGC has decided that it will not make any change in the way it sets the lump sum interest rates it uses for its own payments. However, because those rates have been derived from a mortality table that is becoming increasingly outdated, the PBGC would like to preserve the option to do so in the future.

The PBGC is concerned that any future change might create confusion and difficulties for plans that continue to refer to the PBGC lump sum interest rates. Accordingly, the PBGC is eliminating the linkage between the lump sum interest rates it uses to pay benefits and the PBGC rates the private sector relies upon. In order to eliminate this linkage, the PBGC will publish separate tables of lump sum interest rates for these distinct purposes—one table called ''Lump Sum Rates for PBGC Payments'' and another table called ''Lump Sum Rates for Private-Sector Payments.'' By publishing two sets of lump sum rates, the PBGC could change the way it sets the rates it uses for its own payments without affecting the rates used by the private sector. Because the PBGC is not at this time changing the way it sets the lump sum interest rates it uses for its own payments, the two sets of rates will initially be identical.

The PBGC will continue to publish its lump sum interest rates (in both the PBGC table and the private-sector table) for a given month on the 15th of the previous month (or, if the 15th falls on a weekend or holiday, the preceding regular workday), or as close to that date as circumstances permit.

Surrogate Rate

The PBGC is exploring whether there is a reasonable surrogate (*e.g.,* some percentage of the average yield on 30-year Treasury securities) for its historic rates. If such a surrogate exists, the PBGC might replace the historic rates with the surrogate pursuant to a separate rulemaking. The PBGC would not make such a change unless the Internal Revenue Service concludes that the use of the surrogate in lieu of the historic rates would not cause a plan to fail to satisfy the ''anti-cutback'' rules of Code section 411(d)(6).

Mortality Assumptions for Setting Interest Rates for Private-Sector Payments

The PBGC does not intend to update the mortality assumptions it uses to set its lump sum interest rates for private-sector payments; doing so would increase those interest rates and thereby reduce private-sector lump sums. This would be inconsistent with the desire of various commenters (including several who suggested the PBGC update its mortality assumptions) that the PBGC continue publishing its historical rates (or provide a substitute for those rates) because participants have come to rely upon the larger lump sum amounts these rates produce.

Possible Future Changes to Lump Sum Rates Used by the PBGC

If the PBGC in the future changes the way it sets lump sum rates for its own payments, a number of interpretation and drafting issues might arise for private sector payments. Because there is potential for confusion and misinterpretation, the PBGC cautions pension practitioners to exercise care when drafting or amending documents that refer to the PBGC lump sum interest rates. In particular, plan practitioners should avoid referring to the ''PBGC lump sum rates'' or the rates the PBGC ''uses.'' If they wish to refer to the PBGC's historical lump sum rates, they should refer to the PBGC's lump sum interest rates for private-sector payments. This reference would be to the PBGC's historical rates or a surrogate for those rates and therefore would be unaffected by any change the PBGC might make to the method it uses to determine the rates for its own lump sum payments. Alternatively, plan practitioners may refer to the PBGC's lump sum interest rates for PBGC payments. This reference would be to the rates the PBGC uses for its own lump sum payments and therefore could result in unexpected changes in plan lump sum amounts if the PBGC changes the way it sets rates for its own payments.

Anti-Cutback Issues Under Code Section 411(d)(6)

The Internal Revenue Service has informed the PBGC that a plan that refers to PBGC lump sum interest rates for purposes of calculating the amount of the distribution subject to Code section 417(e)(3) and that is amended before the PBGC amends its regulations to provide lump sum interest rates for PBGC payments that are no longer identical to the lump sum interest rates for private-sector payments will not fail to satisfy the ''anti-cutback'' rules of Code section 411(d)(6) merely because it is amended to clarify that the plan's reference to PBGC lump sum interest rates means the lump sum interest rates for private-sector payments. The Internal Revenue Service has not yet determined whether other amendments relating to PBGC lump sum interest rates would cause the plan to fail to satisfy the ''anti-cutback'' rules of Code section 411(d)(6).

Compliance With Rulemaking Guidelines

The PBGC has determined that there is good cause for dispensing with notice and comment rulemaking as unnecessary. 5 U.S.C. 553(b). This rule provides that instead of publishing one set of monthly lump sum interest rates, the PBGC will publish two sets—one for PBGC payments and one for private-sector payments. This is a nonsubstantive change because the two sets of rates will be identical until the PBGC, through rulemaking, provides otherwise.

The PBGC has determined that this rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this rulemaking, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC amends part 4022 of 29 CFR chapter XL (as amended by the PBGC's final rule published elsewhere in today's **Federal Register**) as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In § 4022.7, a new paragraph (e) is added to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(e) *Publication of lump sum rates.* The PBGC will provide two sets of lump sum interest rates as follows—

(1) In appendix B to this part, the lump sum interest rates for PBGC payments, as provided under paragraph (d)(2) of this section; and

(2) In appendix C to this part, the lump sum interest rates for private-sector payments.

Appendix B to Part 4022

3. In newly redesignated Appendix B to part 4022, the appendix heading is revised to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

Appendix C to Part 4022 [Redesignated as Appendix D to Part 4022]

4. Newly redesignated Appendix C to part 4022 is further redesignated as Appendix D to part 4022, and a new Appendix C is added to part 4022 to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8
2	12–1–93	1–1–94	4.25	4.00	4.00	4.00	7	8
3	1–1–94	2–1–94	4.50	4.00	4.00	4.00	7	8
4	2–1–94	3–1–94	4.50	4.00	4.00	4.00	7	8
5	3–1–94	4–1–94	4.50	4.00	4.00	4.00	7	8
6	4–1–94	5–1–94	4.75	4.00	4.00	4.00	7	8
7	5–1–94	6–1–94	5.25	4.50	4.00	4.00	7	8
8	6–1–94	7–1–94	5.25	4.50	4.00	4.00	7	8
9	7–1–94	8–1–94	5.50	4.75	4.00	4.00	7	8
10	8–1–94	9–1–94	5.75	5.00	4.00	4.00	7	8

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
11	9–1–94	10–1–94	5.50	4.75	4.00	4.00	7	8
12	10–1–94	11–1–94	5.50	4.75	4.00	4.00	7	8
13	11–1–94	12–1–94	6.00	5.25	4.00	4.00	7	8
14	12–1–94	1–1–95	6.25	5.50	4.25	4.00	7	8
15	1–1–95	2–1–95	6.00	5.25	4.00	4.00	7	8
16	2–1–95	3–1–95	6.00	5.25	4.00	4.00	7	8
17	3–1–95	4–1–95	6.00	5.25	4.00	4.00	7	8
18	4–1–95	5–1–95	5.75	5.00	4.00	4.00	7	8
19	5–1–95	6–1–95	5.50	4.75	4.00	4.00	7	8
20	6–1–95	7–1–95	5.50	4.75	4.00	4.00	7	8
21	7–1–95	8–1–95	4.75	4.00	4.00	4.00	7	8
22	8–1–95	9–1–95	4.75	4.00	4.00	4.00	7	8
23	9–1–95	10–1–95	5.00	4.25	4.00	4.00	7	8
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8
25	11–1–95	12–1–95	4.75	4.00	4.00	4.00	7	8
26	12–1–95	1–1–96	4.50	4.00	4.00	4.00	7	8
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8
28	2–1–96	3–1–96	4.25	4.00	4.00	4.00	7	8
29	3–1–96	4–1–96	4.25	4.00	4.00	4.00	7	8
30	4–1–96	5–1–96	4.75	4.00	4.00	4.00	7	8
31	5–1–96	6–1–96	5.00	4.25	4.00	4.00	7	8
32	6–1–96	7–1–96	5.00	4.25	4.00	4.00	7	8
33	7–1–96	8–1–96	5.00	4.25	4.00	4.00	7	8
34	8–1–96	9–1–96	5.25	4.50	4.00	4.00	7	8
35	9–1–96	10–1–96	5.25	4.50	4.00	4.00	7	8
36	10–1–96	11–1–96	5.25	4.50	4.00	4.00	7	8
37	11–1–96	12–1–96	5.00	4.25	4.00	4.00	7	8
38	12–1–96	1–1–97	4.75	4.00	4.00	4.00	7	8
39	1–1–97	2–1–97	4.50	4.00	4.00	4.00	7	8
40	2–1–97	3–1–97	4.75	4.00	4.00	4.00	7	8
41	3–1–97	4–1–97	5.00	4.25	4.00	4.00	7	8
42	4–1–97	5–1–97	4.75	4.00	4.00	4.00	7	8
43	5–1–97	6–1–97	5.00	4.25	4.00	4.00	7	8
44	6–1–97	7–1–97	5.25	4.50	4.00	4.00	7	8
45	7–1–97	8–1–97	5.25	4.50	4.00	4.00	7	8
46	8–1–97	9–1–97	4.75	4.00	4.00	4.00	7	8
47	9–1–97	10–1–97	4.50	4.00	4.00	4.00	7	8
48	10–1–97	11–1–97	4.75	4.00	4.00	4.00	7	8
49	11–1–97	12–1–97	4.50	4.00	4.00	4.00	7	8
50	12–1–97	1–1–98	4.50	4.00	4.00	4.00	7	8
51	1–1–98	2–1–98	4.25	4.00	4.00	4.00	7	8
52	2–1–98	3–1–98	4.25	4.00	4.00	4.00	7	8
53	3–1–98	4–1–98	4.25	4.00	4.00	4.00	7	8
54	4–1–98	5–1–98	4.25	4.00	4.00	4.00	7	8
55	5–1–98	6–1–98	4.25	4.00	4.00	4.00	7	8
56	6–1–98	7–1–98	4.25	4.00	4.00	4.00	7	8
57	7–1–98	8–1–98	4.00	4.00	4.00	4.00	7	8
58	8–1–98	9–1–98	4.00	4.00	4.00	4.00	7	8
59	9–1–98	10–1–98	4.00	4.00	4.00	4.00	7	8
60	10–1–98	11–1–98	4.00	4.00	4.00	4.00	7	8
61	11–1–98	12–1–98	3.75	4.00	4.00	4.00	7	8
62	12–1–98	1–1–99	4.00	4.00	4.00	4.00	7	8
63	1–1–99	2–1–99	4.00	4.00	4.00	4.00	7	8
64	2–1–99	3–1–99	4.00	4.00	4.00	4.00	7	8
65	3–1–99	4–1–99	4.00	4.00	4.00	4.00	7	8
66	4–1–99	5–1–99	4.25	4.00	4.00	4.00	7	8
67	5–1–99	6–1–99	4.25	4.00	4.00	4.00	7	8
68	6–1–99	7–1–99	4.25	4.00	4.00	4.00	7	8
69	7–1–99	8–1–99	4.50	4.00	4.00	4.00	7	8
70	8–1–99	9–1–99	5.00	4.25	4.00	4.00	7	8
71	9–1–99	10–1–99	5.00	4.25	4.00	4.00	7	8
72	10–1–99	11–1–99	5.00	4.25	4.00	4.00	7	8
73	11–1–99	12–1–99	5.00	4.25	4.00	4.00	7	8
74	12–1–99	1–1–00	5.25	4.50	4.00	4.00	7	8
75	1–1–00	2–1–00	5.00	4.25	4.00	4.00	7	8
76	2–1–00	3–1–00	5.25	4.50	4.00	4.00	7	8
77	3–1–00	4–1–00	5.25	4.50	4.00	4.00	7	8
78	4–1–00	5–1–00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, this 9th day of March, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6647 Filed 3–16–00; 8:45 am]

BILLING CODE 7708–01–P