

Benefit Liabilities - Priority Category 6

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A. Background

The Pension Protection Act of 1987 (PPA) amended Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) to increase certain obligations relating to terminations of single-employer plans. PPA introduced the term "benefit liabilities" to describe the total obligations under a plan¹. PPA tied the definition of benefit liabilities to the meaning of "liabilities" under section 401(a)(2) of the Internal Revenue Code.

Note 1: For Title IV purposes, all benefit liabilities must be included in priority categories one through six of ERISA section 4044(a).

After PPA, a plan cannot terminate in a standard termination unless the plan has sufficient assets to provide all benefit liabilities. In a distress or involuntary termination, a contributing sponsor and all members of its controlled group are jointly and severally liable to the PBGC for the total amount, as of the termination date, of unfunded benefit liabilities (UBL). The PBGC must pay participants in distress and involuntary terminations a portion² of the plan's unfunded nonguaranteed benefits, which is dependent on the value of benefit liabilities.

Note 2: This portion is determined by multiplying the amount of a plan's unfunded nonguaranteed benefits by a ratio of the value of PBGC's recoveries on UBL claims to the amount of the UBL claims. In general, the ratio for a large plan is computed using the actual data for that plan. For small plans, the ratio is a rolling five-year average of PBGC's recovery experience.

B. Purpose

The purpose of this internal guidance statement is to provide rules as to the types of benefits included in the term "benefit liabilities" in order to process PPA plan terminations. As of the date of this internal guidance statement, the IRS had not issued post-PPA guidance on benefit liabilities. If the IRS issues written guidance dealing with one or more provisions of this internal guidance statement, the PBGC will review this internal guidance statement in light of such guidance.

C. Scope

This internal guidance applies to determinations of benefit liabilities in PPA plans.

D. Definitions

1. **Benefit liabilities** mean, the liabilities for benefits of participants and their beneficiaries under the plan (within the meaning of section 401(a)(2) of the Code).
2. **Code means the Internal Revenue Code of 1986, as amended.**
3. **Nonforfeitable** means, with respect to a plan, a benefit for which, as of the termination date, a participant has satisfied the conditions for entitlement under the plan or the requirements of ERISA (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit that returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of ERISA or the Code. (See ERISA section 4001(a)(8) and 29 CFR § 2613.6.)
4. **Optional form of benefit** means, generally, a distribution form that is available under the plan that differs from the normal form of benefit for a participant with respect to one or more features relating to the distribution form, e.g., the payment schedule, timing or commencement. (See 26 CFR § 1.411(d)-4, Q&A 1(b).)
5. **PPA plan** means a plan whose termination initiation date is after December 17, 1987. The termination initiation date is --
 - a. for a standard termination under ERISA section 4041(b), the last date on which any notice of intent to terminate is issued to any affected party;
 - b. for a distress termination under ERISA section 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than the PBGC; and
 - c. for an involuntary termination under ERISA section 4042, the date on which the PBGC issues a notice of determination that the plan will be involuntarily terminated (or, in the absence of such a notice, the date on which the PBGC's Executive Director, or the Executive Director's designee, authorizes the initiation of proceedings to terminate the plan under ERISA § 4042).
6. **Termination date** means the date determined in accordance with ERISA section 4048.

E. Benefit Liabilities

The liability for any benefit provided under the terms of a plan as of the termination date³ is a benefit liability unless the plan specifically provides that the conditions for the benefit must be satisfied before plan termination or that the benefit will not be paid after plan termination. A plan amendment may eliminate a benefit liability other than a section 411(d)(6)-protected benefit (see section G.2.). If a plan amendment eliminates or reduces a section 411(d)(6)-protected benefit, the provision of the amendment that eliminated or reduced the section 411(d)(6)-protected benefit shall be disregarded, and the benefit treated as if it were a benefit under the terms of the plan in effect on the termination date.

Note 3: Benefit accruals end no later than the termination date. However, certain contingencies may be satisfied after plan termination.

A favorable determination letter issued by the IRS on plan termination is *prima facie* evidence, in accordance with ERISA section 3001(d), of initial compliance with the rules on benefit liabilities. Thus, for a plan with a favorable letter, OBA should ordinarily presume that a benefit eliminated or reduced by a plan amendment is not a section 411(d)(6)-protected benefit. However, if, in reviewing a plan, OBA has reason to believe that the amendment eliminated or reduced a section 411(d)(6)-protected benefit, OBA should consult CPRD and OGC through appropriate OBA channels.

F. Type of Benefit

Benefits that are nonforfeitable are in the first five priority categories under ERISA section 4044(a). Benefits that are not nonforfeitable (*i.e.*, forfeitable) are in priority category 6 (PC6). The following are examples of benefit liabilities for benefits in PC6.

1. Benefits Contingent on Future Age or Service.

The value of a benefit for which eligibility is based on attainment of a specified age or completion of years of credited service⁴ for a participant who had *not* attained the necessary age or completed the necessary service as of the termination date is a benefit liability in PC6. This includes early retirement supplements or subsidies contingent on future age and service, whether or not such benefits are protected under Code section 411(d)(6). (See section G.2.)

Note 4: To become entitled to a benefit contingent on post-termination service, the participant must satisfy the conditions for credited service under the plan. This would not be possible if the "employer" under the plan (or other entity for which employment counts toward credited service under the plan) ceased to exist.

2. Benefits Contingent on a Future Event.

The value of a benefit for which eligibility is based in whole or in part on the occurrence of a future event (*e.g.*, plant shutdown, disability or death) is a benefit liability in PC6. This includes event-contingent early retirement supplements or subsidies, whether or not such benefits are protected under Code section 411(d)(6). (See section G.2.)

3. Optional Forms of Benefits.

For a nonvested participant, the entire value of the most valuable optional form⁵ is a benefit liability in PC6. For a partially-vested participant who had not elected a form of benefit as of the termination date, the value of the benefit liability in PC6 is the difference between the value of the most valuable optional form under the plan and the value of the plan's automatic form⁶, multiplied by the percent of the benefit that is not vested⁷.

Note 5: The most valuable optional form is determined using plan factors and valued at PBGC rates (in accordance with 29 CFR Part 2619).

Note 6: The automatic form of benefit is the form that is automatically paid under plan terms to a participant who has made no election regarding benefit form.

Note 7: For a partially-vested participant, this difference between the most valuable form and the automatic form is computed by subtracting the value of the automatic form (calculated using plan factors and valued using PBGC rates in accordance with 29 CFR Part 2619) from the value of the optional form (also calculated using plan factors and valued using PBGC rates). This difference is multiplied by one minus the vested percentage to determine the value of the PC6 benefit. The remainder is in PC5 (as is the difference between the most valuable form and the automatic form for fully vested participants who had not elected a benefit form as of the termination date).

4. **QPSA.** [reserved]

G. Rules for Plan Amendments Reducing Benefits

1. General Rule.

ERISA § 204(g) and Code section 411(d)(6) prohibit plan amendments that eliminate or reduce accrued benefits.

2. Benefits protected under Code section 411(d)(6)

Code section 411(d)(6) generally protects accrued benefits, early retirement benefits and retirement-type subsidies, and optional forms of benefits. (See 26 CFR § 1.411(d)-4.)

Note 8: Retirement-type subsidy means, generally, a subsidy that continues past the plan's normal retirement age. (N.B.: The IRS has not yet defined retirement-type subsidy.)

3. Benefits not protected under Code section 411(d)(6)

In general, Code section 411(d)(6) does not protect ancillary benefits. Ancillary benefits include Social Security supplements⁹ (other than qualified Social Security supplements¹⁰), disability benefits not in excess of a qualified disability benefit¹¹, ancillary life insurance and health insurance benefits, pre-retirement death benefits under a defined benefit plan, and other similar benefits. (See 26 CFR § 1.401(a)(4)-4(e)(2).)

Note 9: Social security supplement means, generally, a plan benefit for plan participants which (i) commences and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under Title II of the Social Security Act, and (ii) does not exceed such old-age insurance benefit. (See 26 CFR § 1.411(a)-7(c)(4)(ii).)

Note 10: Qualified Social Security supplement (QSUPP) means, generally, a Social Security supplement that is treated as protected under Code section 411(d)(6) as a result of special nondiscrimination rules. For a Social Security supplement to be a QSUPP, the plan must specifically provide that it is treated as an early retirement benefit protected under Code section 411(d)(6). (See 26 CFR § 1.401(a)(4)-12.)

Note 11: Qualified disability benefit means a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if the participant separated from service at normal retirement. (See Code section 411(a)(9).)

4. **Special Rule for QPSA.**

A qualified pre-retirement survivor annuity (QPSA)¹² is not a section 411(d)(6)-protected benefit. However, the QPSA is required by law and may not be eliminated. The portion of the QPSA in excess of the minimum required QPSA (related to the survivor portion of the QJSA¹³) may be reduced by plan amendment to the level of the minimum required QPSA. (See 26 CFR § 1.401(a)-20.)

Note 12: Qualified pre-retirement survivor annuity (QPSA) means, generally, a survivor annuity for the life of the surviving spouse of the participant if the payments to the surviving spouse are not less than the amount which would be payable as a survivor annuity under the plan's QJSA and the earliest period for which the surviving spouse may receive a payment under the QPSA is not later than the month in which the participant would have attained the earliest retirement age under the plan. (See Code section 417(c)(1).)

Note 13: Qualified joint and survivor annuity (QJSA) means, generally, an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent (and is not greater than 100 percent) of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and which is the actuarial equivalent of a single annuity for the life of the participant. (See 26 CFR § 1.401(a)-11.)