

Benefit Corrections

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A. Introduction

PBGC is committed to paying the right person, the right amount, at the right time, and providing outstanding stewardship of the assets for which it is responsible. PBGC issues benefit determinations to inform participants or beneficiaries, including alternate payees, of any benefits they are due under a plan trusted by PBGC. PBGC may need to change a benefit determination or the amount of a benefit payment due to a variety of reasons, including:

- Discovery of a legal, factual, mathematical or clerical error,
- Newly obtained information, or
- An Appeals Board decision.

In the past, PBGC limited the circumstances under which it would reduce a benefit with the intent of giving participants and beneficiaries greater certainty about their benefits and to limit the administrative burden of making small benefit changes.

The Improper Payments Elimination and Recovery Act of 2010 (IPERA) requires each federal agency to take action to reduce its volume of incorrect payments. In furtherance of that mandate, PBGC is tightening its internal guidance on correcting benefit errors, while still recognizing that there may be limited circumstances in which PBGC should not correct a benefit error.

With this edition, now titled Benefit Corrections, PBGC is changing its internal guidance on correcting benefit errors to take into account the requirements of IPERA and to address other benefit correction issues that have arisen since issuance of the second edition of this internal guidance. PBGC is changing its internal guidance on correcting benefit errors by:

- 1) Clarifying that PBGC must be reasonably certain that a benefit or payment error has occurred before a benefit or payment is changed.
- 2) Providing that benefit and payment errors must be corrected, except:
 - For certain *de minimis* errors,
 - In situations where a cost-benefit analysis establishes that the cost of correcting the error exceeds the anticipated savings to PBGC of correcting the error, or
 - Where the error was previously identified, and the error was not corrected under the internal guidance in effect at that time.
- 3) Reducing the \$5.00 tolerance to a \$1.00 tolerance for errors decreasing benefits discovered when changing estimated benefits to final benefits (i.e., when issuing benefit determinations). Increases will continue to be made regardless of the amount in changing estimated benefits to final benefits.

- 4) Establishing a \$1.00 tolerance for errors increasing benefits discovered after a benefit determination becomes effective. The \$5.00 tolerance remains for errors that decrease benefits discovered after a benefit determination becomes effective.
- 5) Addressing correction of errors in benefit entitlement information other than the amount.
- 6) Clarifying correction of errors in lump-sum benefits and lump-sum payments.
- 7) No longer including rules on changes in estimated benefits before issuance of benefit determinations.
- 8) Clarifying application of the benefit correction rules when a benefit determination is correct, but subsequent payments are incorrect or incorrect benefit entitlement information is subsequently communicated.
- 9) No longer differentiating between revised benefit determinations and corrected benefit determinations.
- 10) Establishing use of limited-scope benefit determinations, rather than revised benefit determinations, in certain benefit change or correction situations.

B. Scope and Effective Date

This internal guidance addresses and distinguishes between benefit errors or payments identified when PBGC issues benefit determinations and benefit or payment errors identified after a benefit determination has become effective. It applies to benefits and payments made pursuant to settlement agreements except as otherwise provided by such agreements. These provisions are supplemented by the provisions in Internal Guidance Re-evaluations, which specifically apply to benefit errors resulting from an asset re-evaluation.

Benefit corrections required under section D.1. Annuity Benefit Amount – Corrections at Benefit Determination Issuance first apply to benefit determinations issued for plans trustee on and after October 1, 2014. The provisions in section E. Corrections at Benefit Determination Issuance in Internal Guidance Benefit Changes 2nd Ed. continue to apply to benefit determinations issued for plans trustee before October 1, 2014. Otherwise, this edition of the internal guidance applies to benefit errors identified by PBGC on or after its effective date and is effective upon issuance.

C. Definitions

As used in this internal guidance:

1. **Benefit Entitlement Information.** Benefit entitlement information means information about a participant's or beneficiary's entitlement to a benefit from PBGC that is communicated in a benefit determination and includes:
 - whether the participant or beneficiary is due a benefit under the plan, for example, whether the participant is a vested participant;

- the type of benefit payable, for example, a retirement benefit or disability benefit;
 - the form of benefit payable, for example, a straight life annuity;
 - the dates benefits are payable, for example, normal retirement date;
 - the amount of the benefit; and
 - other benefit information affecting whether a benefit is payable, to whom, when, and the amount.
2. **Benefit Error.** Benefit error means a mistake in any of the benefit entitlement information listed in section C.1. that was communicated in a benefit determination, including an omission of benefit entitlement information listed in section C.1. required to adequately address the participant's or beneficiary's entitlement.
3. **Payment Error.** Payment error means a mistake in the amount of a benefit being paid or previously paid to a participant or beneficiary. A payment error may be a benefit error or may be due to other reasons, for instance, an error in recalculating a benefit as of an elected annuity starting date or an error in the amount of added interest when paying a lump-sum or other single-sum payment.
4. **Correction.** Correction and the terms corrects or will correct mean to correct a benefit or payment error by:
- Issuing a limited-scope benefit determination, a revised benefit determination, or other notification providing corrected or additional benefit entitlement information;
 - Changing an incorrect payment to the correct amount;
 - Paying any resulting underpayment or collecting any resulting overpayment as provided under PBGC internal guidance; or
 - Otherwise taking action to ensure that the correct benefit entitlement information is communicated and correct benefit payments are made to a participant or beneficiary.

For additional guidance, see section D.7. Corrective Actions.

D. Internal Guidance

The legal obligation to correct benefit or payment errors presupposes that PBGC can establish the existence of the error and determine the correct benefit or payment with reasonable certainty. The passage of time and other circumstances beyond PBGC's present control (e.g., information or documentation that PBGC is or was unable to obtain from the plan sponsor) may reduce the confidence PBGC has in identifying and correcting an error. Without a reasonable degree of certainty, PBGC risks acting in an arbitrary manner that unfairly prejudices participants' rights in circumstances where appeal and review of benefit determinations would be both difficult and costly. Accordingly:

- Where circumstances prevent PBGC from attaining a reasonable degree of certainty in establishing whether an error has occurred or the amount of the error, PBGC will not change the benefit or payment.
- However, when PBGC concludes with reasonable certainty that an error has occurred and that it can accurately be quantified, PBGC corrects the error as provided in this internal guidance.

1. Annuity Benefit Amount - Corrections at Benefit Determination Issuance

If a payee is due a final benefit amount that differs from the estimated benefit amount being paid or that has been paid, PBGC corrects the benefit error when issuing a benefit determination as follows:

- **Increases.** An increase in the monthly amount of the benefit due or paid the payee is made regardless of the amount.
- **Decreases.** A decrease in the monthly benefit due or paid the payee is made if the decrease is \$1.00 or more.

2. Benefit Determination Has Not Become Effective

If PBGC identifies an error in a benefit determination that has not become effective, PBGC corrects the error as provided above in section D.1. and as otherwise provided in this internal guidance by issuing a revised benefit determination. The revised benefit determination will communicate all benefit entitlement information including the corrected or missing benefit entitlement information.

A benefit determination becomes effective after the 45-day appeals period established under 29 CFR §4003.52 has ended and an appeal has not been filed, or if an appeal was filed, after the Appeals Board issues a decision confirming the benefit entitlement communicated in the benefit determination. Issuance of the revised benefit determination establishes a new 45-day appeals period beginning with the date of the revised determination.

3. Annuity Benefit Amount - Corrections After Benefit Determination Becomes Effective

If a benefit determination that has become effective communicated an incorrect benefit amount or an incorrect benefit is being paid or was paid, PBGC corrects the benefit as follows:

a. Benefit in pay status.

- **Increase.** An increase will be made only if the increase is \$1.00 or more in the monthly benefit amount paid or due the participant or beneficiary.
- **Decrease.** A decrease will be made only if the decrease is \$5.00 or more in the monthly benefit amount paid or due the payee.

b. Benefit not in pay status. PBGC applies the rules in section D.3.a. in determining if the benefit error must be corrected. However, even though a benefit error may not require correction under section D.3.a., it may be more practical in some cases for PBGC to correct the error when the benefit is put into pay. For example, this could occur if the payee elects an annuity starting date or benefit form other than that provided in the benefit determination and the original

calculation program or system that generated the error is not available or has already been corrected (typically to correct errors that are outside the tolerances). The participant will be notified of the error, as provided under section D.7.a.3) Other notice of correction. PBGC generally will not issue a revised or limited-scope benefit determination.

4. Lump-Sum Benefits

PBGC corrects an error in a lump-sum benefit (e.g., an error in the lump-sum value of a benefit) or lump-sum payment (e.g., an error in the lump-sum benefit that was paid or an error in the interest added to the payment) as otherwise described in this internal guidance except as specified below:

- a. **Increases.** An increase will be made only if the increase in the lump-sum benefit or lump-sum payment is \$1.00 or more and therefore is payable as an underpayment as provided in PBGC Internal Guidance Underpayment Reimbursement and Interest Payments.
 - An increase in a lump-sum benefit resulting in a residual benefit is payable as an annuity or in an additional lump-sum payment as provided in Internal Guidance Lump-Sum Benefit Payments.
 - An increase in a lump-sum payment that was not caused by an error in the lump-sum benefit (e.g., an error in interest added to the payment) is payable only in an additional lump-sum payment.
 - b. **Decreases.**
 - **Lump-sum not paid.** A decrease in a lump-sum benefit that has not been paid will be made only if the decrease in the lump-sum value of the benefit is \$5.00 or more.
 - **Lump-sum paid.** A decrease in a lump-sum benefit that has been paid will be made only if the decrease in the lump-sum payment results in a net overpayment that is equal to or more than the amount that the Treasury Department accepts to pursue recovery (currently \$25).
 - c. **Lump sum paid when an annuity was due.** If a benefit was paid in a lump-sum payment but should have been paid as an annuity under PBGC internal guidance (e.g., the benefit was a non-*de minimis* benefit), PBGC generally will not change the benefit to an annuity and attempt to recoup or recover the lump-sum payment solely for that reason. The provisions in this internal guidance on the payment of lump sums apply.
 - d. **Annuity paid instead of lump sum.** If a benefit that was payable in a lump sum is being paid (or was paid) as an annuity – for instance where a participant elected to receive an annuity instead of a *de minimis* lump sum – the provisions in this internal guidance on correction of annuity benefits apply.
- Similarly, if an annuity is being paid where the benefit should have been paid as a lump sum – for instance to a non-spouse beneficiary who should have been paid only a lump

sum under Internal Guidance Lump-Sum Benefit Payments – PBGC will not change the benefit form and the provisions on correction of annuity benefits apply.

For additional guidance on lump-sum benefits and payments, see Internal Guidance Lump-Sum Benefit Payments.

5. Errors in Benefit Entitlement Information Other Than the Amount

If PBGC concludes that a benefit determination or other written notice communicated incorrect benefit entitlement information or omitted benefit entitlement information required to adequately describe the benefit entitlement, other than the amount of the benefit, PBGC corrects that information. Whether the amount of the benefit or a benefit payment must also be corrected will be determined as otherwise provided in this internal guidance.

a. Annuity benefit form error. If PBGC concludes that an incorrect annuity benefit form was communicated to the participant or beneficiary or a benefit is being paid in a form other than that validly elected or as provided under plan provisions, PBGC internal guidance, or applicable pension law, PBGC corrects the benefit form.

b. Retirement date error. If PBGC concludes that a benefit determination communicated an incorrect normal retirement date, earliest unreduced retirement date, earliest PBGC retirement date, or annuity starting date (ASD) or a benefit is being paid based on an ASD other than that validly elected or as provided under plan provisions, PBGC internal guidance, or applicable pension law, PBGC corrects the retirement date or dates.

Note: For guidance on a payee who is receiving a retirement benefit for which he or she was not eligible at the time payments began but who is eligible at a later date, see Internal Guidance Erroneous Commencement.

c. Errors in other types of benefit entitlement information. If a benefit determination communicated other types of benefit entitlement information that are incorrect or omitted benefit entitlement information required to adequately describe the benefit entitlement, PBGC will correct or provide that information. Other types of benefit entitlement information include any information that affects whether a benefit is payable, to whom, when, or the amount. For instance, it includes but is not limited to:

- The specified date or event as of which a temporary supplement ends;
- A benefit offset provision (the benefit is reduced by another pension benefit or other type of program benefit, such as Worker's Compensation or Black Lung benefits);
- A benefit reduction or stepdown required under the annuity benefit form, such as a Social Security Leveling Option ("SSLO");
- The cut-off date for a survivor benefit, such as in the case of a certain-and-continuous annuity ("C&C");

- A disability benefit conversion to a retirement benefit at a specified age; or
- Other benefit aspects, such as the availability of a free surviving spouse benefit ("FSSB").

6. Exceptions

- a. **Change in legal Interpretation or PBGC internal guidance.** A benefit determination generally will not be revised due to a change in legal interpretation or in PBGC internal guidance that was not in effect at the time PBGC issued the determination.
PBGC generally will not decrease a benefit under the provisions of this edition of this internal guidance if the error was previously identified by PBGC and no corrective action was taken by PBGC under the internal guidance in effect at that time.
- b. **Cost-benefit analysis of decreasing benefits.** After a benefit determination becomes effective, PBGC reserves the right to not correct benefit errors that would decrease benefits if PBGC concludes that the cost of fixing the error would exceed the amount that would be saved by fixing the error.
- c. **Participant or beneficiary not entitled to a benefit.** If PBGC concludes that a benefit determination communicated an incorrect benefit because the participant or beneficiary is not entitled to the benefit, PBGC corrects the error regardless of the amount. The cost-benefit exception described above in section D.5.b. is not applicable.
- d. **Fraud or Incorrect Information Provided by Participant or Beneficiary**

1) **Fraud.** If PBGC's Office of the General Counsel (OGC), Office of the Chief Counsel (OCC), or Office of Inspector General (IG) establishes that benefits or payments have been fraudulently procured by a participant or beneficiary, the benefit will be corrected as soon as practicable regardless of the amount of the change. If benefits are in pay status, incorrect payments may be reduced or stopped as soon as practicable based on guidance from OGC, OCC, or IG.

2) **Incorrect information provided or verified by participant or beneficiary.** If a benefit determination communicated incorrect benefit information or incorrect payments were made as the result of incorrect information provided by or verified by a participant or beneficiary or any other misrepresentation by a participant or beneficiary, PBGC corrects the benefit regardless of the amount of the change.

Information that has been provided to a participant or beneficiary in a benefit determination or other written correspondence is considered to have been verified by the participant or beneficiary if he or she knew or

reasonably should have known that the information was incorrect and did not notify PBGC.

The cost-benefit exception described above in section D.5.b. is not applicable in correcting errors resulting from fraud or incorrect information provided or verified by a participant or beneficiary.

7. Corrective Actions

PBGC takes the following actions in correcting a benefit or payment error:

a. **Notification of a benefit correction.** Written notice of a benefit correction will be sent as follows.

1) **Revised benefit determination.** Generally, a revised benefit determination will be sent to correct an error in benefit entitlement information communicated in a benefit determination. However, a revised benefit determination generally will not be issued if:

- The earlier benefit determination was correct but omitted or did not address other significant information required to adequately describe the benefit entitlement. In such a case, PBGC may issue a limited-scope benefit determination as described in section D.7.a.2) Limited-scope benefit determination, below.
- The benefit determination will not be corrected but a corrected amount will be paid, as provided in section D.3.b. Instead, notice of the error and the corrected payment amount may be sent as described section D.7.a.3) Other notice of correction, below.

2) **Limited-scope benefit determination.** If a benefit determination that has gone into effect communicated benefit entitlement information that was correct, but omitted or did not address other significant benefit entitlement information, a limited-scope benefit determination may be issued that supplements the earlier benefit determination, rather than a revised benefit determination.

Example 1: A married participant was sent a benefit determination confirming that the benefit in pay status was a straight life annuity PBGC subsequently determines that while the benefit determination was correct, the plan provided a free surviving spouse benefit (FSSB), which was not addressed in the benefit determination. A limited-scope benefit determination will be issued to confirm the entitlement to the FSSB.

Example 2: Participants in a plan are not permitted to work and receive early retirement benefits (ERB) under PBGC's internal guidance on working retirement. After they stopped working and filed for early retirement benefits (ERB), some participants were not permitted to receive an ERB as of their elected annuity starting dates (ASD) because

the plan sponsor confirmed that their employment ended after the elected ASD.

The participants want to appeal PBGC's decision because they think the plan sponsor provided incorrect information. However, they no longer have appeal rights because their benefit determinations have already become effective. Limited-scope benefit determinations specifically addressing this early retirement issue may be sent because the entitlement issue arose after the original benefit determinations, which were correct, became effective.

- 3) **Other notice of correction.** If a benefit determination communicated correct benefit entitlement information but an error occurred in subsequent benefit payments or incorrect benefit information was subsequently communicated to a participant or beneficiary, a revised or limited-scope benefit determination generally will not be issued. However, notice of any required correction will be sent.

Generally, notice of a benefit or payment error will not be sent if the error will not be corrected unless an explanation of the error or difference in benefits is deemed prudent.

Example: PBGC issued a benefit determination communicating that a normal retirement benefit of \$1,000 in the form of a SLA would be payable beginning 8/1/2020, and that an ERB would first be payable beginning 8/1/2015 in the amount of \$700. The participant elected to retire as of 8/1/2017 and to receive the benefit as an SLA. PBGC begins to pay the participant a monthly benefit of \$880.

PBGC subsequently concludes that although the benefit determination was correct, an incorrect annuity starting date of 8/1/2018 was used to calculate the actual retirement benefit. The correct retirement benefit is \$820. Notice of the error (and any net overpayment) will be issued. A revised or limited scope benefit determination will not be sent because the original benefit determination communicated the correct benefit entitlement.

- b. **Benefit increases.** A benefit payment generally is increased as soon as practicable after notice of the increase is sent.
- c. **Benefit decreases**
 - 1) **Benefit determinations.** A benefit payment is decreased as soon as practicable after a benefit determination (including a revised or limited-scope benefit determination) becomes effective.
 - 2) **Other notices.** A benefit payment is decreased as soon as practicable but no earlier than 30 days after the date of the notice of the decrease.

d. **Benefit overpayments and underpayments.** Benefit overpayments and underpayments resulting from benefit corrections will be calculated in accordance with PBGC Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

- **Benefit overpayments.** Benefit overpayments will be recouped or recovered in accordance with PBGC Internal Guidance Recoupment, Recovery and Administrative Correction unless determined otherwise as provided under this internal guidance.
- **Benefit underpayment.** Resulting underpayments will be paid as provided in PBGC Internal Guidance Underpayment Reimbursement and Interest Payments.