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## TECHNICAL UPDATE 00-4

# PBGC's Full Funding Limit Exemption From The Variable Rate Premium

*Editor's Note: This is an August 25, 2000, news release from The Pension Benefit Guaranty Corporation's Web site (www.pbgc.gov). It is being reprinted with permission.*

*See Examples 2 and 3 for situations where the RPA 94 full funding limit "90% override" is controlling.*

*The Pension Benefit Guaranty Corporation (PBGC) today issued Technical Update 00-4, explaining how the full funding limit exemptions from PBGC's variable rate premium works in light of a change in the full funding limitation of Internal Revenue Code section 412 (c)(7).*

*The Retirement Protection Act of 1994 changed Internal Revenue Code section 412 (c)(7) by adding a "90% override" to the full funding limitation. The 90% override provides that the full funding limitation is not less than the excess, if any, of 90% of a pension plan's current liability over the actuarial value of the plan's assets.*

*The PBGC has received inquiries about the proper treatment of credit balances in applying the 90% override for purposes of PBGC's full funding limit exemption. Technical Update 00-4 clarifies what the correct result is under the statutory and regulatory framework of Title IV of the Employee Retirement Income Security Act of 1974.*

*Technical Update 00-4 is available on the PBGC's Web site at (www.pbgc.gov). For more information, plan administrators and pension practitioners may contact Jane Pacelli of PBGC at (202) 326-4080, ext. 6775 (e-mail: pacelli.jane@pbgc.gov).*

**T**his technical update explains how the PBGC full funding limit exemption (PBGC FFL Exemption) from the variable rate premium (VRP) works in light of the changes the Retirement Protection Act of 1994 (RPA) made to the full funding limitation under section 412(c)(7) of the Internal Revenue Code of 1986 (Code). The RPA added a "90% override" to the full funding limitation. The 90% override provides that the full funding limitation is not less than the excess, if any, of 90% of the plan's current liability over the actuarial value of the plan's assets.

The PBGC has received inquiries about the proper treatment of credit balances in applying the 90% override for purposes of the PBGC FFL Exemption. This update clarifies what the correct result is under the statutory and regulatory framework of Title IV of ERISA.

### Guidance

The 90% override does not require greater contributions for the PBGC FFL Exemption than are required for the plan to be at the full funding limitation under Code section 412(c)(7) for funding purposes. Accordingly, a plan qualifies for the PBGC FFL Exemption for a plan year if the sum of contributions to the plan for the prior year (including any interest credited under the funding standard account) and any credit balance in the funding standard account (including interest to the end of the plan year) is not less than the full funding limitation under Code section 412(c)(7).

For purposes of the preceding sentence

- \* the "Full Funding Limitation under Code section 412(c)(7)" means the full funding limitation as calculated for minimum funding purposes, i.e., the sentence in the PBGC regulations providing that "[p]lan assets shall not be reduced by the amount of any credit balance in the plan's funding standard account" is inapplicable;
- \* the PBGC rules (see 29 CFR § 4006.5(a)(5)) on rounding down contributions and on counting only contributions made by the earlier of the VRP due date or VRP payment date continue to apply.

See the Appendix to this update for examples of how the PBGC FFL Exemption works.

### Effective Date

This guidance is generally effective for PBGC premium purposes for plan years beginning after December 31, 1995.

### Effect of Guidance

This guidance will have no effect on the vast majority of plans for which a VRP was paid (see Example 1 in the Appendix). Based on the PBGC's analysis, there were only 100-200 plans since 1996 for which a VRP may have been paid solely as a result of applying the PBGC FFL Exemption in a manner inconsistent with this technical update (see Examples 2 and 3 in the Appendix). The plan administrator of such a plan

may apply for a refund through the PBGC's normal refund process (i.e., by filing an amended Form 1, including Schedule A, for the applicable year or years). Refunds are subject to the six-year limitations period in ERISA section 4003(f)(5).

For questions about this update, contact Jane Pacelli at 202-326-4080, ext. 6775.

#### **Appendix to Technical Update 00-4**

The following examples show how the PBGC FFL Exemption works. All amounts in the examples include interest to the end of the plan year and assume that actuarial value of assets equals market value of assets.

#### **Example 1**

Plan A has a full funding limitation under Code section 412(c)(7) (prior to applying the override) of \$3,000, calculated as the excess of the plan's accrued liability of \$30,000 over adjusted plan assets of \$27,000 (\$29,000 assets less \$2,000 credit balance). The plan's 90% override full funding limitation is \$900,

would have calculated its full funding limitation (using full assets) as \$1,000 — the greater of \$1,000 (\$30,000 – \$29,000) or \$900 (\$29,900 – \$29,000) — and concluded that the plan would qualify for the PBGC FFL Exemption if employer contributions equaled or exceeded \$1,000 (the same result as under the guidance in this technical update).

#### **Example 2**

Plan B has a full funding limitation under Code section 412(c)(7) (prior to applying the override) of \$3,000, calculated as the excess of the plan's accrued liability of \$30,000 over adjusted plan assets of \$27,000 (\$29,000 assets less \$2,000 credit balance).

The plan's 90% override full funding limitation is \$4,000, calculated as the excess of 90% of the plan's current liability (\$33,000) over the plan's full assets of \$29,000. Thus, the plan's full funding limitation is \$4,000 (the greater of \$3,000 or \$4,000). Plan B will qualify for the PBGC FFL Exemption if employer contributions

**exceeded the \$4,000 full funding limitation.**

#### **Example 3**

Plan C has a full funding limitation under Code section 412(c)(7) (prior to applying the override) of \$4,000, calculated as the excess of the plan's accrued liability of \$31,000 over adjusted plan assets of \$27,000 (\$29,000 assets less \$2,000 credit balance). The plan's 90% override full funding limitation is \$3,000, calculated as the excess of 90% of the plan's current liability (\$32,000) over the plan's full assets of \$29,000. Thus, the plan's full funding limitation is \$4,000 (the greater of \$4,000 or \$3,000). Plan C will qualify for the PBGC FFL Exemption if employer contributions equal or exceed \$2,000, because the sum of the contributions and the credit balance will equal or exceed the \$4,000 full funding limitation.

**Without the guidance in this technical update, the actuary for Plan C might have determined the full funding limitation to be \$3,000**

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***“The PBGC has received inquiries about the proper treatment of credit balances in applying the 90% override for purposes of the PBGC FFL Exemption. This update clarifies what the correct result is under the statutory and regulatory framework of Title V of ERISA.”***

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calculated as the excess of 90% of the plan's current liability (\$29,900) over the plan's full assets of \$29,000. Thus, the plan's full funding limitation is \$3,000 (the greater of \$3,000 or \$900). Plan A will qualify for the PBGC FFL Exemption if employer contributions equal or exceed \$1,000, because the sum of the contributions and the credit balance will equal or exceed the \$3,000 full funding limitation.

The guidance in this technical update does not affect Plan A. Without this guidance, the actuary for Plan A

equal or exceed \$2,000, because the sum of the contributions and the credit balance will equal or exceed the \$4,000 full funding limitation.

**Without the guidance in this technical update, the actuary for Plan B might have calculated its full funding limitation (using full assets) as the greater of \$1,000 (\$30,000 – \$29,000) or \$4,000 (\$33,000 – \$29,000), and concluded that the plan would not qualify for the PBGC FFL Exemption unless employer contributions equaled or**

**— the greater of the pre-override full funding limitation of \$2,000 (\$31,000 less full assets of \$29,000) and the 90% override full funding limitation of \$3,000 — and concluded that the plan would not qualify for the PBGC FFL Exemption unless employer contributions equaled or exceeded the \$3,000 full funding limitation.**