

## LAW &amp; POLICY GROUP

**GRIST**

## PBGC PROPOSAL WOULD END PUBLICATION OF OLD LUMP SUM RATES

*By Mercer's Margaret Berger and Brian Kearney  
Sept. 30, 2019*

PBGC is [proposing](#) to update the actuarial basis for calculating lump sums for trustee terminated single-employer defined benefit (DB) plans. The proposal would stop monthly publication of the old PBGC tiered interest rate assumptions that some plans still use for lump sum calculations and other purposes. Instead, the agency would publish one final set of “legacy” rates for all future determination dates. Comments are due Nov. 29.

### PBGC LUMP SUM RATES

Since the 1970s, PBGC has been publishing a set of tiered (immediate and deferred) interest rates for determining *de minimis* lump sums for terminated DB plans under ERISA Section 4022. Although those rates were intended for PBGC’s use, Internal Revenue Code Section 417(e) mandated the use of these rates before 1994 to determine minimum lump sums from private-sector plans. Even after the Retirement Protection Act of 1994 changed the 417(e) actuarial basis, many plans have continued to use the PBGC legacy rates for lump sums — for example, if those rates produce a more valuable lump sum than the 417(e) rates. Plans sometimes use the legacy rates for other purposes as well — for instance, using the immediate rate for crediting interest in a cash balance plan.

### Proposal Would Eliminate Old Basis, Provide Final Rates

PBGC believes the legacy rates have become “increasingly obsolete” and intends to start using the 417(e) basis for *de minimis* lump sums. However, recognizing that some plans — what the agency considers a “relatively small number” — still use the legacy rates for some purposes, PBGC proposes to publish a final set of legacy rates for plans to use in the future. The new rates would be a 10-year average of the published rates over the period ending July 2019, resulting in an immediate rate of 1.5% — a significant bump from the current rate of 0.0% — and deferred rates of 4%.

### PLAN AMENDMENTS MAY BE NECESSARY

This isn’t the first time PBGC has suggested changing its lump sum methodology. In 2000, after pushback on a 1998 proposal to discontinue publication of its own lump sum rates, PBGC began [publishing](#) two identical sets of rates: one set for determining PBGC-paid lump sums (Appendix B rates), and a second set for use by private-sector DB plans (Appendix C rates). At the time, PBGC recommended that plan

sponsors specifically reference the Appendix C rates to ensure their plans would not be affected by any future changes in PBGC's actuarial basis. How this new proposal will affect individual plans depends, in part, on way the plan document references the rates.

Plans that specifically reference the private-sector rates shouldn't need amending if they want to continue to use those rates. However, if a plan simply refers to PBGC's lump sum rates and uses the private-sector rates in operation, the sponsor may want to amend the plan to reference Appendix C rates to avoid any ambiguity after the rule is finalized. Adopting this amendment prior to the final rule's effective date shouldn't violate the anti-cutback rules according to informal guidance the IRS gave PBGC, but employers should consult with counsel.

However, some employers may find using the final legacy rates for all future determination dates unpalatable since the immediate rate will be locked in at 1.5% (and the deferred rates at 4%), even if market rates return to higher levels. An employer that wants to avoid this result (for example, by switching to the 417(e) basis) will need to grandfather the legacy rates for accrued benefits to avoid violating the anti-cutback rules. Grandfathering would increase the plan's administrative burden (and would not help a frozen plan).

In the preamble to the 2000 regulations, PBGC acknowledged that some plans may refer to the Appendix B rates — for example, by referencing the rates PBGC uses to determine lump sums — even though the agency urged sponsors to reference Appendix C if they wanted to continue using the historical rates. Sponsors of plans that reference the Appendix B rates (or have ambiguous language) should consult with legal counsel about the proposal's possible implications for plan amendments, anti-cutback issues and other considerations.

#### **EMPLOYER ACTION STEPS**

Employers with affected plans should immediately review plan language relating to lump sum rates and carefully analyze the potential impact of the proposed rule. The changes could also affect collective bargaining agreements that require the use of PBGC lump sum rates.

Employers might consider notifying employees about the impact of the change in advance of the final rule's effective date — and should consult with legal counsel about whether such notice would be required under the employer's circumstances. The current low rates provide large lump sums, relative to a market basis like the 417(e) rates. Some employees in affected plans may be particularly attuned to the PBGC rates and the impact of the change, so those employees may decide to retire to lock in the lower rate. But many employees won't be aware of the change or its impact without notice from their employer.

Depending on the impact on their plans, sponsors may want to comment on the proposal. PBGC has specifically requested comments on which private-sector plans use the legacy rates for what purposes, and whether setting the future rate at the 10-year average would cause any undue burden. PBGC is also interested in whether other entities use the legacy rates and, if so, for what purpose.

## RELATED RESOURCES

- [Proposed PBGC Rule on Lump Sum Payment Assumptions](#) (Federal Register, Sept. 30, 2019)
- [Final PBGC Rule on Lump Sum Payment Assumptions](#) (Federal Register, March 17, 2000)

*Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.*