

**In Brief: PBGC Issues Final PPA Regulation
on Terminating Plans in Bankruptcy**

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Mark G. Douglas

On June 13, the Pension Benefit Guaranty Corporation (“PBGC”) released a final rule that, in most cases, will reduce the amount of pension benefits guaranteed under the agency’s single-employer insurance program when a pension plan is terminated in a bankruptcy case. The rule will also decrease the amount of pension benefits given priority in bankruptcy.

The rule (RIN: 1212-AA98) became effective on July 14. Under the final rule, the date on which a plan sponsor’s bankruptcy petition is filed will be treated by PBGC as the plan’s termination date for purposes of determining certain benefits guaranteed by PBGC. Pension plan benefits earned by participants after the bankruptcy petition date will not be guaranteed. The final rule also establishes the benefits entitled to “priority category 3” status in statutory procedures for allocating the assets of terminated plans. The final rule implements Sections 4022 and 4044(a)(3) of Title IV of the Employee Retirement Income Security Act, as amended by Section 404 of the Pension Protection Act of 2006.

One consequence of the rule will be that a plan participant’s guaranteed benefit can be no greater than the amount of the benefit on the sponsor’s bankruptcy petition date. Previously, some employers continued to sponsor plans after filing for bankruptcy and participants continued to accrue benefits after the petition date. Those postbankruptcy accruals will no longer be guaranteed by PBGC.

Another consequence of the final rule is that PBGC will guarantee only benefits that were “nonforfeitable” on the bankruptcy petition date. For a plan that has five-year “cliff” vesting, a participant with fewer than five years of service on the petition date will receive no guaranteed benefit, even if the benefit “becomes vested by the section 4048 termination date.” Similarly, if a participant becomes entitled to a disability retirement benefit or an early retirement subsidy after the sponsor’s bankruptcy petition date, but prior to the plan termination date, that disability benefit or subsidy will not be guaranteed.