

### III. Confirmation of June 25, 2010, Interpretive Rule

Again, HUD appreciates the input and information provided by the members of the public and representatives of industry who responded to HUD's solicitation of public comment on the June 25, 2010, interpretive rule. After consideration of the comments, HUD confirms its June 25, 2010, interpretation of certain provisions of RESPA as applied to the payment of fees to real estate brokers and agents by home warranty companies. The interpretive rule therefore stands without change.

Finally, some commenters asked whether the interpretive rule has prospective or retroactive effect. An interpretive rule does not change existing law. As noted in the concluding paragraph of the rule, the interpretive rule represents HUD's interpretation of its existing regulations. This interpretive rule, therefore, does not constitute a change in HUD's interpretation of RESPA or the RESPA regulations, but is an articulation of HUD's interpretation of RESPA and the implementing regulations that specifically applies to home warranty company payments to real estate brokers and agents.

**Authority:** 12 U.S.C. 2601–2617; 42 U.S.C. 3535(d).

Dated: November 23, 2010.

**Helen R. Kanovsky,**  
General Counsel.

[FR Doc. 2010–30243 Filed 11–30–10; 8:45 am]

**BILLING CODE 4210–67–P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4044

#### Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting a new table for determining expected retirement ages for participants in pension plans undergoing distress or involuntary termination with valuation dates falling in 2011. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under a plan.

**DATES:** *Effective Date:* January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV. Guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with subpart B of part 4044. In addition, when PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b) of the asset allocation regulation, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories

respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–10 with Table I–11 in order to provide an updated correlation, appropriate for calendar year 2011, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–11 will be used to value benefits in plans with valuation dates during calendar year 2011.

PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 2011, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 2011.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

#### List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR part 4044 is amended as follows:  
■ 1. The authority citation for part 4044 continues to read as follows:

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

■ 2. Appendix D to part 4044 is amended by removing Table I–10 and adding in its place Table I–11 To read as follows:

#### Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

**TABLE I-11—SELECTION OF RETIREMENT RATE CATEGORY**  
 [For plans with valuation dates after December 31, 2010, and before January 1, 2012]

If participant reaches URA in year—	Participant's retirement rate category is—			
	Low <sup>1</sup> if monthly benefit at URA is less than—	Medium <sup>2</sup> if monthly benefit at URA is—		High <sup>3</sup> if monthly benefit at URA is greater than—
		From—	To—	
2012 .....	568	568	2,400	2,400
2013 .....	579	579	2,448	2,448
2014 .....	591	591	2,497	2,497
2015 .....	602	602	2,547	2,547
2016 .....	614	614	2,598	2,598
2017 .....	627	627	2,652	2,652
2018 .....	640	640	2,708	2,708
2019 .....	654	654	2,765	2,765
2020 .....	668	668	2,823	2,823
2021 or later .....	682	682	2,882	2,882

<sup>1</sup> Table II-A.  
<sup>2</sup> Table II-B.  
<sup>3</sup> Table II-C.

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Issued in Washington, DC, this 29th day of November 2010.

**Vincent K. Snowbarger,**

*Deputy Director for Operations, Pension Benefit Guaranty Corporation.*

[FR Doc. 2010-30301 Filed 11-30-10; 8:45 am]

**BILLING CODE 7709-01-P**

**LIBRARY OF CONGRESS**

**Copyright Royalty Board**

**37 CFR Part 381**

[Docket No. 2010-9 CRB]

**Cost of Living Adjustment for Performance of Musical Compositions by Colleges and Universities**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges announce a cost of living adjustment (“COLA”) of 1.2% in the royalty rates that colleges, universities, and other nonprofit educational institutions that are not affiliated with National Public Radio pay for the use of published nondramatic musical compositions in the ASCAP, BMI and SESAC repertories. The COLA is based on the change in the Consumer Price Index from October 2009 to October 2010.

**DATES:** *Effective Date:* January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor. Telephone: (202) 707-7658. E-mail: *crb@loc.gov*.

**SUPPLEMENTARY INFORMATION:** Section 118 of the Copyright Act, title 17 of the

United States Code, creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR parts 253 and 381.

Final regulations governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works, and published pictorial, graphic, and sculptural works for the license period beginning January 1, 2008, and ending December 31, 2012, were published in the **Federal Register** on November 30, 2007. *See* 72 FR 67646. Pursuant to these regulations, on or before December 1 of each year the Judges shall publish a notice of the change in the cost of living as determined by the Consumer Price Index (all urban consumers, all items (“CPI-U”)) during the period from the most recent index published prior to the previous notice, to the most recent index published prior to December 1 of that year. *See* 37 CFR 381.10(a). The regulations also require that the Judges publish a revised schedule of rates for the public performance of musical compositions in the ASCAP, BMI, and SESAC repertories by public broadcasting entities licensed to colleges and universities, reflecting the change in the CPI-U. 37 CFR 381.10(a)(requiring publication of a revised schedule of rates for 37 CFR 381.5). Accordingly, the Judges are hereby announcing the change in the CPI-U and applying the annual COLA to the rates set out in 37 CFR 381.5(c).

The change in the cost of living as determined by the CPI-U during the period from the most recent index published before December 1, 2009, to the most recent index published before December 1, 2010, is 1.2%.<sup>1</sup> Rounding to the nearest dollar,<sup>2</sup> the royalty rates for the performance of published nondramatic musical compositions in the repertories of ASCAP, BMI, and SESAC are \$301, \$301, and \$121, respectively.

**List of Subjects in 37 CFR Part 381**

Copyright, Music, Radio, Television, Rates.

**Final Regulations**

■ For the reasons set forth in the preamble, part 381 of title 37 of the Code of Federal Regulations is amended to read as follows:

**PART 381—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING**

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 17 U.S.C. 118, 801(b)(1), and 803.

■ 2. Section 381.5 is amended by revising paragraphs (c)(1) through (c)(3) to read as follows:

<sup>1</sup> The most recent CPI-U figures are published in November of each year and use the period 1982–1984 to establish a reference base of 100. The index for October 2009 was 216.177, while the figure for October 2010 was 218.711.

<sup>2</sup> *See* 37 CFR 381.10(b) (adjusted royalty rates shall be “fixed at the nearest dollar”).