

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

NOTE: Certain provisions of part 4044 have been superseded by legislative changes. For example, there are references to provisions formerly codified in 29 CFR part 2617, subpart C (and to the Notice of Sufficiency provided for thereunder) that no longer exist because of changes in the PBGC's plan termination regulations in response to the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987. The PBGC intends to amend part 4044 at a later date to conform it to current statutory provisions.

SOURCE: 61 FR 34059, July 1, 1996, unless otherwise noted.

Subpart A—Allocation of Assets

GENERAL PROVISIONS

§ 4044.1 Purpose and scope.

This part implements section 4044 of ERISA, which contains rules for allocating a plan's assets when the plan terminates. These rules have been in effect since September 2, 1974, the date of enactment of ERISA. This part applies to any single-employer plan covered by title IV of ERISA that submits a notice of intent to terminate, or for which PBGC commences an action to terminate the plan under section 4042 of ERISA.

(a) *Subpart A.* Sections 4044.1 through 4044.4 set forth general rules for applying §§ 4044.10 through 4044.17. Sections 4044.10 through 4044.17 interpret the rules and describe procedures for allocating plan assets to priority categories 1 through 6.

(b) *Subpart B.* The purpose of subpart B is to establish the method of determining the value of benefits and assets under terminating single-employer pension plans covered by title IV of ERISA. This valuation is needed for both plans trustee under title IV and plans which are not trustee. For the former, the valuation is needed to allocate plan assets in accordance with subpart A of this part and to determine the amount of any plan asset insufficiency. For the latter, the valuation is needed to allocate assets in accordance with subpart A and to distribute the assets in accordance with subpart B of part 4041 of this chapter.

(1) Section 4044.41 sets forth the general provisions of subpart B and applies

to all terminating single-employer plans. Sections 4044.51 through 4044.57 prescribe the benefit valuation rules for plans that receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and are placed into trusteeship by PBGC, including (in §§ 4044.55 through 4044.57) the rules and procedures a plan administrator shall follow to determine the expected retirement age (XRA) for a plan participant entitled to early retirement benefits for whom the annuity starting date is not known as of the valuation date. This applies to all trustee plans which have such early retirement benefits. The plan administrator shall determine an XRA under § 4044.55, § 4044.56 or § 4044.57, as appropriate, for each active participant or participant with a deferred vested benefit who is entitled to an early retirement benefit and who as of the valuation date has not selected an annuity starting date. (See Note at beginning of part 4044.)

(2) Sections 4044.71 through 4044.75 prescribe the benefit valuation rules for calculating the value of a benefit to be paid a participant or beneficiary under a terminating pension plan that is distributing assets where the plan has received a Notice of Sufficiency issued by PBGC pursuant to part 2617 of this chapter and has not been placed into trusteeship by PBGC. (See Note at beginning of part 4044.)

EFFECTIVE DATE NOTE: At 76 FR 34605, June 14, 2011, § 4044.1 (b)(1) was amended by removing from the second sentence the words “receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and,” and by removing from the end of the paragraph the parenthetical “(See Note at beginning of part 4044.)” Section 4044.1(b)(2) was amended by removing “received a Notice of Sufficiency issued by PBGC pursuant to part 2617 and has” and by removing “(See Note at beginning of part 4044.)”. These amendments became effective July 14, 2011.

§ 4044.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: annuity, basic-type benefit, Code, distribution date, earliest retirement age at valuation date, ERISA, expected retirement age (XRA), fair market value, guaranteed benefit, insurer, IRS, irrevocable commitment, mandatory employee con-

tributions, nonbasic-type benefit, non-forfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, single-employer plan, substantial owner, termination date, unreduced retirement age (URA), and voluntary employee contributions.

(b) For purposes of this part:

Deferred annuity means an annuity under which the specified date or age at which payments are to begin occurs after the valuation date.

Early retirement benefit means an annuity benefit payable under the terms of the plan, under which the participant is entitled to begin receiving payments before his or her normal retirement age and which is not payable on account of the disability of the participant. It may be reduced according to the terms of the plan.

Non-trusteed plan means a single-employer plan which receives a Notice of Sufficiency from PBGC and is able to close out by purchasing annuities in the private sector in accordance with part 2617 of this chapter. (See Note at beginning of part 4044.)

Notice of Sufficiency means a notice issued by the PBGC that it has determined that plan assets are sufficient to discharge when due all obligations of the plan with respect to benefits in priority categories 1 through 4 after plan assets have been allocated to benefits in accordance with section 4044 of ERISA and this subpart. (See Note at beginning of part 4044.)

Priority category means one of the categories contained in sections 4044 (a)(1) through (a)(6) of ERISA that establish the order in which plan assets are to be allocated.

Trusteed plan means a single-employer plan which has been placed into trusteeship by PBGC.

Valuation date means (1) for non-trusteed plans, the date of distribution and (2) for trustee plans, the date of termination.

(c) For purposes of subpart B of this part (unless otherwise required by the context):

Age means the participant's age at his or her nearest birthday and is determined by rounding the individual's exact age to the nearest whole year. Half years are rounded to the next