AMERICAN ACADEMY *of* ACTUARIES

September 22, 2011

David Gustafson
Chief Policy Actuary
Pension Benefit Guaranty Corporation
1200 K Street, NW
12th Floor
Washington, DC 20005

RE: Calculation of Unfunded Vested Benefits for At-Risk Plans

Dear Mr. Gustafson:

The American Academy of Actuaries[1] Pension Committee respectfully requests your consideration of its comments on the calculation of unfunded vested benefits for plans that are at risk. We specifically believe that when a plan is subject to the 4 percent and $700-per-participant load (applicable when a plan has been at risk for two of the prior four years), that load should not be included in the premium funding target for purposes of determining the variable rate premium.

As background:

- ERISA Section 303(d) defines the funding target used for minimum funding purposes. To the extent a plan is deemed to be at risk, ERISA 303(i) requires the funding target be calculated "using the additional actuarial assumptions described in subparagraph (B)" plus the 4 percent/$700-per-participant "loading factor determined under subparagraph (C)." It is worth noting that this load is defined separately, and is distinct from the benefit component of the at-risk funding target.
- Unfunded vested benefits for purposes of the variable rate premium calculation are defined in ERISA 4006(a)(3)(E)(iii) as the excess of "the funding target of the plan as determined under 303(d) for the plan year by only taking into account vested benefits and by using the interest rate described in clause (iv)" over assets.
- Pension Benefit Guaranty Corporation (PBGC) regulation Section 4006.4(b)(2) further specifies that, for this purpose, the standard premium funding target is "the plan's funding target as determined under ERISA section 303(d) (or 303(i), if applicable) for the premium payment year using the same assumptions that are used for funding purposes, except that (i) only vested benefits are taken into account," and the spot segment rates are

[1] The American Academy of Actuaries is a 17,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

used. (The alternative premium funding target is defined in a similar manner but is based on the same interest rates used for the funding calculations.)

The statute and the regulations both clearly require that only vested benefits be taken into account when determining the premium funding target. It is clear that these vested benefits must be determined using the special at-risk assumptions specified in ERISA 303(i)(1)(B). The additional load, however, is not a plan benefit, vested or otherwise, nor is it an assumption under the statute. It should, therefore, not be included in the premium funding target.

We understand that the PBGC has suggested informally an alternative interpretation of the statute and regulations. Under this interpretation, the premium funding target would be calculated as the funding target under 303(d) (or 303(i) for at-risk plans) but subtracting out the value of non-vested benefits. Under this approach, the entire amount of the load would remain in the premium funding target. As we have noted above, since the load is neither a benefit nor an assumption, we believe such an interpretation would run counter to the language of statute, which states that the premium funding target should reflect only vested benefits. And even if the load were somehow viewed as an assumption or otherwise attributable to the plan's benefits, the statute clearly limits any consideration to vested benefits. In contrast, this alternative interpretation would include the 4 percent load on non-vested benefits and a $700-per-participant load for any non-vested participants.

The Pension Committee appreciates your consideration of these comments and would be happy to discuss them with you at your convenience. Please contact Jessica M. Thomas, the Academy's senior pension policy analyst (202-785-7868, thomas@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

John H. Moore, FSA, MAAA, EA, FCA
Chair, Pension Committee
American Academy of Actuaries