

PBGC Finalizes Additional Guarantee for DC Rollovers

PBGC has finalized regulations that increase individual participant maximum benefit guarantees when covered defined benefit plans accept rollovers from defined contribution plans in exchange for lifetime income benefits and are subsequently terminated. PBGC anticipates increased use of rollovers and aims to promote retirement security for those benefits.

Background

PBGC had proposed this regulation in April 2014 in response to 2012 guidance from the IRS on providing annuities from funds brought into covered defined benefit plans by individual rollovers. IRS had set expectations about suitable interest rate credits and conversion rates, both based on the rules for mandatory contributions to defined benefit plans. Any subsidy of additional income benefits under the IRS rules would be treated as an “employer-provided” benefit.

PBGC’s proposed regulation followed suit with comparable treatment of any excess benefit created by generous conversion rates. The benefit based on the permitted rates would be added to the PBGC maximum guarantee provided when a single-employer plan terminates. This would assure participants that they would not lose protection of their core plan benefit by using the rollover option. Our [April 3, 2014 For Your Information](#) provides a review of the earlier IRS guidance and the PBGC’s proposal.



Few Changes in Final Rule

In line with the proposal, [PBGC's amendment](#) to their plan termination regulation:

- Treats the lifetime income purchased by the rollover contribution as a priority category 2 benefit so that it stands in line for plan asset allocations just after voluntary account benefits
- Adds the annuity income from the rollover to the maximum guarantee so that the rollover does not result in any decrease in the PBGC protection that would otherwise apply for the participant
- Shields the rollover benefit from the five-year and 10-year phase-in of PBGC’s guarantee on benefit increases

- Counts any excess produced by subsidized factors as an employer-provided benefit in lower priority categories that is subject to the maximum guarantee and phase-ins starting from the rollover date
- Bars any lump sum distribution of the participant's rollover account under a distress termination of the plan

Comment. The amended final rule does not change the treatment of “mandatory contributions” under the defined benefit plan itself. These benefits are integral to the design of the benefit structure as contrasted with the supplemental benefits created by the employee's affirmative election to roll over a distribution from another plan.

What has changed is a clarification that the rollover changes only apply to *rollovers from defined contribution plans*. In our article on the proposed regulation, we noted that the change appeared to apply to rollovers from defined benefit plans and would allow an individual to obtain a greater guarantee from two defined benefit plans than would otherwise be available. This clarification prevents such a result.

Comment. PBGC also clarifies that rollover amounts include both salary deferral contributions made by the participant as well as any other employer contributions made to the defined contribution plan. This opens a “back door” to using pretax deferrals to buy defined benefit accruals.

In Closing

As we said with the proposed regulation, the proposed amendments to PBGC's regulations would provide assurance to participants that annuitizing rollover funds through their employer's defined benefit plan will not work to their disadvantage though a reduction in their PBGC guarantee of other benefits. With the trend being for employers to de-risk and defease pension liabilities, however, this assurance is unlikely to spur plan sponsors to expand their plans to create this opportunity.

Authors

Marjorie Martin, EA, FSPA, MAAA

Jay P. Rosenberg, EA, FSA, MAAA, FCA

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