



Comments on Proposed Rule Relating to Benefit Determinations and Plan Valuations for Statutory Hybrid Plans

December 30, 2011

Pension Benefit Guaranty Corporation

**29 CFR Part 4022
RIN 1212-AB17**

The American Society of Pension Professionals & Actuaries (“ASPPA”) and the ASPPA College of Pension Actuaries (“ACOPA”) appreciate this opportunity to comment on the proposed rule relating to Benefit Determinations and Plan Valuations for Statutory Hybrid Plans issued by the Pension Benefit Guaranty Corporation on October 31, 2011 [RIN 1212-AB17].

ASPPA is a national organization of more than 8,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system. All credentialed actuarial members of ASPPA are members of ACOPA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Most of the proposed regulation follows our understanding of proposed and final Treasury regulations regarding the determination of plan benefits in a hybrid plan. However, §4022.122 of the proposed regulation appears to permit a lump sum payment equal to the theoretical account balance in circumstances that would not be permissible under the law and Treasury regulations. Consider a cash balance plan that terminates *after* the effective date of the final market rate of return regulations, with an interest crediting rate that exceeds a market rate of return. Following the proposed §4022 regulations, the plan administrator would determine the lump sum benefit to be the account balance under the plan. However, under Internal Revenue Code (IRC) §411(a)(5), an “applicable defined benefit plan” that does not restrict the interest crediting rate to a market rate of return fails to meet the qualification requirements, and corrective action would be necessary to maintain the qualified status of the plan. Although it is impossible to know what final Treasury regulations and related guidance will provide regarding the appropriate correction, it is very likely the lump sum payment amount after correction will not be the payment determined prior to correction (which is the payment to be made under this proposed regulation).

ASPPA and ACOPA recommend that proposed regulations regarding §4022 be temporary, effective only for plan terminations occurring before the effective date of final Treasury regulations regarding market rate of return. PBGC should re-propose these rules in a manner that is consistent with the final Treasury regulations after the final market rate of return regulations are issued.



These comments were prepared by ASPPA's Defined Benefit Subcommittee of the Government Affairs Committee and the ASPPA College of Pension Actuaries. Please contact Judy A. Miller, MSPA, Chief of Actuarial Issues at (703) 516-9300 if you have any comments or questions on the matters discussed above. We look forward to discussing this matter with you in person.

Thank you for your time and consideration.

Sincerely,

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