

# ERISAfication

**Issue Date** 04/10/1985

## A. Purpose

This internal guidance incorporates into the manual internal guidance which was established on March 29, 1983, by a letter from the Executive Director to OMB stating that PBGC would administratively implement the ERISAfication internal guidance in accordance with a proposed regulation.

## B. Scope

The ERISAfication internal guidance applies to non-ERISAfied, partially ERISAfied or improperly ERISAfied plans which terminate on or after September 26, 1980 (the effective date of MPPAA).

## C. Mandatory Provisions of ERISA Required by MPPAA

Certain essential requirements of Title I will be read into plans. The requirements are as follows (please refer to the proposed regulation when applying the provision to cases):

### A. Minimum Participation Standards

Participants are defined as employees who "during the 12 months preceding the date of plan termination, met the plan's participation requirements except for age and years of service." Therefore, the age and years service requirements for participation purposes will be **read out** of a plan in the following determinations (B, C, and D).

### B. Minimum Vesting Standards

The vesting schedule that will most benefit plan participants will be read into each terminating plan that does not meet the minimum vesting standards in section 203(a) of the Act. In order to determine which schedule to use, the percentage of vesting for each participant (other than substantial owners) is to be added under each of the vesting schedules and the vesting schedule that will produce the highest total percentage in the aggregate is to be used for all participants. In the following example, the "Rule of 45" is to be used.

| Participant | Age | Service | 10-Yr. Cliff | 5-15 Graded | Rule of 45 |
|-------------|-----|---------|--------------|-------------|------------|
| A           | 42  | 13      | 100%         | 80%         | 100%       |
| B           | 31  | 6       | 0%           | 30%         | 0%         |
| C           | 48  | 15      | 100%         | 100%        | 100%       |
| D           | 40  | 9       | 0%           | 45%         | 70%        |

|   |    |    |      |      |      |
|---|----|----|------|------|------|
| E | 50 | 10 | 100% | 50%  | 100% |
|   |    |    | 300% | 305% | 370% |

For vesting purposes, years of service are determined using the elapsed time method. Under this method, service is determined with reference to the total period of time that elapses from the date hired to the earlier of date of separation or plan termination.

### **C. Benefit Accrual Requirements**

The computation of a participant's accrued benefit would be made as of the date of plan termination under the fractional rule in ERISA section 204(b)(1)(C) without the special limiting exceptions in (D). Under the fractional or "pro rata" rule, a participant's projected normal retirement benefit would be multiplied by a fraction, the numerator of which is the participant's years of participation in the plan to the date of plan termination (DOPT) and the denominator of which is the number of years of participation the participant would have had if he or she had continued in the plan until normal retirement age. Years of participation would be determined using the elapsed time method as in the vesting rules.

### **D. Forms of the Benefit**

#### **1. Joint and Survivor Annuity**

An automatic actuarially equivalent 50% joint and survivor annuity for participants married at DOPT will be read into plans that provide an annuity form of benefit. Married participants, however, will not be given an opportunity to elect to receive benefits in the annuity form payable to unmarried participants after DOPT.

#### **2. Pre-retirement Survivor Annuity**

ERISA's section 205(c) provides that a married participant must be given the option to elect a survivor annuity to be paid if the participant dies, while still employed by the plan sponsor before retiring but after meeting the eligibility requirements for early retirement. A participant who would have been eligible to elect this benefit if offered, and who died while employed before DOPT but after becoming eligible for early retirement, will be deemed to have elected the benefit. Therefore, the benefit should have been in pay status before DOPT and the spouse of the deceased participant will be entitled to an actuarially equivalent survivor annuity (50%).

#### **3. Early Retirement Benefit**

A plan that provides for early retirement based on age and service requirements cannot require that the participant be employed at the early retirement age in order to be eligible for an early retirement benefit. Rather, pursuant to Section 206 of ERISA, the plan must provide that a participant who has fulfilled the service requirements, but who terminated employment before meeting the age requirement, is entitled to an actuarially reduced early retirement benefit upon reaching the age requirement. This provision will be read into plans with early retirement provisions that have not been amended, that have been improperly amended, or not timely amended, to comply with the Act. Employer consent before DOPT will not be required. The actuarially reduced early PBGC retirement benefit will be calculated using the reduction factor under 29 CFR 2621.4c.

## **D. Phase-in of ERISA Amendments**

### **A. Mandatory Provisions**

All minimum provisions mandated by ERISA will be phased-in as of the applicable Section 211 effective date.

### **B. Non-Mandatory or More Favorable Provisions (Amount in excess of ERISA Requirements)**

All non-mandatory ERISA amendments, including the portion of any amendment in excess of minimum ERISA requirements (i.e., 5 year as opposed to 10 year cliff vesting) will be phased-in under the PBGC's normal requirements. Specifically, any such amendments or portions will be phased-in based on the latter of the amendment's adopted or effective date.