Subpart D prescribes procedures that minimize the overpayment of benefits by plan administrators after initiating distress terminations of single-employer plans that are not expected to be sufficient for guaranteed benefits. Subpart E sets forth the method of recoupment of benefit payments in excess of the amounts permitted under sections 4022, 4022B, and 4044 of ERISA from participants and beneficiaries in PBGC-trusteed plans, and provides for reimbursement of benefit underpayments. (The provisions of this part have not been amended to take account of changes made in section 4022 of ERISA by sections 766 and 777 of the Retirement Protection Act of 1994.)

§ 4022.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, employer, ERISA, guaranteed benefit, mandatory employee contributions, nonforfeitable benefit, normal retirement age, notice of intent to terminate, PBGC, person, plan, plan administrator, plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, substantial owner, and title IV benefit.

In addition, for purposes of this part (unless otherwise required by the context):

Accumulated mandatory employee contributions means mandatory employee contributions plus interest credited on those contributions under the plan, or, if greater, interest required by section 204(c) of ERISA.

Benefit in pay status means that one or more benefit payments have been made or would have been made except for administrative delay.

Benefit increase means any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan. Such increases include, but are not limited to, a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase, and any change in plan provisions which advances a participant’s or beneficiary’s entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments. In the case of a plan under which the amount of benefits depends on the participant’s salary and the participant receives a salary increase the resulting increase in benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase. Similarly, in the case of a plan under which the amount of benefits depends on the participant’s age or service, and the participant becomes entitled to increased benefits solely because of advancement in age or service, the increased benefits to which the participant becomes entitled will not, for the purpose of this part, be treated as a benefit increase.

Covered employment means employment with respect to which benefits accrue under a plan.

Pension benefit means a benefit payable as an annuity, or one or more payments related thereto, to a participant who permanently leaves or has permanently left covered employment, or to a surviving beneficiary, which payments by themselves or in combination with Social Security, Railroad Retirement, or workmen’s compensation benefits provide a substantially level income to the recipient.

Straight life annuity means a series of level periodic payments payable for the life of the recipient, but does not include any combined annuity form, including an annuity payable for a term certain and life.

§ 4022.3 Guaranteed benefits.

Except as otherwise provided in this part, the PBGC will guarantee the amount, as of the termination date, of a benefit provided under a plan to the extent that the benefit does not exceed...
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the limitations in ERISA and in sub-
part B, if—
(a) The benefit is, on the termination
date, a nonforfeitable benefit;
(b) The benefit qualifies as a pension
benefit as defined in §4022.2, and
(c) The participant is entitled to the
benefit under §4022.4.
[61 FR 34028, July 1, 1996; 61 FR 67943, Dec. 26,
1996]

EFFECTIVE DATE NOTE: At 76 FR 34601, June
14, 2011, §4022.3 was amended by designating
the introductory text as paragraph (a) with the
heading “General,” redesignating para-
graphs (a), (b), and (c) as paragraphs (1), (2),
and (3), and adding a new paragraph (b), ef-
fective July 14, 2011. For the convenience
of the user, the added text is set forth as fol-
lows:

§ 4022.3 Guaranteed benefits.

* * * * *

(b) PPA 2006 bankruptcy termination. (1) Sub-
stitution of bankruptcy filing date. In a PPA
2006 bankruptcy termination, “bankruptcy
filing date” is substituted for “termination
date” each place that “termination date” appears in paragraph (a) of this section.

(2) Condition for entitlement satisfied between
bankruptcy filing date and termination date. If
a participant becomes entitled to a sub-
sidized early retirement or other benefit be-
fore the termination date (or on or before
the termination date, in the case of a re-
quirement that a participant attain a par-
ticular age, earn a particular amount of
service, become disabled, or die) but on or
after the bankruptcy filing date (or after the
bankruptcy filing date, in the case of a re-
quirement that a participant attain a par-
ticular age, earn a particular amount of
service, become disabled, or die), the subsidy
or other benefit is not guaranteed because
the participant had not satisfied the condi-
tions for entitlement by the bankruptcy fil-
ing date. In such a case, the participant may
have been put into pay status with the sub-
sidized early retirement or other benefit by
the plan administrator, because the plan was
ongoing at the time. Even though the sub-
sidy or other benefit is not guaranteed, the
participant may be entitled to another ben-
efit from PBGC (at that time or in the fu-
ture). If so, PBGC will continue paying the
participant a benefit, but in an amount re-
duced to reflect that the subsidy or other
benefit is not guaranteed. PBGC will also
allow a similarly situated participant who
had not started receiving a subsidized early
retirement or other benefit before PBGC be-
came trustee of the plan to begin receiving
a benefit (if the participant would have been
allowed under the plan to begin receiving
benefits and has reached his Earliest PBGC
Retirement Date, as defined in §4022.10), but
in an amount that does not include the sub-
sidy or other benefit.

(3) Examples. (i) Vesting. A plan provides for
5-year “cliff” vesting—i.e., benefits become
100% vested when the participant completes
five years of service; before the five-year
mark, benefits are 0% vested. The contrib-
uting sponsor of the plan files a bankruptcy
petition on November 15, 2006. The plan ter-
minates with a termination date of Decem-
ber 4, 2007, and PBGC becomes statutory
trustee of the plan. A participant had four
years and six months of service at the bank-
ruptcy filing date and became vested in May
2007. None of the participant’s benefit is
guaranteed because none of the benefit was
nonforfeitable as of the bankruptcy filing
date.

(ii) Subsidized early retirement benefit. The
facts regarding the plan are the same as in
Example (i) (paragraph (b)(3)(i) of this sec-

(iii) Accruals after bankruptcy filing date. The
facts regarding the plan are the same as in
Example (i) (paragraph (b)(3)(i) of this sec-

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