PPA Bankruptcy

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A. Introduction

Section 404 of the Pension Protection Act of 2006 (PPA 2006) made changes to the benefits PBGC guarantees and to how PBGC calculates benefits in priority category 3 (PC3). For plans terminated while the contributing sponsor (generally the plan sponsor) is a debtor in a bankruptcy case (or a proceeding under similar law) that is filed on or after 9/16/06, PPA 2006 requires that the date on which the petition was filed be treated as the date of plan termination (DOPT) for purposes of determining (1) the benefits PBGC guarantees and (2) the amount of benefits in PC3.

For affected plans, this means that guaranteed benefits are based on a participant's vesting and accruals under the plan as of the bankruptcy petition date, and that the limitations on benefits, such as accrued-at-normal, maximum guaranteeable benefit and phase-in limitations, are determined by using the contributing sponsor's bankruptcy petition date instead of DOPT. In addition, benefits in PC3 are only those that were (or could have been) in pay status three years before the bankruptcy petition date, based generally on the provisions of the plan in effect five years before the bankruptcy petition date.

With this second edition of the internal guidance, PBGC clarifies:

- The requirement to request guidance by emailing PSDGuidance@pbgc.gov in any case involving a contributing sponsor that was the subject of a non-bankruptcy insolvency proceeding. See section C.2 below.
- The treatment of auxiliary disability benefits. See section D.3.b below.

B. Scope and Effective Date

This internal guidance applies to any plan that terminates in a distress or PBGC-initiated termination while its contributing sponsor is a debtor in a bankruptcy, if the bankruptcy was filed on or after 9/16/06.

C. Definitions

1. **Bankruptcy Petition Date (BPD)** means the date on which the plan's contributing sponsor files (or has had filed against it) a bankruptcy petition (or similar filing) commencing a case under the U.S. Bankruptcy Code (or under similar federal or state law) that has not been dismissed as of DOPT.

   If a bankruptcy converted from one chapter to another (e.g., if the bankruptcy began with the filing of a petition for reorganization under Chapter 11 of the Bankruptcy Code but was later converted to a liquidation under Chapter 7), BPD is the date of the original petition filing.

   If the plan has more than one contributing sponsor, and the sponsors entered bankruptcy on different dates, PBGC will determine BPD according to a facts-and-circumstances test. Among the facts and circumstances PBGC will consider are: the size of the various contributing plan sponsors; the relative amounts of their minimum required contributions to the plan; the amount of time between bankruptcy petition dates; and the expectations of participants regarding the continuation of the plan.

2. **PPA 2006 Bankruptcy Plan** means a single-employer plan that terminates in a distress or PBGC-initiated termination while bankruptcy proceedings (or proceedings under any similar federal or state law) are pending with respect to at least one of the plan's contributing sponsors if the bankruptcy proceedings were initiated on or after 9/16/06. Request guidance by emailing PSDGuidance@pbgc.gov if the plan's contributing sponsor was the subject, as of the plan's DOPT, of a non-bankruptcy insolvency proceeding under federal or state law (e.g., a receivership, a special mastership, an assignment, or other type of case). For such cases, PSD will seek guidance from OGC regarding whether the federal or state law is similar enough to bankruptcy law for the plan to be a PPA 2006 Bankruptcy Plan. A PPA 2006 Bankruptcy Plan does not include a plan for which the contributing sponsor has filed only under Canadian or other international law even if the foreign filing resembles a US filing under federal bankruptcy or similar state law.

D. PPA 2006 Changes to PBGC Guaranteed Benefits

1. **General Rule**

   For a plan that PBGC determines to be a PPA 2006 bankruptcy plan, PBGC will guarantee only those benefits that meet the requirements for PBGC's guarantee as of BPD. This means that only that portion of the benefit that has accrued and for which the participant has satisfied the conditions of entitlement on or before BPD can be guaranteed. For example, PBGC will not guarantee a benefit in which the participant was 100% vested at DOPT but 0% vested at BPD.

2. **Early Retirement**

   The date a participant is eligible to enter pay status with an early retirement benefit does not change for participants in PPA 2006 bankruptcy plans. However, PBGC will not guarantee early retirement subsidies to which a participant became entitled under the plan after BPD. To determine whether a participant in a PPA 2006 bankruptcy plan is eligible to start or to continue receiving early retirement benefits from PBGC, see section D.2.a below. To determine the extent to which PBGC will guarantee the additional value provided by an early retirement benefit or subsidy, see section D.2.b below.

   a. **Eligibility to Receive Early Retirement Benefits**

      The date a participant is eligible to enter pay status with an early retirement benefit does not change for participants in PPA 2006 bankruptcy plans; eligibility to receive early retirement benefits depends on the conditions that were satisfied under the plan on or before DOPT (not BPD). See Internal Guidance Annuity Starting Dates. This means that a participant or beneficiary the prior plan administrator put into pay status, will remain in pay status after PBGC trustees the plan if the plan's requirements for early retirement were satisfied on or before DOPT. Similarly, a participant who was not receiving a benefit before PBGC trusteed the plan but who satisfied the plan's conditions for early retirement on or before DOPT will be eligible to begin receiving benefits at the later of DOPT and the participant's earliest PBGC retirement date. See Internal Guidance Earliest PBGC Retirement Date.

Example 1. A PPA 2006 bankruptcy plan offers 2 early retirement benefits:

(1) a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA); and

(2) an unreduced benefit payable with 30 years of service ("30-and-out").

At DOPT, a participant was age 52 with 31 years of service. At BPD, he was age 50 with 29 years of service.

If the participant was not in pay status at DOPT, he can elect to retire after DOPT even if he is not yet age 55 because he satisfied the plan's eligibility conditions for a 30-and-out benefit on or before DOPT.

If the participant was in pay status at DOPT, he will remain in pay status.

For the amount of the participants guaranteed benefit, see Example 2 below.

b. **Guaranteed Amount of Early Retirement Subsidies**

PBGC will not guarantee the additional value provided by a subsidized early retirement benefit (or other similar benefits) to which a participant becomes entitled under the plan after BPD.

The portion of the early retirement benefit that PBGC will guarantee (subject to the Title IV limitations described in section D.4 below) will be equal to the amount which would otherwise be payable by PBGC, had the subsidized early retirement benefit not been available. If no benefit would have otherwise been payable at the annuity starting date (ASD; see section D.2.a above), the benefit will be actuarially reduced using the method set forth in section D of Internal Guidance Erroneous Commencement.

Example 2. A participant in a PPA 2006 bankruptcy plan was receiving an early retirement benefit at DOPT. The plan offered 2 early retirement benefits:

(1) a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA); and

(2) an unreduced benefit payable with 30 years of service ("30-and-out").

Early retirement factors before age 55 are not provided in the plan. At DOPT, a participant was age 52 with 31 years of service. At BPD, he was age 50 with 29 years of service. The participant's vested benefit at DOPT is $1000.00 per month commencing at NRA (65), but at BPD his vested benefit was only $950.00. No maximum or phase-in limits apply.

Under prior law, the participants guaranteed benefit would have been $1000.00. Because the plan is a PPA 2006 bankruptcy plan, the guaranteed benefit is:

\$950.00	(guaranteed accruals stop at BPD instead of DOPT)
x0.5000	(ineligible for "30-and-out"; plan ERF from 65 to 55)
x0.7778	(no plan factor at 52: PBGC ERF at 52 / PBGC ERF at 55 = 0.3500 /
\$369.46	0.4500)

3. **Disability Benefits**

PBGC will not guarantee the additional value provided by a disability benefit to which a participant becomes entitled under the plan after BPD. Like early retirement benefits (see section D.2 above), eligibility for entry into pay status, including with disability benefits depends on the conditions that were satisfied under the plan on or before DOPT (not BPD).

To determine the date a participant in a PPA 2006 bankruptcy plan is or became eligible to enter pay status with a disability retirement benefit, see section D.3.a below. To determine whether a participant receiving an auxiliary disability benefit that has not yet converted to the regular retirement benefit may come out of pay status, see section D.3.b below. To determine the extent to which PBGC will guarantee the additional value provided by a disability benefit, see section D.3.c below.

a. **Eligibility to Receive Disability Benefits**

Eligibility for entry into pay status depends on the conditions that were satisfied under the plan on or before DOPT (not BPD).

Participants in a PPA 2006 bankruptcy plan may have met the plan's eligibility requirements for a disability benefit as a result of a disability that began or is attributable to a disabling event that occurred between BPD and DOPT. See Internal Guidance Disability Benefits. The disability provisions of a plan may also provide disabled participants with a subsidized benefit payable after the disabling event. For example, a participant may have started receiving a disability benefit after becoming permanently incapacitated between BPD and DOPT, and begun receiving the plan's partially subsidized disability retirement benefit before the plan was trusteed. In such situations, a participant the prior plan administrator put into pay status before PBGC trusteed the plan will remain in pay status after PBGC trustees the plan if the plan's requirements for a disability retirement were satisfied on or before DOPT. Similarly, a participant who was not in pay status when PBGC trusteed the plan, but satisfied the plan's requirements for a disability retirement on or before DOPT, will be eligible to go into pay status at the ASD described in Internal Guidance Annuity Starting Dates.

Example 3. A participant in a PPA 2006 bankruptcy plan became disabled after BPD and before DOPT. At DOPT, he is age 45. The plan's disability benefit equals the accrued benefit earned as of the disability date, reduced (but with a subsidized factor) for early commencement. The participant was receiving a benefit at DOPT. He will remain in pay status after the plan is trusteed. If the participant were not in pay status when the plan was trusteed, PBGC would allow the participant to enter into pay status.

b. **Pre-Conversion Auxiliary Disability Benefits**

For a plan disability benefit that

(1) is an auxiliary benefit which has not yet converted to a retirement benefit, as described in section H.1 of Internal Guidance Disability Benefits; and

(2) is not guaranteed because the participant became entitled to the auxiliary benefit between BPD and DOPT,

PBGC will generally offer the disabled participant the following options:

- Remain in pay status by submitting an application for his regular retirement benefit (including electing a benefit form) as described in section D.3.c below

  or

- Come out of pay status and begin receiving his regular retirement benefit at a later date, based on the plan's retirement eligibility requirements

In either case, PBGC will seek repayment of any resulting benefit overpayments in accordance with Internal Guidance Recoupment, Recovery and Administrative Correction. This generally means that if the payee comes out of pay, PBGC will seek repayment of any resulting benefit overpayments by recouping from the future retirement benefit payments at no more than 10%.

If it is anticipated that plan assets and PBGC recoveries will cover a substantial portion of the nonguaranteed portion of the auxiliary benefit, request guidance by emailing PSDGuidance@pbgc.gov.

For the amount of the participant's guaranteed benefit, see Example 4 below.

c. **Guaranteed Amount of Disability Benefits**

PBGC will determine whether the additional value provided by a disability benefit is guaranteed by following Internal Guidance Disability Benefits and substituting BPD for DOPT. Generally, PBGC will guarantee the additional value provided by a disability benefit in a PPA 2006 bankruptcy plan only if the disability began or is attributable to a disabling event that occurred on or before BPD.

If the disabling event occurred after BPD and on or before DOPT, the portion of the plan's disability benefit that PBGC will guarantee (subject to the Title IV limitations described in section D.4 below) will be equal to the amount that would otherwise be payable by PBGC, had the subsidized disability benefit payable not been available. If no benefit would have otherwise been payable at the ASD (see section D.3.a above), the benefit will be actuarially reduced using the method set forth in section D of Internal Guidance Erroneous Commencement.

Example 4. A participant in a PPA 2006 bankruptcy plan became disabled after BPD and before DOPT. He was age 45 when he started receiving a disability pension from the plan between BPD and DOPT. The plan's disability benefit equals the accrued benefit earned as of the disability date. The plan also provides a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA). When the participant's disability occurred, he was entitled to a vested benefit of $1000.00 per month but at BPD his vested benefit was only $950.00. No maximum or phase-in limits apply.

The participant will remain in pay status. Under prior law, the participant's guaranteed benefit would have been $1000.00. Under PPA 2006, the guaranteed benefit equals $263.89:

$950.00	(guaranteed accruals stop at BPD)
x0.5000	(not eligible for disability at BPD)
x0.5556	(no plan factor at 45: PBGC ERF at 45 / PBGC ERF at 55 = 0.2500 / 0.4500)
$263.89	(guaranteed benefit)

4. **Title IV Limitations on Guaranteed Benefits**

   a. **Accrued-at-Normal (AAN) Limitation.**

Under the AAN rule, PBGC's guarantee is limited to the amount of a straight life annuity (SLA) commencing at normal retirement age. Before calculating the guaranteed benefit for a plan that is not a PPA 2006 bankruptcy plan, PBGC calculates the benefit under each plan/amendment in the 5 years before DOPT. For each plan/amendment PBGC applies the AAN limitation by determining the dollar amount payable as a straight-life annuity (SLA) commencing at normal retirement age (NRA) using the plan provisions of that plan/amendment. In performing this calculation, PBGC uses vesting and accruals (e.g., based on service, salary) as of DOPT.

In calculating and applying the AAN in PPA 2006 bankruptcy plans for guarantee purposes, PBGC will continue to use this same "amendment by amendment" approach by calculating the benefit under each plan/amendment in the 5 years before BPD and using vesting and accruals (e.g., based on service, salary) as of BPD (not DOPT).

Example 5. BPD is 1/2/08 and DOPT is 1/2/10. The PPA 2006 bankruptcy plan provides a SLA benefit at normal retirement age (NRA) equal to a benefit rate (BR) times years of credited service (YoS). The plan was amended on 1/1/00 (more than 5 years before BPD), 1/1/07 (before BPD) and 1/1/09 (between BPD and DOPT). A participant's BR and YoS are as follows:

Plan	BR	YoS:	@BPD	@DOPT
5-yr-old plan (effective 1/1/00)	$10.00		10	12
1-yr-old plan (effective 1/1/07)	$15.00		10	12
post-BPD plan (effective 1/1/09)	$20.00		10	12

PBGC will use credited service, salary, and other relevant factors as of BPD to determine the AAN limits on the 1/1/00 and 1/1/07 benefits, disregarding the benefit increases that result from the later amendment (1/1/09) for determining the guaranteed benefit.

To determine the AAN limit on the benefit under each amendment, PBGC will use the 5-year-old benefit (counting from BPD) determined under the plan provisions in effect prior to the 2007 amendment. The AAN limit for the 5-year-old plan is $100.00:

$10.0	(BR under 5-yr-old plan)
x 10	(YoS at BPD)
$100.00	(plan benefit payable as SLA at NRA under 5-yr-old plan)

The provisions in effect at the time of the 2007 amendment will determine the 1-year-old benefit (counting from BPD) for the AAN limit. The AAN limit for the 1-year-old plan is $150.00:

$15.00	(BR under 1-yr-old plan)
x 10	(YoS at BPD)
$150.00	(plan benefit payable as SLA at NRA under 1-yr-old plan)

b. **Maximum Guaranteeable Benefit (MGB) and Disability Maximum.**

To calculate and apply the MGB in PPA 2006 bankruptcy plans, PBGC generally will treat BPD as DOPT. This means that to determine the maximum insurance limit (MIL), PBGC will use the calendar year in which BPD (not DOPT) occurs to establish (1) the five-year period of the participant's adjusted gross income (see ERISA section 4022(b)(3)(A)), and (2) the maximum amount for a SLA payable at age 65 (see ERISA section 4022(b)(3)(B)). The lesser of these two amounts is the MIL.

To determine the MGB, PBGC actuarially adjusts the MIL for form and age by multiplying the MIL by (1) an early/late retirement factor (ERF/LRF) and (2) a benefit form conversion factor (BFCF). (For certain disabled participants, PBGC actuarially adjusts the MIL only for form. See section D of Internal Guidance Disability Benefit.)

If the participant is alive on DOPT:

- The ERF/LRF will be calculated using the participant's age at the later of BPD and ASD (or expected retirement date (XRD) if applicable).

If the participant is not alive on DOPT and a benefit is payable to a beneficiary at DOPT:

- The ERF/LRF will be calculated using the beneficiary's age at the later of BPD and ASD (where the ASD is the participant's ASD or, if a pre-retirement survivor annuity is payable, the beneficiary's ASD).

The BFCF will be calculated based on the form of the benefit being paid, or expected to be paid, at the later of DOPT (not BPD) and ASD (or XRD if applicable). However, if age is used in the calculation of the BFCF (e.g., the age-difference factor for a joint-life annuity), the BFCF will be based on the age(s) at the later of BPD and ASD (or XRD if applicable). Similarly, if the form of benefit includes a period-certain feature, the BFCF will be based on the number of months remaining at the later of BPD and ASD.

If the benefit is non-level (e.g., a step-down annuity), PBGC will levelize the plan benefit and compare the levelized benefit to the MGB. The factors used to levelize the plan benefit will be based on (1) the number of years additional benefits are payable at the later of the ASD (or XRD if applicable) and BPD (not DOPT) and (2) the age of the participant (last birthday) at the later of the ASD (or XRD if applicable) and BPD (not DOPT).

Example 6. BPD is 7/12/07 and DOPT is 7/12/08. Participant A (age 64 at BPD) is receiving the plan's 10-year certain-and-continuous (10C&C) annuity. Forty-eight months remain in the certain period at BPD. The MGB will equal $3759.53:

$4125.00	(MIL at BPD)
x 0.9300	(ERF at age 64)
x 0.9800	(48 months remaining in the certain period at BPD)
$3759.53	(MGB payable to 64-year-old with 48 months certain)

Participant B has been receiving a J&50%S since 1/1/2007 (before BPD). The participant's spouse was 64 at BPD. The participant dies 12/15/07 (between BPD and DOPT). The spouse's survivor annuity begins on 1/1/08. The form of the benefit in pay status at DOPT is the survivor's SLA, so the form of the MGB is SLA. The maximum benefit PBGC will guarantee is $3836.25:

$4125.00	(MIL at BPD)
x 0.9300	(ERF at age 64)
$3836.25	(MGB payable to 64-year-old as SLA)

Participant C had a Social Security leveling option payable until age 65. He was 62 at BPD and 63 at DOPT. The plan benefit (payable as a SLA) is $5000.00 per month until age 65 and $4000.00 thereafter. The levelized step-down annuity equals $4242.00:

$242.00	(levelized at age 62 with 3 years = $1000.00 x 0.242)
+$4000.00	(plan benefit payable for life)
$4242.00	(levelized plan benefit equivalent)

The MGB equals $3258.75:

$4125.00	(MIL at BPD)
x 0.7900	(ERF at age 62)
$3258.75	(MGB payable to 62-year-old as SLA)

PBGC will guarantee 76.82% (= $3258.75 / $4242.00) of the participant's non-level benefit--i.e., $3841.00 until age 65 and $3072.80 thereafter:

$5000.00	(benefit participant is receiving at DOPT)
x 0.7682	(guarantee ratio)
$3841.00	(guaranteed benefit payable from age 64 to 65)

$4000.00	(benefit participant is receiving at DOPT)
x 0.7682	(guarantee ratio)
$3072.80	(guaranteed benefit payable at age 65)

c. **Phase-In Limitation**

PBGC will apply the phase-in limitation from BPD instead of DOPT. This means that to determine the number of years a benefit increase has been in effect, PBGC will count the number of full years (complete 12-month periods) ending on or before BPD during which such benefit increase was in effect.

As with plans that are not PPA 2006 bankruptcy plans, to determine the guaranteed benefit, multiple benefit increases within any 12-month period are aggregated and treated as one benefit increase.

For participants (and beneficiaries) receiving a benefit at DOPT, PBGC will apply the phase-in limitation using the form of benefit that is being paid at DOPT (not necessarily the form of the benefit the participant was receiving at BPD).

> **Example 7.** BPD is 10/2/07 and DOPT is 10/2/09. A PPA 2006 bankruptcy plan provides a SLA benefit at normal retirement age (NRA) equal to a benefit rate times years of credited service (YoS). Until the 3/1/06 plan amendment increased the benefit rate to $25.00, the benefit rate was $20.00. A participant had 10 YoS at BPD and 12 YoS at DOPT.
>
> The plan's benefit payable to the participant at NRA as a SLA is $300.00 (12 YoS x $25.00). PBGC will phase in the benefit increase at $20/20% because the amendment was in effect only 1 full year before BPD, and will guarantee $220.00:

$250.00	(BPD-1 benefit with YoS until BPD = $25.00 x 10 YoS)
- $200.00	(BPD-5 benefit with YoS until BPD = $20.00 x 10 YoS)
$50.00	(increase in plan benefit)
$20.00	(guaranteed portion of the increase)
+ $200.00	(BPD-5 benefit)
$220.00	(guaranteed benefit)

d. **Majority Owner Determination and Limitation**

To determine whether a participant is a majority owner for the purposes of the majority owner limitation, PBGC will use the 60-month period ending on DOPT (not BPD). To determine the benefit PBGC will guarantee for a majority owner, PBGC will substitute BPD for DOPT in the "x/10" phase-in ratio.

> **Example.** BPD is 3/2/07 and DOPT is 5/12/09. The PPA 2006 bankruptcy plan was adopted in June 1999, with an effective date of 2/1/00. A participant owned 60% of the capital interest of one of the plan's contributing sponsors from May 2004 until June 2005.

PBGC will deem the participant a majority owner because he held a majority interest of a contributing sponsor within 60 months of DOPT. As the plan had been in effect for less than 10 years before BPD, PBGC will apply the majority owner phase-in to the participant's benefit. The majority owner phase-in ratio is 7/10 because the later of the effective date and adoption date of the plan is 2/1/00, which is 7 full years before BPD.

E. PPA 2006 Changes to Allocation of Plan Assets

1. **Benefits Assigned to PC3.**

   PBGC will assign to PC3 those benefits that were in pay status or could have been in pay status at BPD-3, taking into account generally only the lowest benefits that were included in the provisions of the plan at BPD-5. PBGC will calculate benefits in PC3 based on vesting and the accrued benefit amount as of BPD-3. See Internal Guidance Allocation of Assets – Priority Category 3**.**

2. **Benefits Assigned to PC4.**

   The "gross" benefits in a priority category are the benefits PBGC assigns to that priority category; the "net" benefits in a priority category include gross benefits in that category less the benefits PBGC assigns to higher (i.e., lower numbered) priority categories. For example, this means that net PC4 benefits are the gross PC4 benefits less those benefits PBGC assigns to PC2 and PC3.

   PBGC will include in gross PC4 those benefits that were accrued and nonforfeitable as of BPD (instead of DOPT) after reductions for the AAN, MIL and the non-majority owner phase-in limitations as described above. Gross PC4 benefits include benefits that would be guaranteed but for the majority owner and aggregate maximum limitations (see section F.6 below).

3. **Basic-Type Benefits.**

   For PPA 2006 bankruptcy plans, the category of basic-type benefits is expanded to include those benefits not guaranteed solely because they accrued or became nonforfeitable, or the participant became entitled to them, between BPD and DOPT.

   For the purpose of separating basic-type benefits from nonbasic-type benefits in the allocation of assets to priority categories, PBGC will set a single AAN limit to be the dollar amount payable as a SLA commencing at NRA under the provisions of the plan in effect at DOPT (not BPD).

F. Determinations Not Directly Affected by Bankruptcy

1. **Expected Retirement Age (XRA)**

   PBGC determines XRA by using Table I and Tables II-A, II-B, and II-C in CFR section 4044 Appendix D. Table I uses the guaranteed benefit to determine whether Table II-A, II-B or II-C is used.

PBGC will use the guaranteed benefit at BPD (not DOPT) in Table I. PBGC will determine XRA using the participant's earliest and unreduced retirement ages at DOPT (not BPD) in Table II-A, II-B or II-C.

2. **Valuation of Benefits**

   PBGC will value all liabilities, including those in PC3, as of DOPT (not BPD). See Internal Guidance Allocation of Assets - Priority Category 3.

3. **Valuation Data**

   PBGC will continue to use participant and beneficiary data (regarding marital, health and death status, etc.) as of DOPT for purposes of valuation of benefit.

4. **Statutory Hybrid Plans (including Cash Balance Plans)**

   In a statutory hybrid plan, including a cash balance plan, PBGC will fix the plan's variable rates for accumulating interest to a hypothetical account balance and converting the balance to an annuity, as well as variable mortality rates, by using DOPT (not BPD).

5. **Overpayment Accrual Commencement Date (OACD)**

   For purposes of recoupment and recovery, PBGC will not treat payments made between BPD and DOPT as overpayments. Therefore, the plan's BPD does not affect the OACD. See Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

6. **Aggregate Limit**

   PBGC will apply the Aggregate Limit (see ERISA section 4022B) by using the participant's MGB as of DOPT (not BPD) of the latest-terminating plan. See Internal Guidance Aggregate Limit on Benefits Payable from PBGC Funds***.***

7. **4022(c) Benefits**

   One element in determining 4022(c) benefits is the amount of a plan's unfunded nonguaranteed benefits (UNGB)—i.e., benefits that are neither guaranteed by PBGC nor funded by the plan's assets. See Internal Guidance 4022(c) Amounts. Because guaranteed benefits and PC3 benefits for a PPA 2006 bankruptcy plan will be different than under prior law (see sections D and E above), the amount of UNGB will be affected. However, PBGC will continue to value UNGB as of DOPT.

   Another element for determining 4022(c) benefits is the applicable recovery ratio. The recovery ratio's numerator (the value of PBGC's recoveries for its claims under sections 4062(b), 4063 and 4064) and the denominator (the amount of employer liability under sections 4062(b), 4063 and 4064) will continue to be based on amounts as of DOPT.

8. **Benefits Assigned to PC5**

   PBGC will separate PC5 benefits into subcategories based on whether the nonforfeitable pension benefits would have been payable under the plan provisions in effect five years before DOPT (not BPD) and under subsequent plan amendments. This means that PPA 2006 indirectly affects the benefits PBGC will assign to net PC5 because the guaranteed benefit will depend on BPD (not DOPT). However, PPA 2006 does not affect the benefits PBGC will assign to gross PC5.

Example 9. BPD is 10/2/07 and DOPT is 10/2/09. A PPA 2006 bankruptcy plan provides a SLA benefit at NRA equal to a benefit rate (BR) times years of credited service (YoS). The plan had the following benefit rates:

Amendment Date	Provisions in Effect		BR
9/30/02	BPD-5	DOPT-7	$20.00
9/30/04	BPD-3	DOPT-5	$25.00
9/30/06	BPD-1	DOPT-3	$30.00
9/30/08	BPD+1	DOPT-1	$35.00

A participant (not eligible for benefits in PC3) accrued 28 YoS at BPD and 30 YoS at DOPT. The plan benefit is $1050.00 (=$35.00 x 30 YoS). PBGC will guarantee $672.00:

$560.00	(BPD-5 benefit with YoS until BPD = $20.00 x 28 YoS)
+ $84.00	(guaranteed portion of the increase)
+ $28.00	(guaranteed portion of the increase)
$672.00	(guaranteed benefit)

The non-guaranteed benefits in PC5 are prioritized according to the oldest provisions, using accruals (service, salary, etc.) at DOPT. Thus, layer PC5a has priority in the asset allocation over layer PC5b, etc.:

Layer	Provisions	Gross	Net
PC5a	DOPT-5	$750.00 = $25.00 x 30 YoS	$78.00 = $750.00 - $672.00
PC5b	DOPT-3	$900.00 = $30.00 x 30 YoS	$150.00 = $900.00 - $750.00
PC5c	DOPT-1	$1050.00 = $35.00 x 30 YoS	$150.00 = $1050.00 - $900.00